Subject: Americans with Disabilities Act Reasonable Accommodations		Policy Number: ADM: 45
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1) PURPOSE

a) The Rehabilitation Act of 1973, as amended, the Americans with Disabilities Act (ADA), and the New Mexico Human Rights Act require that reasonable accommodation be provided to applicants for employment and employees with disability or a serious medical condition, if necessary, for the employee to perform the essential functions of the employee's job. In addition, it is in keeping with the values and goals of DPS to provide reasonable accommodations to employees with disabilities or serious medical conditions.

2) POLICY

a) It is the policy of the Department of Public Safety to reasonably accommodate qualified individuals with disabilities unless the accommodation would impose an undue hardship. Reasonable accommodations will be provided for qualified individuals with disabilities when such accommodations are directly related to performing the essential functions of a job, competing for a job, or to enjoy equal benefits and privileges of employment. Declaring a disability and requesting an accommodation is the exclusive responsibility of the employee or applicant for employment. When a declaration or request is made, the procedure outlined in this policy will be followed. Employees with a serious medical condition or disability, who decline the opportunity to make a specific declaration and request accommodation will be required to perform the functions which are normal and appropriate for the job that employee holds. The employees' performance will be evaluated as though no disability existed. Declaration by an employee of a disability or serious medical condition after a less than favorable evaluation has been given or appropriate disciplinary action has been initiated will not be grounds for reversal of such actions. However, a disclosure at such a time, and subsequent adherence to the procedures outlined in this policy will be taken

precludes the Department from adhering to the requirements of Department of Public Safety Policy *PRS: 13 Fitness for Duty Evaluations*.

3) APPLICABILITY

a) This policy provides protection for any applicant for employment with the Department of Public Safety and/or all individuals employed by the Department, regardless of their employment relationship with the Department.

4) REFERENCES

a) Rehabilitation Act of 1973, as amended
b) Americans with Disabilities Act
c) New Mexico Human Rights Act

5) DEFINITIONS

a) **ADA Coordinator** - An individual appointed by the DPS Cabinet Secretary to oversee the program.
b) **ADL** - Activities of Daily Living. These are activities that are fundamental for self-care.
c) **Applicant** - An individual that applies for DPS employment, or an employee seeking a promotion or transfer to a different position within DPS.
d) **Appropriate Supervisory Authority** - An individual in the employee's chain with the ability to commit the department to fulfill an offer of accommodation.
e) **DPS** – Department of Public Safety.
f) **Days** - For purposes of this policy, days always refers to Monday through Friday working days.
g) **Disability** - A physical or mental impairment that substantially limits one or more of an individual's major life activities, a record of such impairment, or being regarded as having such an impairment.
h) **DPS Building** - Any building owned, leased, or operated by the Department of Public Safety, which includes the Headquarters offices, Law Enforcement Academy, remote district offices, sub-district offices, ports of entry, etc.
i) **Employee** - A person who works for and receives wages and whose work is under the direct control and supervision of DPS. "Employee" includes term, probationary, temporary, permanent, and exempt positions, but does not include independent contractors who perform work for DPS.

j) **Essential Functions** - The fundamental (as opposed to marginal) job duties of the employment position the individual holds.

k) **Functional Limitations** - Limitations imposed by a disability that impede or limit an individual's functioning can include, but are not limited to, one or more of the following areas (or in any area of physical or mental functioning):

Sensory Functioning	Work Behaviors Manual
Dexterity	Motor Coordination
Physical Strength or Stamina	Mobility
Interpersonal Relations	Physical Appearance
Communication	Speech
Thought Process	Visual/Auditory Perception
Learning Style	Judgment
Physical, Mental or Emotional Functioning	Memory

l) **Major Life Activities** - These include but are not limited to: caring for oneself; performing manual tasks; walking; seeing; hearing; speaking; breathing; learning; working; sitting; standing; lifting or reading.

m) **Mitigating Measure** - Compensation made, assistive devices employed, auxiliary aids used, or actions taken to control, reduce, compensate for, or otherwise correct the impact of a physical or mental impairment. Examples of mitigating measures may include, but are not limited to, eyeglasses or medication.

n) **Physical or Mental Impairment.**
   i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, sensory, respiratory (including speech organs), cardiovascular, digestive, genitourinary, hemic and lymphatic, skin, and endocrine.
   ii) Any mental or psychological disorder, such as developmental disability, organic brain syndrome, traumatic brain injury, mental illness, or a learning disability.

o) **Qualified person with a disability with respect to employment** - An individual with a disability who meets the skill, experience, education, and other job-related requirements of a position held or desired, and who, if needed, with a reasonable accommodation, can perform the essential functions of the job

p) **Reasonable Accommodation**

i) Any modification or adjustment to the work environment or to the manner or circumstances under which the position held or desired is customarily performed, that enables a qualified individual with a disability to perform the essential functions of that position.

ii) Reasonable accommodation may include, but is not limited to, any combination of the following:

(1) Making existing facilities used by employees accessible to and usable by individuals with disabilities.

