



National Endowment for the Arts

Directive 2723

REASONABLE ACCOMMODATION for INDIVIDUALS with DISABILITIES

Signature of Approving Official:

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Reasonable Accommodation for Individuals with Disabilities

- I. **PURPOSE.** This directive establishes the National Endowment for the Arts (NEA) policy on Reasonable Accommodation for Individuals with Disabilities and outlines the appropriate procedures for processing requests and, where appropriate, providing reasonable accommodation to employees and applicants.
- II. **AUTHORITY AND COVERAGE.** Reasonable accommodation of qualified individuals with disabilities who are employees or job applicants will be provided in accordance with; 29 CFR Parts 1630 and 1614; Sections 501 and 508 of the Rehabilitation Act of 1973, 29 U.S.C. 791; the Americans with Disabilities Act (ADA) of 1990 as amended, the Americans with Disabilities Act Amendments Act (ADAAA) of 2008 and Executive Order 13164.
- III. **POLICY.** The NEA's policy is to fully comply with the reasonable accommodation requirements of the Rehabilitation Act of 1973, as amended, and Title I of the Americans with Disabilities Act (ADA) as amended. Under the law, Federal agencies must provide reasonable accommodation to qualified employees or job applicants with disabilities, unless to do so would cause undue hardship. The NEA is committed to providing reasonable accommodation to its employees and applicants for employment in order to assure that individuals with disabilities enjoy full access to equal employment opportunity at the NEA. The NEA will not discriminate on the basis of disability and will ensure that all the programs and facilities within its control are accessible. The NEA provides reasonable accommodation when an applicant with a disability needs an accommodation in order to be considered for a job. The NEA will provide reasonable accommodation, including personal assistance services (PAS) as provided by law, when an employee with a disability needs an accommodation to enable him or her to perform the essential functions of their job, to gain access to the workplace, and to enjoy equal benefits and privileges of employment. The NEA will process requests for reasonable accommodation and, where appropriate, provide such reasonable accommodation in a prompt and efficient manner.
- IV. **APPLICABILITY.** The provisions of this directive apply to all NEA employees and applicants for employment.
- V. **DEFINITIONS.**

Deciding Official. In the case of an employee, the deciding official may be the immediate supervisor, the second level supervisor, the Disability Program Manager or designee. The deciding official in the case of an applicant for employment may be the human resources specialist handling the application, the Disability Program Manager or designee.

Disability. In general, with respect to an individual, disability means a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (ii) A record of such an impairment; or (iii) Being regarded as having such an impairment. This means that the individual has been subjected to an action prohibited by the ADA as amended because of an actual or perceived impairment that is not both "transitory and minor." In this policy, all references to "disability" refer only to those impairments that meet the ADA/Rehabilitation Act definition of disability as amended by the ADAAA. For further information, please see 29 CFR § 1630.2(g) through (l).

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Disability Program Manager (DPM). Director of the Office of Human Resources, or designee.

Essential Functions. Those job duties that are so fundamental to the position that the individual holds or desires that the job cannot be done without performing them. A job function can be "essential" if, among other things: the position exists specifically to perform that function; there are a limited number of other employees who could perform the function; or the function is specialized and the individual is hired based on his/her ability to perform it. Determination of the essential functions of a position must be done on a case-by-case basis so that it reflects the job as actually performed, and not simply the components of a generic position description. For more information, please see 29 CFR 1630.2(n).

Functional Limitation. An activity which an employee or applicant for employment cannot perform due to a disability impacting their ability to accomplish tasks at work, home, or in other settings.

Interactive Process. The communications between the individual requesting the accommodation and the NEA's deciding official about the request, the process for determining whether an accommodation will be provided, and the nature of the potential accommodation, if the request is granted.

Medical Documentation. Documentation relating to the claimed disability, which substantiates that the individual is an individual with a disability, and assists in the identification of appropriate accommodations that does not disclose unrelated medical or genetic information.

Personal Assistance Services (PAS). As defined in 29 CFR 1614.203(a)(5), the term personal assistance services means assistance with performing activities of daily living that an individual would typically perform if he or she did not have a disability, and that is not otherwise required as a reasonable accommodation, including, for example, assistance with removing and putting on clothing, eating, and using the restroom.

Qualified Individual. The term "qualified," with respect to an individual with a disability, means that the individual satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires and, with or without reasonable accommodation, can perform the essential functions of such position. For more information, please see 29 CFR 1630.2(m) and 1630.3

Reasonable Accommodation.

(i) Modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires; or

(ii) Modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable an individual with a disability who is qualified to perform the essential functions of that position; or

(iii) Modifications or adjustments that enable a covered entity's employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated employees without disabilities. For more information, please see 29 CFR 1630.2(o).

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Reassignment. Reassignment is a form of reasonable accommodation that, absent undue hardship, is provided to employees (not applicants) who, because of a disability, can no longer perform the essential functions of their job, with or without reasonable accommodation. Reassignments are made only to vacant positions and for employees who are qualified for the new position. If the employee is qualified for the position, he/she will be reassigned to the job and will not have to compete for it.

