

**Report On
Employees with Disabilities and/or
Serious Health Conditions at the
University of Colorado at Boulder**

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**Prepared by:
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I. Charge to Task Force

On February 23, 2005, Christine Yoshinaga-Itano, Ph.D., Vice Provost and Associate Vice Chancellor for Diversity and Equity on the CU-Boulder campus, established a disability task force charged with “providing advice, recommendations and strategies to campus administration and primary units to address the needs of faculty and staff with disabilities on the CU-Boulder campus.” The task force was to include faculty and staff from various campus units and persons with disabilities. These employees were invited:

Garnett Tatum, Task Force Chair and ADA Coordinator
Paul Bennett, Graduate Student and Instructor (has graduated)
Laura Border, Director, Graduate Teacher Program
Candice Bowen, Director Labor Relations
Dominique Clawson, Bursar’s Office (has left the university)
Jim Cohn, Disability Services Specialist
Cindy Davis, Risk Management (has left the university)
Cindy Donahue, Director Disability Services
Charlotte Katherine Erwin, Labor Relations
Sheryl Jensen, Asst to VC for Research/Dean of Grad School (invited as of Oct ’06)
Howard Kramer, AT Lab Coordinator, Disability Services and Chair, PAC
Yolanda Maloney, Faculty
Michelle Martinez, Payroll and Benefit Services
Lauren Saenz, Graduate Student and Instructor (replaced by Sara Rabin)
Celia Sinoway, Faculty Staff Assistance Program
Gloria Timmons, Human Resources

II. Focus of the Task Force

The task force began by identifying current services provided to faculty and staff with disabilities and/or serious health conditions, as well as problems and gaps in the current system. The task force recognized that difficulties surfaced in discussing and clarifying the roles of the various university departments charged with administering services to employees with disabilities and/or serious health conditions. It became apparent that employees on campus are also likely to be confused as to where to seek support for a disabling condition and/or serious health condition. Furthermore, the task force realized that by looking at faculty and staff only, other employees were left out of the discussion. All employees, regardless of classification or FTE, must be considered. Therefore, the term “employee” in this report includes faculty, staff, administrators, instructors, and graduate and undergraduate student employees. Eventually, the task force members and the vice provost agreed that the following issues should be addressed:

- role of the Americans with Disabilities Act (ADA) Coordinator;
- ADA protocols for providing accommodations to employees;
- training and outreach;
- building collaborative partnerships among disability and accommodation experts;
- central funding related to accommodations;
- record keeping and disability data collection;
- a means to inform all employees about the roles of various offices that work with the populations identified.

III. Legislation

Employees with disabilities and/or serious health conditions have had their rights defined by two pillars of federal legislation: the Americans With Disabilities Act (ADA), passed in 1990, requiring employers to make “reasonable” accommodations for otherwise qualified employees with disabilities, as long as they can perform the “essential” functions of the job; and the Family and Medical Leave Act (FMLA), passed in 1993, allowing workers to take up to 12 weeks leave from work without losing their health insurance or job. Colorado State law provides classified staff an additional week of FMLA coverage. Under both the ADA and FMLA, the employer (the university, including supervisors who are agents of the institution) is only obligated to assist employees whose conditions are known to the employer. Once notified, the employer (the university) is required to respond to the employee’s request in a timely manner.

IV. Current Situation and Areas of Potential Legal Liability for the University

At CU-Boulder, assistance for employees with disabilities and/or serious health conditions is disbursed throughout the campus. This decentralized model includes ADA Coordinator, Office of Labor Relations, Risk Management, Human Resources, Faculty Staff Assistance, and informally, Disability Services, whose mission is to serve students. The task force identified several concerns with the current system, any of which pose potential legal liability for the university concerning employees with disabilities and/or serious health conditions.

- ill-defined reporting processes
- differing criteria, guidelines, policies and procedures
- conflicting information on which office to contact, which forms to complete, what documentation to submit and to whom, and how accommodations are determined
- lack of funding for
 - identified accommodations for employees
 - Chancellor’s Program Accessibility Committee (PAC)
 - Reasonable Employer Program
- lack of Human Resources FMLA contact for faculty and student employees
- lack of ADA training for supervisors
- unclear status of the “Tenure Clock” – whether it stops or not when a faculty member takes leave due to illness
- dual status of graduate teaching students, as employees and students
- inconsistencies with ADA and FMLA related information and procedures, especially determining eligibility and provision of accommodations
- employees reporting disability for accommodation requests or for FMLA purposes directly to a supervisor - may violate confidentiality rights