(2) Restructuring a job by modifying the job so that a qualified person with a disability can perform the essential functions of the position (i.e., eliminating marginal elements of the job, or redesigning procedures).

(3) Initiating part-time or modified work schedules.

(4) Acquiring or modifying equipment or devices.

(5) Acquiring readers or interpreters.

(6) Providing personal assistant services while traveling on official state business.

(7) Providing secretarial or clerical help to perform essential duties of the job.

(8) Providing an alternative worksite in a setting away from the employee's normal workstation, such as an alternative facility owned, leased or arranged for by the DPS.

q) **Record or History of Impairment** - A person who has a history of impairment or has been diagnosed as having an impairment.

r) **Regarded as Impaired** - A person who is regarded as having a physical or mental impairment in which (1) there is a physical or mental impairment that does not substantially limit major life activities but who is treated as if the impairment causes such limitation, or (2) the person has a physical or mental impairment that substantially limits major life activities only as the result of the attitudes of others, or (3) the person does not have an impairment but is treated as if the person does.

s) **Serious Medical Condition** - A serious health-related impairment other than a disability, which substantially limits one or more of an individual's major life activities, as "major life activities" is defined within this policy.

t) **Supervisor** - For purposes of this policy, a supervisor is a law enforcement or civilian employee of the DPS who is charged with overseeing the work assignments of one or more individuals, whether civilian personnel or commissioned officers.

u) **Undue Hardship** - Any action that DPS can demonstrate would result in a fundamental alteration in the nature of its programs or activities or any undue financial and administrative burdens. Where a particular accommodation would result in an undue hardship, DPS must determine if another accommodation is available that would not result in an undue hardship. All possible alternatives must be considered up to and including reassignment.

6) OPERATIONAL PROCEDURES

a) Determining Reasonable Accommodation

i) Informal Accommodation Process

(1) The employee must complete the Request for Reasonable Accommodation (Attachment A) and presents it to their immediate supervisor along with required medical documentation. The supervisor must provide a copy of this material to the ADA Coordinator.

(2) Informal accommodations are low cost and implemented with relative administrative ease. These types of accommodations may be approved and granted by the immediate supervisor, in conjunction with appropriate members in the chain of command. Additionally, such accommodations must be in keeping with the department's applicable personnel policies and procedures, within any existing funding constraints, and if the request does not fundamentally alter the nature of the position.

(3) If there is any question that the informal accommodation is insufficient, or the employee is not satisfied with the accommodation(s) provided, the supervisor **must** use the formal accommodation process to resolve the matter. If the informal accommodation process is used, the supervisor will document this process, including the outcomes; what specific actions were taken; what alterations to physical surroundings were made; what alterations of schedule were allowed; what deadlines were extended, etc. A copy of this documentation will be forwarded to the ADA Coordinator for inclusion in the employee's ADA file.

Examples of accommodation requests which may appropriately be handled through the informal accommodation process includes, but are not limited to, requests for office equipment such as: ergonomic

seating; alternative keyboard; magnification devices; simple amplification devices; alternative lighting; etc. The informal accommodation process may also approve of the request for alternative work, break, or lunch schedules; temporary non-essential job function changes, etc.

ii) Formal Accommodation Process. This is a structured, documented procedure for requesting, evaluating, and receiving reasonable accommodations.

(1) The employee must fill out the Request for Reasonable Accommodation (Attachment A) and give it to their immediate supervisor along with required medical documentation. The supervisor provides a copy of this material to the ADA Coordinator.

(2) No accommodation(s) shall be agreed upon through this process until the following factors have been considered:

(a) The type of accommodation(s) requested by the employee.

(b) The type of accommodation(s) offered to employees in similar circumstances.

(c) Alternative methods of providing reasonable accommodations to the employee.

(d) Availability of the service or item requested in regard to state purchasing requirements, state personnel rules, and applicable state and federal requirements.