Targeted Disability. A disability that is designated as a “target disability or health condition” on the Office of Personnel Management’s Standard Form 256 or that falls under one of the first 12 categories of disability listed in Part A of question 5 of the Equal Employment Opportunity Commission’s Demographic Information on Applicants form. For further information, please see 29 CFR 1614.203(a)(9).

Undue Hardship. With respect to the provision of an accommodation, undue hardship means significant or expense incurred by the agency when considered in light of various factors including but not limited to the nature and cost of the accommodation needed as well as the overall financial resources of the agency and the impact of the accommodation on the agency’s ability to do business. Determination of undue hardship will always be made on a case-by-case basis. For further information, please see 29 CFR 1614.203(a)(10) and 29 CFR part 1630.2(p).

VI. ROLES AND RESPONSIBILITIES

A. Individuals requesting reasonable accommodation, including employees requesting Personal Assistance Services, will:

1. Make request including identification of the disability and functional limitations. Employees may request assistance in filling out NEA/OHR Form 141 from their immediate supervisor or from the DPM. This form is found in Appendix A of this directive and is available in alternative formats that are accessible to people with disabilities.
2. Work with appropriate NEA officials to identify specific, appropriate reasonable accommodation.
3. If requested, provide appropriate, reasonable medical or other supporting documentation relating to the function impairment and requested accommodation within 20 business days.

B. The Deciding Official will:

1. Provide an initial response to the employee or applicant for employment which indicates that the accommodation is approved or that additional information is needed within a specified timeframe. The deciding official will ensure the requesting employees receives all necessary forms and be available to assist employees in completing documents to complete the request.
2. Consult and cooperate with an employee or applicant who makes an accommodation

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request, and make referrals as necessary, to determine whether the requested accommodation is appropriate.

3. Decide on a case-by-case basis whether to grant the requested accommodation, offer alternative reasonable accommodation(s), or deny the request.
4. Provide reasonable accommodation to an employee or qualified applicant for employment with a disability unless the accommodation requested would create an undue hardship on the Agency.

C. The Disability Program Manager (DPM) will:

1. Provide guidance, assistance and training to managers, supervisors, employees and applicants for employment on how to adhere to the policy and procedures described in this document.
2. Review accommodation requests and decisions that deny requested accommodation to ensure that these established procedures have been followed.
3. Ensure that deciding officials respond within specified timeframes to employees or applicants who have requested reasonable accommodation.
4. Determine position series for which an employee qualifies and whether vacant positions are available for reassignment.
5. Consult and coordinate the provision of services/equipment with the Civil Rights Office, the Office of Information and Technology Management, the Office of Accessibility, the Administrative Services Office, and other offices, as needed, concerning reasonable accommodation issues and policies, and concerning specific requests for accommodation.

D. The General Counsel will provide legal advice and counsel to NEA managers and supervisors, the Office of Human Resources (OHR), the Office of Civil Rights (OCR), the Office of Information and Technology Management (ITM), the Office of Accessibility, the Administrative Services Office, and other offices, as needed, concerning requests for accommodation.

E. The Director of Administrative Services will provide assistance in accommodating an employee or applicant with a disability in areas related to building facilities, furniture, and equipment not related to information technology.

F. The Chief Information Officer will be responsible for the provision of information technology and other adaptive equipment to facilitate approved reasonable accommodation requests.

G. The Office of Accessibility will provide guidance and assistance in addressing accessibility issues raised in conjunction with reasonable accommodation requests.

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- VII. REASONABLE ACCOMMODATION.** A request for reasonable accommodation is a statement that an individual with a disability needs an adjustment or change at work, in the application process, or in a benefit or privilege of employment to perform the duties of a position. A request does not have to use any special words, such as "reasonable accommodation," "disability," or "Rehabilitation Act." It is important for supervisors to recognize statements that may represent a request for reasonable accommodation. Examples might include:
- a. "I'm having trouble getting to work at my scheduled starting time because of the medical treatments I'm undergoing."
 - b. "I need six weeks off to get treatment for a back problem."
 - c. A new employee, who uses a wheelchair, informs the supervisor that her wheelchair cannot fit under the desk in her office.

An individual with a disability may request a reasonable accommodation orally or in writing at any time, even if existence of a disability has not been previously disclosed. **The reasonable accommodation process begins as soon as the request for accommodation is made.**

There are three categories of individuals who may submit a request for reasonable accommodation:

1. An Employee. Requests from employees are to be submitted to the individual's immediate supervisor; the supervisor will determine, in consultation with the DPM or designee, if the request should be referred to someone other than the immediate supervisor.
2. An Applicant for Employment. An applicant may request a reasonable accommodation from the human resources specialist with whom the applicant has contact in connection with the application process. The Office of Human Resources is responsible for training OHR staff involved in the application process to recognize requests for reasonable accommodation and to handle them appropriately.
3. A family member, friend, health professional, or other representative may request reasonable accommodation on behalf of an individual with a disability. Where possible, the agency should confirm with the person with a disability that he/she in fact wants a reasonable accommodation. The employee may refuse an accommodation when he/she believes it is not needed. The procedures for consideration and approval/disapproval of such requests (as detailed below) will be the same as for requests made by the individual needing the accommodation.