V. General Discussion

At the University of Colorado at Boulder, employees with disabilities, as well as those with serious health conditions, are entitled to a welcoming campus climate. All employees with disabilities, regardless of FTE, are entitled to access, support and, when appropriate, reasonable accommodations. Many of the concerns addressed in Section IV have the effect of maintaining an oppressive atmosphere for several members of this historically underrepresented group. Fear of reprisal, harassment, or negative

repercussions affecting one's job or job performance is a reoccurring obstacle. Employees should not be denied access to the opportunity to perform their jobs. Lack of sufficient supervisory training in the ADA compounds these problems and failure to address these issues may lead to discrimination. Lack of a central access fund for accommodations leaves departments that have no funding for accommodations liable for such needs as interpreting. Individual departments should not be the decision makers regarding whether or not to provide an accommodation, especially when based on budgetary factors.

Information on how to self-advocate and disclose a disability is greatly needed. Existing policies, such as those related to tenure, may be overly prohibitive toward providing reasonable accommodation to otherwise eligible faculty. The lack of FMLA contact for faculty and student employees is also very problematic. The dual status of student employees, particularly students with disabilities who are instructors, promotes confusion about which office to contact or what policies and procedures to follow when requesting support. Differing criteria used by Employment Services, Labor Relations, ADA Coordinator and Disability Services in determining eligibility for reasonable accommodations is appropriate within each unit's understanding of its responsibilities, but these differences present confusion to the campus community and potential liabilities to the university. All employees are entitled to submit documentation to one designated place for the purpose of substantiating disability and determining reasonable accommodations. Employees are entitled to a timely review of their documentation. When necessary, a committee of impartial experts in applicable disability matters should be convened to review the documentation. With the exception of the committee review, these principles should also apply to serious health condition cases related to FMLA. As noted throughout, all campus procedures for disability and/or serious health conditions should be consistent and complimentary to each other.

Ultimately, the Office of the ADA Coordinator assures university compliance with the Americans with Disabilities Act and should provide ADA authoritative expertise, information, policies, procedures and leadership. The ADA Coordinator should:

- serve as the ultimate point of contact for all disability related issues
- publicize ADA policies and procedures to the campus
- develop documentation guidelines for employees
- determine eligibility for reasonable workplace accommodations due to disability
- oversee/review implementation of accommodations in each case for appropriateness, consistency, and funding
- provide professional development support for employees with disabilities on topics such as self-advocacy, disclosure, communication with supervisors
- maintain ongoing partnership with other relevant resources
- coordinate campus ADA trainings for employees
- maintain confidential record keeping
- prepare annual reports on the number and nature of: (a) reported disabilities in each identified employee and student group; (b) requests for services and accommodations by group; (c) those granted; (d) disability-related harassment and discrimination claims, in coordination with the Office of Discrimination and

Harassment; (e) disability data from faculty and staff searches; (f) results from faculty and staff surveys

It is important to note that employees may face situations that involve ADA, FMLA, Workers' Compensation, short and long term disability insurance, and/or the Reasonable Employer Program. The complexity of some situations, combined with the complex reporting structure of the responsible units, can create confusion for the employee and layers of decision making. The Office of Labor Relations provides guidance on FMLA procedures for classified staff and professional exempt employees and is currently developing policies and procedures for The Reasonable Employer Program in which the ADA Coordinator participates. The goal of this program is to support and retain productive employees who acquire a serious health condition and/or a disability.

Employees may report allegations of discrimination and harassment on the basis of disability to the ADA Coordinator or the Office of Discrimination and Harassment. Failure to provide approved accommodations violates the ADA, as well as university ODH policies. Individuals who are found to discriminate against and/or harass employees with disabilities in the workplace are subject to corrective action, up to and including termination.

Finally, it is appropriate that data gathered by the university to monitor and account for its diversity efforts include comparable data on employees with disabilities. Currently, a dearth of campus data is gathered on disability and/or serious health conditions, due in part, to fear of disclosure, how best to survey this diverse population and what to do with the derived data once it is gathered. Without good data, the university has poor information on recruitment and retention of this historically underrepresented diversity group. What does exist is described in Appendix B through the results of a survey conducted by Dr. Laura Border and in examples known by members of this task force.

The university must do more to demonstrate its commitment to the recruitment, retention, and full inclusion of employees with disabilities. The task force presents the following recommendations to Vice Provost and Associate Vice Chancellor of Diversity and Equity, Christine Yoshinaga-Itano, to assist the university in its commitment to ensuring equal access to the working environment for employees with disabilities under the ADA and to provide support for those who acquire a serious health condition while employed. These recommendations will strengthen the university's compliance with ADA, FMLA, and other relevant non-discrimination laws and foster a welcoming climate for all employees.