(e) The cost of the accommodation requested in relation to other accommodations which could be provided.

iii) The ADA Coordinator and the appropriate supervisory authority (this must be someone in the employee's chain with the ability to commit the department to fulfill the accommodation) shall reach an agreement on the type of accommodation(s) to be offered to the employee. All offers of accommodation(s) shall be subject to the State Personnel Act, State Personnel Board Rules, the Procurement Code, any existing collective bargaining agreement(s), and DPS policies.

iv) The accommodation(s) agreed upon shall be presented in writing by the immediate supervisor to the employee.

v) The employee shall, within fifteen (15) days of the offered accommodation(s), accept or reject the offer in writing to the immediate supervisor, with a copy to the ADA Coordinator. If the proposed

accommodation(s) is rejected, the written statement shall include the reason(s) why the proposed accommodation(s) is not suitable.

vi) If the employee accepts the proposed accommodation(s), the ADA Coordinator and the immediate supervisor, in consultation with the employee, will develop the written specifications for the accommodation. If necessary, these specifications will be submitted to procurement for appropriate processing.

vii) If the employee rejects the proposed accommodation(s), the ADA Coordinator and the immediate supervisor may engage in the interactive process with the employee in an attempt to reach agreement. The ADA Coordinator shall inform the appropriate Deputy Secretary immediately if no agreement can be reached. Upon notification by the ADA coordinator, the Deputy Secretary may:

(1) Affirm the recommendation of the ADA Coordinator and the appropriate supervisory authority.

(2) Send the matter back to the ADA Coordinator with recommendations for further consideration.

(3) Overturn the recommendation of the ADA Coordinator and the appropriate supervisory authority and impose the reasonable accommodation(s) requested by the employee.

The ADA Coordinator shall inform the employee in writing of the Deputy Secretary's decision.

b) **Roles and Responsibilities**

i) **Interaction with Job Applicants**

(1) At no time, during an interview, will the person or persons conducting the interview inquire about a disability or the severity of a disability, even if the disability is obvious.

(2) The interviewer will have a copy of the job description and explain the essential job functions of the position. The interviewer may then ask all applicants, without inquiring further into any disability issues, whether the applicant can perform the essential functions with or without reasonable accommodation.

(3) If the applicant responds that an accommodation will be required to proceed with the application process, the requested accommodation may be addressed as an informal or formal accommodation as

described in Section 6.0 a) Determining the Reasonable Accommodation as outlined above.

(4) The hiring authority will determine the most qualified applicant for the position based upon requisite skill, experience, education, and other job-related requirements. The fact that an applicant may have a disability or require an accommodation shall not be considered in selecting the most qualified applicant.

ii) **Current Employee's Responsibilities**

(1) It is the employee's responsibility to initiate a reasonable accommodation request through their immediate supervisor. The original request for reasonable accommodation does not need to be in writing. However, once the employee has made the supervisor aware of a disability or medical condition, the supervisor will provide the employee with a copy of the Request for Reasonable Accommodation form. If an employee specifically declines to declare a disability and/or request accommodation, it will be so noted by the supervisor, and the process ceases.

(2) The written request will include the description of the disabling condition, serious medical condition, or physical or mental disability, as well as an impediment to the performance of essential job functions.

(3) The employee will be required to provide documentation, such as a diagnosis by a physician, medical records, or other evidence sufficient to document the disability or serious medical condition for which accommodation is requested. The only documentation needed is that which is related to removing the employment barrier. It is the employee's responsibility to actively participate in the determination of reasonable accommodation(s) and to suggest alternatives that would be acceptable to the employment situation.

iii) **Employee's Immediate Supervisor Responsibility**

It is the supervisor's responsibility to:

(1) Ensure that employees and applicants know of the availability of reasonable accommodations and the process for requesting them.

(2) Be able to identify the essential functions of the employee's job.

(3) Ensure that the Request for Reasonable Accommodations is substantially completed and forwarded to the ADA Coordinator.

(4) Assist the employee and the ADA Coordinator to determine a reasonable accommodation(s). This process may require the supervisor to consult with other appropriate supervisory authority.

(5) Make recommendations regarding the most appropriate reasonable accommodation(s) for an employee, with respect to the employee's needs, the requirements of the procurement process, cost issues, essential functions of the job, and the effect on other employees and the operations of the unit in which the employee operates.

(6) Ensure that the employee is afforded adequate time away from workload demands to meet with the ADA Coordinator, if necessary.

(7) Ensure the employee receives an accommodation(s) once it has been determined to be the appropriate accommodation(s) for the employee.

iv) **Department of Public Safety Responsibility**

(1) It is the Department's responsibility to ensure that employees are afforded timely and courteous consideration of their requests for reasonable accommodations. The most appropriate reasonable accommodation is the decision of DPS and may not be specifically what the employee requested.