Any NEA employee or applicant may also submit a request for accommodation directly to the DPM in the Office of Human Resources and consult the DPM or designee for further information or assistance in connection with requesting or processing a request.

- VIII. PERSONAL ASSISTANCE SERVICES.** Additionally, an employee may request Personal Assistance Services (PAS). PAS only includes assistance with basic human functions. Together with any required reasonable accommodation, PAS are provided during work hours and for job-related travel to enable an employee to perform the essential functions of the

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position. PAS are provided when required because of a targeted disability and when the services do not impose an undue hardship on the Agency. Any required PAS must be performed by a personal assistance service provider. The Agency may require that personal assistance providers provide PAS to more than one individual and may require the providers to perform tasks unrelated to personal assistance services, but only to the extent that doing so does not result in failure to provide PAS in a timely manner. When selecting a personal assistance service provider for a single individual, the employees' preferences will be the primary consideration to the extent permitted by law.

Employees requesting PAS will submit a completed NEA OHR Form 141 found in Appendix A. Employees will submit the request to their immediate supervisor or appropriate management official for processing. PAS requests will be processed in the same basic manner as a request for reasonable accommodation.

Any NEA employee may consult the DPM or designee for further information or assistance in connection with requesting or processing a request for PAS.

The NEA will not take an adverse action against applicants or employees based on their need for, or perceived need for, PAS.

IX. PROCESSING REASONABLE ACCOMMODATION REQUESTS. The NEA will process requests for reasonable accommodation, including requests for PAS, and provide accommodations, where they are appropriate, in as short a time frame as reasonably possible. The time necessary to process a request will depend on the nature of the accommodation requested and whether it is necessary to obtain supporting information. The reasonable accommodation process consists of the following steps, which are explained in detail in the sections that follow:

- A. Submit the request as described in Section VII above.
- B. Determine the Deciding Official. The NEA staff member who receives the request consults with the DPM or designee to determine who is responsible for handling the request. That person will be referred to as the **deciding official**. In the case of an employee, the deciding official may be the immediate supervisor, the second level supervisor, the Disability Program Manager or designee. The deciding official in the case of an applicant for employment may be the human resources specialist handling the application, the Disability Program Manager or designee. The staff member receiving a request, if not the deciding official, must forward it to the deciding official **as soon as possible but no more than five business days after receiving it**. Upon receipt of the request, the deciding official will inform the employee that either the deciding official or the DPM or designee who oversees the Reasonable Accommodation program will be issuing the final decision. An employee or applicant requesting an accommodation may contact the DPM in the Office of Human Resources directly with questions about the processing of and final decision regarding their request. The DPM may be contacted by telephone at: 202.682.5527 or by email at: OfficeofHumanResources@arts.gov.

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- C. Interactive Process. To start the interactive process, no particular form needs to be completed and the individual need not have a particular accommodation in mind before making a request. The interactive process should be completed with 15 business days of the request for reasonable accommodation. This process allows the parties to determine what, if any, accommodation should be provided. The individual requesting the accommodation and the deciding official must talk to each other about the request, the process for determining whether an accommodation will be provided, and potential accommodations. **Communication is a priority throughout the entire process.** The deciding official has the principal responsibility for identifying possible accommodations. The deciding official will search out and consider possible accommodations, including consulting appropriate resources for assistance. The deciding official will provide a decision within 15 business days of the request for reasonable accommodation unless extenuating circumstances exist.

Where a particular reasonable accommodation can be provided in less than the maximum amount of time provided, failure to provide the accommodation in a prompt manner may result in a violation of the Rehabilitation Act.

The employee requesting the accommodation should also participate to the extent possible in helping to identify an effective accommodation. Resources, which are available to help both the deciding official and the individual requesting the accommodation, are listed in **Appendix B**. The DPM is also available to provide assistance.

Ongoing communication is particularly important where the specific limitation, problem, or barrier is unclear; where an effective accommodation is not obvious; or where the parties are considering different possible reasonable accommodations. In those cases where the disability, the need for accommodation, and the type of accommodation which should be provided are clear, extensive discussions are not necessary. Even so, the deciding official and requesting individual should talk to each other to make sure that there is a full exchange of relevant information.

- D. Standard Processing. If a request for an accommodation can be processed by the requesting **employee's supervisor or second level supervisor**, no supporting medical documentation is required, and no extenuating circumstances apply, the request shall be processed and the accommodation, if granted, provided within no more than **15 business days** from the date the employee's supervisor receives the request, and sooner, if possible. Since the deciding official may need the full 15 business days to engage in the interactive process and collect all relevant information about possible accommodations, the request should be dealt with immediately. Failure to meet this time frame solely because a deciding official delayed processing the request is not an extenuating circumstance.

Examples of accommodations that may be provided to an individual with a disability within this 15 business days timeframe include:

1. An employee with diabetes who sits in an open area asks for four breaks a day to test her blood sugar levels in private.

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2. An employee who takes antidepressants that make it hard for him to get up in time to get to the office at 9:00, requests that he be allowed to start work at 10:00 and still put in an 8-hour day.
3. A supervisor distributes detailed agendas at the beginning of each staff meeting. An employee with a learning disability asks that the agenda be distributed ahead of time because the disability makes it difficult to read and he needs more time to prepare.

The NEA recognizes that the need for documentation may not become apparent until after the interactive process has begun. If the deciding official believes that it is necessary to obtain medical documentation, the deciding official will inform the DPM as soon as possible after his or her receipt of the request for accommodation (but before the expiration of the 15 business days period), at which time the 15 business days period is frozen.

If the DPM determines that medical documentation is needed, a decision will be made on the request and the accommodation, if granted, will be provided within 15 business days from the date the deciding official receives the relevant information from the DPM, absent any extenuating circumstances.

If the DPM determines that medical documentation is not needed, the 15 business day time period resumes as soon as the DPM notifies the deciding official to continue processing the request.

E. Expedited processing. In certain circumstances, a request for reasonable accommodation requires an expedited review and decision in a time frame that is shorter than the 15 business days discussed above. This includes where a reasonable accommodation is needed:

1. **To enable an applicant to apply for a job.** Depending on the timetable for receiving applications, conducting interviews, taking tests, and making hiring decisions, there may be a need to expedite a request for reasonable accommodation in order to ensure that an applicant with a disability has an equal opportunity to apply for a job. Therefore, the Office of Human Resources needs to move as quickly as possible to make a decision and, if appropriate, provide a reasonable accommodation.
2. **To enable an employee to attend a meeting scheduled to occur shortly.** For example, an employee may need a sign language interpreter for a meeting scheduled to take place in five days. (See **Appendix C.**)

F. Extenuating Circumstances are factors that could not reasonably have been anticipated or avoided in advance of the request for accommodation. When extenuating circumstances are present, the time for processing a request for reasonable accommodation and providing the accommodation will be extended as reasonably necessary. It is the NEA's policy that extensions based on extenuating circumstances should be limited to circumstances where they are strictly necessary. All NEA staff are expected to act as quickly as reasonably possible in processing requests and providing accommodations; the NEA may not delay processing or providing an accommodation simply because a particular staff member is

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unavailable.

The following are examples of extenuating circumstances:

1. There is an outstanding initial or follow-up request for medical documentation, or the DPM is evaluating medical documentation that has been provided.
2. The purchase of equipment may take longer than 15 business days because of requirements under the Federal Acquisition Regulation.
3. Equipment must be back-ordered, the vendor typically used by the NEA for goods or services has unexpectedly gone out of business, or the vendor cannot promptly supply the needed goods or services and another vendor is not immediately available.
4. The individual requesting the accommodation needs to try working with equipment on a trial basis to ensure that it is effective before the NEA buys it.
5. New staff needs to be hired or contracted for, or an accommodation involves alteration to or removal of architectural barriers.

Where extenuating circumstances cause a delay in the process, **the deciding official must notify the individual of the reason for the delay, including any extenuating circumstances that justify the delay, and the approximate date on which a decision, or provision of the reasonable accommodation, is expected.** Any interim developments or changes should also be communicated promptly to the individual.

G. Temporary Measures. When all the facts and circumstances known to the agency make it reasonably likely that an individual will be entitled to a reasonable accommodation, but the accommodation cannot be provided immediately, the agency shall provide an interim accommodation that allows the individual to perform some or all of the essential functions of his or her job, if it is possible to do so without imposing undue hardship on the agency. Here are two examples of circumstances that could justify temporary measures:

- There may be a delay in receiving adaptive equipment for an employee with a vision disability. During the delay, the supervisor might arrange for other employees to act as readers. This temporary measure may not be as effective as the adaptive equipment, but it will allow the employee to perform as much of the job as possible until the equipment arrives.
- There may be a need to obtain or evaluate medical documentation and the NEA has not yet determined that the individual is entitled to an accommodation. In such a case, the deciding official will notify the individual in writing that the accommodation is being provided on a temporary basis pending a decision on the accommodation request.

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NEA deciding officials who approve such temporary measures are responsible for assuring that they do not take the place of a permanent accommodation and that all necessary steps to secure the permanent accommodation are being taken.

H. Request for reassignment. There are specific considerations when responding to a request for reassignment:

- The NEA must consider providing reassignment to a vacant position as a reasonable accommodation when it determines that no other reasonable accommodation will permit an employee with a disability to perform the essential functions of his or her current position. Reassignment will be considered if the only effective accommodation would cause undue hardship.
- In considering whether there are positions available for reassignment, OHR will work with both the deciding official and the individual requesting the accommodation to identify: (1) all vacant positions within the agency for which the employee may be qualified, with or without reasonable accommodation; and (2) all positions which OHR has reason to believe will become vacant over the next 60 business days and for which the employee may be qualified. The agency will first focus on positions that are equivalent to the employee's current job in terms of pay, status, and other relevant factors.
- If there is no vacant equivalent position, the NEA will consider vacant lower level positions for which the individual is qualified. Pay and grade are retained for reassignments to lower level made as part of a reasonable accommodation determination.