(2) In addressing reasonable accommodation needs for an applicant or employee with a disability that is covered under the ADA, the DPS shall:

(a) Assess the required skills and competencies necessary to do the job.

(b) Define the essential and marginal function of the job.

(c) Evaluate the functional limitations of the employee.

(d) Invite the applicant or employee to participate in the process.

v) **ADA Coordinator's Responsibility**

(1) Determine if documentation of the disability or serious medical condition claimed is sufficient. If not, the ADA Coordinator shall request further evidence of the disability from the employee. Updated documentation may not be required if the disability is permanent or progressive, of known history, or observable. **At any point that documentation is needed regarding a disability or serious medical condition relevant to a request for reasonable accommodation, the Authorization for the Release of Medical Information form**

(Attachment B) shall be provided and explained to the applicant or employee in order to obtain this information.

(2) Make a determination of whether the employee is a qualified individual with a disability, when using a mitigating measure, within the meaning of the ADA and the Rehabilitation Act of 1973, as amended, and if the accommodation is needed. This determination should be made as soon as is practicable and no longer than thirty (30) days from the date of receipt of the request.

(a) If the ADA Coordinator determines that the employee is not a qualified individual with a disability, the ADA Coordinator shall inform the employee, the employee's supervisor, and the appropriate Deputy Secretary and the Cabinet Secretary.

(b) The ADA Coordinator shall document the reasons for determining that the employee is not a qualified individual with a disability.

(c) If the ADA Coordinator determines that the employee is a qualified individual with a disability, the ADA Coordinator shall explore appropriate types of accommodations with the employee and the appropriate supervisory authority. The ADA Coordinator, the appropriate supervisory authority, and the employee shall consider options in light of their roles and responsibilities as set out in this policy.

(3) Work with the supervisor and the employee in evaluating the reasonable accommodations requested in light of the essential functions of the employee's job.

(4) Research and evaluate available technology and various methods of providing accommodations to perform the essential functions of the job.

(5) Make recommendations and reach a consensus, if possible, regarding the most appropriate reasonable accommodation(s) for an employee, with respect to the employee's needs, the requirements of the procurement process, cost issues, essential functions of the job, and the effect on other employees and the operations of the agency.

(6) Consult with internal and external specialists, if necessary.

(7) Notify the appropriate Deputy Secretary and Cabinet Secretary immediately if an employee cannot be provided with the accommodation(s) requested.

(8) Monitor the reasonable accommodation process to ensure that the employee is actually receiving and implementing the agreed upon accommodation(s) in a timely manner.

c) **Conditions Not Amenable to Accommodation**

Once all required steps described in this policy have been taken, if it becomes clear that the employee is unable to perform the essential functions of the position, even with agreed-upon accommodation, that employee is no longer qualified for that specific position. Therefore, the employee can not continue in that specific position, and it is then the responsibility of the department to offer the disabled individual any position which is then currently open and available for which the disabled individual does qualify. The employee is not required to compete for the position but must simply meet the basic qualifications. The Department of Public Safety has no responsibility to create a position for such an employee in order to provide accommodation.

If there is no job within DPS that the employee can perform the essential job functions of, the DPS has no option other than to terminate the employee.

d) **Implementation of Reasonable Accommodation**

i) Purchase of Goods and Services

(1) All purchases of items or services needed to provide reasonable accommodations are subject to the provisions of the New Mexico Procurement Code, the regulations of the Department of Finance and Administration (DFA), and the regulations of the General Services Department (GSD).

(2) The procurement of goods and services shall follow internal procedures.

e) **Time Requirements**

Any time requirements or limits included within this policy may be extended by direction of the Cabinet Secretary upon good cause.

f) **Recordkeeping**

i) Records related to a particular individual's accommodation request should be kept for the duration of the individual's employment by the ADA Coordinator. These records are confidential and must be kept

separate in a Reasonable Accommodation File and not in the individual's personnel file.

ii) The ADA Coordinator or designee may provide the agency information regarding reasonable accommodations requests, without individual identifiers, to analyze data concerning the provision of reasonable accommodations. This may be accomplished using the Individual Reasonable Accommodation Summary Report (Attachment C or similar method).

7) ATTACHMENTS

a) **Request for Reasonable Accommodation Form**
b) **Authorization Release of Medical Information Form**
c) **Individual Reasonable Accommodations Summary Report Form**

8) APPROVAL

APPROVED BY: _____ **DATE:** 11/17/25

DPS Cabinet Secretary