X. REQUESTS FOR MEDICAL DOCUMENTATION. The NEA may require an individual who requests a reasonable accommodation to provide medical documentation that is sufficient to explain the nature of the individual's disability, his or her need for reasonable accommodation and how the requested accommodation, if any, will assist the individual to apply for a job, perform the essential functions of a job or enjoy the benefits and privileges of the workplace. The Agency has a right to request relevant supplemental medical documentation if the information submitted by the requester is insufficient for these purposes.

The NEA **may not** request medical information where

- (a) both the disability and the need for reasonable accommodation are obvious; or
 - (b) the individual has already provided the agency with sufficient information to document the existence of the disability and his/her functional limitations.
- A. If the individual requesting an accommodation supplies medical documentation to the deciding official without being asked, the deciding official will consider it and – if additional information is needed – will work with the DPM as set forth in this directive.
- B. If the deciding official believes that medical documentation is necessary in order to evaluate a request for reasonable accommodation, the deciding official will inform the DPM, who will make a determination as to whether medical documentation from an

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appropriate professional, such as a doctor, social worker, or rehabilitation counselor, is necessary. If the DPM determines that medical documentation is **not** necessary, the request for accommodation will be promptly returned to the deciding official to complete processing.

- C. If a determination is made to seek medical documentation, the DPM may work with the deciding official in seeking appropriate information. The DPM will request information sufficient to substantiate that the individual has a disability and needs the reasonable accommodation requested; unrelated documentation will not be requested. All requests for medical documentation should describe the nature of the job, the essential functions the individual is expected to perform, and any other relevant information. The individual will be provided 20 business days to provide the required documentation.

Required documentation may include:

- **the nature, severity, and duration of the individual's impairment;**
- **the activity or activities that the impairment limits;**
- **the extent to which the impairment limits the individual's ability to perform the activity or activities; and/or**
- **why the individual requires reasonable accommodation or the particular reasonable accommodation requested, as well as how the reasonable accommodation will assist the individual to apply for a job, perform the essential functions of the job, or enjoy a benefit of the workplace.**

The DPM will evaluate the medical documentation, and may consult with medical expert chosen by the NEA at the agency's expense, if necessary. If the information provided by the health professional (or the information volunteered by the individual requesting the accommodation) is insufficient to enable the NEA to determine whether an accommodation is appropriate, the DPM may ask for further information. In such cases, the following will occur:

1. The DPM will explain to the individual seeking the accommodation, in specific terms, why the information that has been provided is insufficient, what additional information is needed, and why.
2. The individual may then ask the health care or other appropriate professional to provide the missing information within 20 business days. Alternatively, the DPM and the individual may agree that the individual will sign a limited release, after which the NEA may submit a list of specific questions to the individual's health care professional or may otherwise contact the individual's doctor. The Agency will not be expected to adhere to its usual timelines if an individual's health professional fails to provide needed documentation in a timely manner.
3. If, after a reasonable period of time, there is still not sufficient information to demonstrate that the individual has a disability and needs a reasonable accommodation, the DPM may request that the individual be examined by a physician chosen by the NEA at the Agency's expense.

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4. The DPM will inform the deciding official whether the documentation demonstrates that a reasonable accommodation is appropriate and provide, if necessary, any additional relevant information about the individual's functional limitations.

The failure to provide appropriate documentation or to cooperate in the NEA's efforts to obtain such documentation may result in a denial of the request for reasonable accommodation. A decision will be provided within 10 business days of receipt of medical documentation absent extenuating circumstances.

- D. Confidentiality Requirements Regarding Medical Documentation. Under the Rehabilitation Act and the ADA, medical documentation obtained in connection with the reasonable accommodation process must be kept confidential, in accordance with applicable laws and regulations. The deciding official or any other NEA official who receives information in connection with a request for reasonable accommodation may share information connected with that request with other agency officials **when the agency official(s) need to know the information in order to make determinations on a reasonable accommodation request and otherwise in accordance with applicable laws and regulations.** All medical documentation, including information about functional limitations and reasonable accommodation needs, that NEA obtains in connection with a request for reasonable accommodation must be kept in files separate from the individual's personnel file and shall be treated as confidential except as otherwise provided for by laws and regulation. Any NEA employee who obtains or receives such information is strictly bound by these confidentiality requirements.

The DPM will maintain custody of all records obtained or created during the processing of a request for reasonable accommodation, including medical records, and will respond to all requests for disclosure of the records. All records will be maintained in accordance with the Privacy Act and the requirements of 29 C.F.R. 1611.

Medical documentation may be disclosed only as follows:

- Supervisors and managers who need to know (including the deciding official who requested that the DPM obtain medical documentation) may be told about necessary restrictions on the work or duties of the employee and about the necessary accommodation(s), but medical documentation should only be disclosed if strictly necessary;
- First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment;
- Government officials may be given information necessary to investigate the agency's compliance with the law; and
- Information may in certain circumstances be disclosed to workers' compensation offices or insurance carriers.

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- Equal Employment Opportunity Commission (EEOC) officials to maintain records.

Whenever medical documentation is disclosed, the individual disclosing the information must inform the recipients of the confidentiality requirements attached to the information being provided. Employees who believe the confidentiality of their medical documentation has been violated may file a grievance in accordance with the appropriate grievance procedure.

XI. GRANTING A REASONABLE ACCOMMODATION REQUEST. As soon as the deciding official determines that a reasonable accommodation will be provided, that decision should be immediately communicated to the individual and noted on NEA/OHR Form 141. If the accommodation cannot be provided immediately, the deciding official must inform the individual of the projected time frame for providing the accommodation. This notice does not need to be in writing.

After a request is first approved for a type of reasonable accommodation that an employee is likely to need on a repeated basis, such as sign language interpreters or readers, the employee does not need to submit a written request each time the accommodation is needed. The employee may obtain the accommodation by notice to the appropriate individual or office.

Once an accommodation is approved, the deciding official will immediately contact the DPM to arrange for use of agency resources and funding, where applicable, to provide the accommodation.

XII. DENIAL OF A REASONABLE ACCOMMODATION REQUEST. As soon as the deciding official determines that a request for reasonable accommodation will be denied, that official must complete the "Disposition" section of NEA/OHR Form 141 and provide a copy to the individual who requested the accommodation. The explanation for the denial should be written in plain language, clearly stating the specific reasons for the denial. Where the deciding official has denied a specific requested accommodation, but offered to make a different one in its place which was not agreed to during the interactive process, the denial notice should explain both the reasons for the denial of the requested accommodation and the reasons that the deciding official believes the chosen accommodation will be effective. The denial shall be provided in an accessible format when requested.

Reasons for the denial of a request for reasonable accommodation may include the following (keeping in mind that the actual notice to the individual **must include specific reasons for the denial**):

- The requested accommodation would not be effective.
- Providing the requested accommodation would result in undue hardship to the agency. Before reaching this determination, the deciding official must have explored whether other effective accommodations exist which would not impose undue hardship and therefore can be provided. A determination of undue hardship means that the NEA finds that a specific accommodation would result in significant difficulty or expense, or would fundamentally alter the nature of the NEA's operations. When evaluating budgetary or administrative concerns to determine if undue hardship exists, the NEA will follow the

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standards enunciated in the regulations and in the "Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act" and will consider all resources available to the Agency as a whole, excluding those designated by statute for a specific purpose that does not include reasonable accommodation.

- Medical documentation is inadequate to establish that the individual has a disability and/or needs a reasonable accommodation.
- The requested accommodation would require the removal of an essential function.
- The requested accommodation would require the lowering of a performance or production standard.

The written notice of denial also informs the individual of their right to file an equal employment opportunity (EEO) complaint of discrimination pursuant to 29 CFR 1614.203, an equal employment opportunity (EEO) complaint, any rights they may have to pursue a claim under the Merit Systems Protection Board (MSPB) process, and/or to file a written grievance in accordance with the appropriate grievance procedures. The NEA also encourages the use of the Agency's informal dispute resolution process explained in Section XIII to request prompt reconsideration of denials of reasonable accommodation.

XIII. REQUEST FOR RECONSIDERATION. Individuals may request prompt reconsideration of a denial of reasonable accommodation by using this informal dispute resolution process.

If an individual wishes reconsideration, they should submit a written request to the second-level official within **ten business days** of receipt of a denial. The individual may present additional information in support of the request. The second-level official will respond to the request for reconsideration within **ten business days**.

- A. If the deciding official was the supervisor, the second-level supervisor is the second-level official.
- B. If the deciding official was the second-level supervisor or HR Specialist, the DPM is the second-level official.
- C. If the deciding official was the DPM, the Chairman or designee is the second-level official.

If the second-level official does not reverse the denial, the individual may submit a formal appeal within 10 business days of receipt of a decision to uphold the denial of an accommodation.

XIV. FORMAL APPEALS. An individual who wishes to file an EEO complaint or pursue an appeal with the MSPB, must take the following steps:

1. Initiate an EEO complaint pursuant to 29 C.F.R. § 1614 by contacting an EEO counselor in the Office of Civil Rights/EEO **within 45 days** from the date of the

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- notice of denial of reasonable accommodation; **or**
2. Initiate an appeal to the Merit Systems Protection Board **within 30 days** of an appealable adverse action as defined in 5 C.F.R. § 1201, **or**
 3. File a grievance under the appropriate NEA procedures within 30 days.

Pursuing any of the informal dispute resolution procedures identified in Section XII above, including seeking reconsideration from the deciding official and appealing to the next person in the deciding official's chain of command pursuant to Section XIII, does not affect the time limits for initiating an EEO complaint or an appeal to the MSPB. An individual's participation in the informal dispute resolution process does not satisfy the requirements for bringing a claim under EEO or an appeal to the MSPB. Pursuant to 29 CFR 1614.105, the right to file a complaint will be lost unless the job applicant or employee initiates contact with an EEO Counselor within 45 days of the denial, regardless of whether the applicant or employee participates in an informal dispute resolution process.

XV. INFORMATION TRACKING AND REPORTING. The deciding official will submit a copy of completed NEA/OHR Form 141 to the DPM within **10 business days** of the decision. The deciding official should attach copies of all information, including medical documentation received as part of processing the request. An applicant or employee requesting reasonable accommodations may contact the DPM in the Office of Human Resources to track the progress of their request. The DPM may be contacted by telephone at: 202.682.5527 or by email at: OfficeofHumanResources@arts.gov.

- The DPM will maintain records about each request for reasonable accommodation that include:
 - The specific reasonable accommodation requested, if any;
 - The job (occupational series, grade level, and agency component) sought by the requesting applicant or held by the requesting employee;
 - Whether the accommodation was needed to apply for a job, perform the essential functions of a job, or enjoy the benefits and privileges of employment; and
 - The identity of the deciding official.
- The DPM will maintain these records for the longer of the employee's tenure with the NEA or five years.
- The DPM will prepare annually a report available to NEA employees upon request. The report will contain the following information, presented in the aggregate:
 - The number of reasonable accommodations that have been requested in the application process and whether those requests have been granted or denied;
 - The number of reasonable accommodations that have been requested by employees and whether those requests have been granted or denied;
 - The reasons for denial of any requests for reasonable accommodation;

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- The amount of time taken to process each request for reasonable accommodation; and
 - The sources of technical assistance that were consulted in trying to identify possible reasonable accommodations.
- The DPM will maintain records that the NEA may use to determine whether it is complying with the nondiscrimination and affirmative action requirements imposed under Section 501. The records shall be made available to the EEOC upon its request.

XVI. RELATION OF PROCEDURES TO STATUTORY CLAIMS. This policy is in accordance with statutory protections for persons with disabilities and the remedies they provide for the denial of requests for reasonable accommodations. **Requirements governing the initiation of statutory claims, including the time frames for filing such claims, remain unchanged.**

XVII. DISCLAIMER. The procedures described in this document supersede all previous procedures concerning reasonable accommodation issued by the NEA. The statements in this document are intended solely as general guidance on internal Agency procedures for processing requests for reasonable accommodation. These procedures may be revised to reflect changes in statutes, regulations, case law, EEOC guidance, or NEA organizational changes.

XVIII. INQUIRIES. Any person wanting further information concerning these procedures may contact the Disability Program Manager or designee.

APPENDIX A

REASONABLE ACCOMMODATION REQUEST FORM

Please provide a response to each of the items below. Information obtained or generated in processing your request will be held confidential to the extent possible, but may be released to individuals or agencies participating in the evaluation of your request.

1. Employee Name: <i>(printed)</i>	2. Office/Division/Title:	3. Phone Number:
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4. Reason accommodation needed: ☐ [Check here if request includes Personal Assistance Services.](#)

_____ Application Process

_____ Performing Job Functions or Accessing the Work Environment

_____ Accessing a Benefit or Privilege of Employment (*e.g., attending a training program or social event*)

5. Accommodation Requested: (*Be as specific as possible, e.g., adaptive equipment, reader, interpreter, schedule change*):

6. Reason Requested: (*Be as specific as possible, e.g., vision or hearing impaired, effects of medication, etc.*)

7. Employee Signature and Date

8. Employee Receiving Request Signature and Date

➤ **Forward Form to Disability Program Manager**

DISPOSITION OF REASONABLE ACCOMMODATION REQUEST

Where the immediate supervisor has the authority, he/she will either approve or deny the request. If the request is denied, this form will be submitted to the next higher supervisor for concurrence or reversal before a final decision is given to the requester.

9. Determination: ☐ Granted ☐ Denied *(Provide explanation below)*

Date Granted

Date Provided

Date Denied

10. Type(s) of reasonable accommodation provided *(if different from what was requested)*:

11. Was medical documentation required to process this request? ☐ Yes ☐ No *Yes (Please explain why.)*

12. Basis for denial: *(may check more than one)*:

☐ Accommodation Ineffective

☐ Accommodation Would Cause Undue Hardship

☐ Medical Documentation Inadequate

☐ Accommodation Would Require Removal of an Essential Function

☐ Accommodation Would Require Lowering of Performance or Production Standard

☐ Other (Please identify): _____

13. If the individual proposed one type of reasonable accommodation, which is being denied, but rejected an offer of a different type of reasonable accommodation, explain both the reasons for denial of the requested accommodation and why you believe the chosen accommodation would be effective.

14. Detailed reason for the denial of reasonable accommodation: *(must be specific, e.g., why accommodation is ineffective or causes undue hardship)*:

15. List sources of technical assistance, if any, consulted in trying to identify possible reasonable accommodations (e.g., Job Accommodation Network, disability organization, Disability Program Manager):

12. Deciding Official Signature and Date	13. Office/Division/Title	14. Phone Number
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Individuals with disabilities can request prompt reconsideration of a denial of reasonable accommodation in accordance with Section XIV of NEA Directive 2723-Reasonable Accommodation for Individuals with Disabilities. Individuals have the right to file an EEO complaint and may have rights to pursue a claim under the MSPB.

If an individual wishes to file an EEO complaint or pursue an appeal with the Merit Systems Protection Board, s/h must take the following steps:

- (a) Initiate an EEO complaint pursuant to 29 C.F.R. § 1614 by contacting an EEO counselor in the Office of Civil Rights/EEO within 45 days from the date of this notice of denial of reasonable accommodation; or
- (b) Initiate an appeal to the Merit Systems Protection Board within 30 days of an appealable adverse action as defined in 5 C.F.R. § 1201.3.

APPENDIX B

SELECTED REASONABLE ACCOMMODATION RESOURCES

U.S. Equal Employment Opportunity Commission

1-800-669-3362 (Voice) 1-800-800-3302 (TT)

EEOC has published many ADA and Rehabilitation Act-related documents that may assist both individuals requesting accommodations as well as those involved in the decision-making process. Most of these documents are available at www.eeoc.gov.

Job Accommodation Network (JAN)

1-800-232-9675 (Voice/TT)

<http://janweb.icdi.wvu.edu/>

A service of the Office of Disability Employment Policy, JAN can provide information, free-of-charge, about many types of reasonable accommodations and provide referrals to other organizations that may have particular information about accommodations for persons with different disabilities.

ADA Disability and Business Technical Assistance Centers (DBTACs)

1-800-949-4232 (Voice/TT)

The DBTACs consist of 10 federally funded regional centers that provide information, training, and technical assistance on the ADA. Each center works with local business, disability, governmental, rehabilitation, and other professional networks to provide current ADA information and assistance. The DBTACs can provide information on reasonable accommodation and make referrals to local sources of expertise in reasonable accommodations.

Registry of Interpreters for the Deaf

(301) 608-0050 (Voice/TT)

The Registry offers information on locating and using interpreters and transliteration services.

RESNA Technical Assistance Project

(703) 524-6686 (Voice) (703) 524-6639 (TT)

<http://www.resna.org>

RESNA, the Rehabilitation Engineering and Assistive Technology Society of North America, can refer individuals to projects in all 50 states and the six territories offering technical assistance on technology-related services for individuals with disabilities. Services may include: information and referral centers to help determine what devices may assist a person with a disability (including access to large data bases containing information on thousands of commercially available assistive technology products), centers where individuals can try out devices and equipment, assistance in obtaining funding for and repairing devices and equipment exchange and recycling programs.

APPENDIX C

UTILIZING SIGN LANGUAGE INTERPRETERS

1. **SCHEDULING INTERPRETER SERVICES.** The individual or office scheduling a meeting or event which will require interpreting services (staff meeting, training, office function, etc.) is responsible for obtaining the interpreter. **Please check to see if an interpreter is available before scheduling the date, time, and place of the event.**

Advance scheduling - preferably one to two weeks - is strongly encouraged, to the extent possible. Although it is not possible to foresee every occasion for which interpreting services may be required, failure to schedule interpreting services well in advance may result in the necessity to reschedule meetings until interpreter services are available.

If a meeting or event will last longer than one half hour, arrangements must be made for more than one interpreter to be present, or the meeting or event must be scheduled to include sufficient rest periods, including a "sign-free" lunch break, if necessary. Generally, one interpreter can work 45-60 minutes and then needs a 15-minute break. A break during a meeting or event does not constitute a rest period for the interpreter if s/he is expected to continue working (e.g., deaf and hearing parties wish to communicate during the break and look to the interpreter to facilitate the exchange).

An employee who knows sign language or who is taking a sign language class is not an acceptable substitute for a contract interpreter.

2. **WORK EVENTS OUTSIDE THE WORKPLACE.** The NEA will provide an interpreter for an employee who is deaf or hard of hearing who, as part of his/her job, attends a meeting or event outside of the workplace. If s/he attends a conference or training program sponsored by an outside organization, the sponsoring organization is principally responsible for providing interpreters. The NEA will provide interpreting services, however, if the sponsoring entity fails to do so.
3. **OFFICE SOCIAL FUNCTIONS AND SPECIAL EVENTS TO WHICH THE INTERPRETERS ARE INVITED.** Interpreting services are routinely requested for **office or Agency social functions or special events -- e.g., Holiday Party -- scheduled** during official government time and which might be attended by employees who are deaf or hard of hearing.
4. **INTERPRETING PHONE CALLS.** Employees who are deaf or hard of hearing should schedule an interpreter when services are needed to interpret business-related phone calls. The telecommunication relay service is available to all NEA employees to serve telephone needs when a sign language interpreter is not available.