VI. Recommendations

1. University Policies and Procedures

All university policies and procedures for disability and/or serious health conditions should be consistent, clear and complimentary to each other, especially those related to ADA, FMLA, and/or the Reasonable Employer Program. It is imperative that providers for ADA, FMLA, Reasonable Employer Program, Employment Services and other related units communicate, collaborate and cooperate on a regular basis, regardless of the

reporting structure or physical location. Furthermore, the reporting structures of these units should be reviewed for best service to the campus. Persons responsible for implementation of this recommendation should be members of this task force, appointed by the Vice Provost and Assoc VC for Diversity and Equity, who would review and coordinate the existing policies and procedures with customer service in mind.

2. Budgetary Resources & Central Access Fund

A Central Access Fund must be established on this campus to support accommodation expenses for employees in order to relieve individual departments from this responsibility. The ADA Coordinator's office should have the necessary budget to perform its required duties. The Chancellor's Program Accessibility Committee should have ongoing funding to address the physical, communication and programmatic access needs of the campus. The Reasonable Employer Program also must be funded appropriately. The person responsible for implementation of this recommendation is the Chancellor.

3. Specific ADA Procedures

The majority of the ADA Coordinator's direct caseload involves employees, including prospective employees, with ADA-related services and/or accommodations. The following ADA procedures are recommended:

- A. Employee submits documentation and requests services, auxiliary aids, modifications and/or other accommodations to ADA Coordinator.
- B. ADA Coordinator determines eligibility for reasonable accommodations due to disabling condition(s) based on established documentation guidelines. Each and every requested accommodation must be supported by evidence of impact due to disability. The Coordinator may convene a committee of experts for assistance.
- C. ADA Coordinator meets with employee and employee's supervisor to assess the workplace situation. Workplace assessments should include review of employee's PDQ and all policy statements that might impact or be impacted by a request for reasonable accommodation.
- D. ADA Coordinator completes eligibility determination and discusses findings with employee in a timely manner.
- E. ADA Coordinator informs employee's supervisor of accommodations, if approved, in a timely manner.
- F. Accommodations, modifications, and/or auxiliary aids are provided to employee.
- G. All related paperwork is filed along with employee's documentation and other intake materials in the ADA Coordinator office.
- H. ADA Coordinator conducts a follow up meeting with employee within one month. Additional requests must be self-initiated by the individual employee.

The person responsible for implementation of this recommendation is the supervisor of the ADA Coordinator, the Vice Provost and Assoc VC for Diversity and Equity.

4. Outreach and Education (ADA Training, Website, Brochures, etc.)

All employees, particularly supervisors, should be required to complete the recently developed CU-System online training at <https://blackboard.cudenver.edu>. Academic

Affairs administrators should complete this training to assist in reviewing access to reasonable accommodations in the tenure process for faculty with disabilities and/or serious health conditions. The course: defines disability; explains a supervisor's role when an employee reports disability, a health condition and/or requests accommodation; tells who determines accommodation eligibility in the workplace; directs that disability issues go to the ADA Coordinator; and provides communication and language suggestions. In addition, all employees who are non-English speakers should be able to easily access related information, in understandable terms. Campus diversity trainings for all employees should include ADA training. Several of the campus resources in Appendix A are available for training on ADA, FMLA, disability culture, assistive technology, and discrimination and harassment. The person responsible for implementation of this recommendation is the Vice Provost and Associate VC for Diversity and Equity, who should require the online training for all employees. The ADA Coordinator should oversee all campus ADA trainings.

5. Supervisors

Supervisors should be informed that they do not determine disability status and/or accommodations. Supervisors should be obligated to refer employees disclosing disability and/or serious health conditions to the ADA Coordinator, document that a referral was made, and refrain from further discussion. Supervisors have limited "need to know" knowledge of confidential disability and/or serious health condition information regarding their employees. Supervisors should respond to the ADA Coordinator requests for workplace information and maintain a welcoming climate for employees eligible for accommodations. Determinations made by the ADA Coordinator should be binding. The ADA Training Module referenced above addresses supervisor responsibilities. Policies related to tenure should be reviewed and revised as they relate to ADA and reasonable accommodations. The persons responsible for implementation of this recommendation are the Vice Provost and Associate VC of Diversity and Equity and the Provost.

6. FMLA Cases

Office of Labor Relations should continue to oversee FMLA cases involving classified staff and professional exempt employees for the campus. Considering the issues of timely review, confidentiality, consistency, equitable treatment, and liability related to disability and/or serious health conditions, the current practice of supervisors determining all FMLA approvals should be reviewed by OLR. Medical records and/or records of possible disabling conditions should be housed in a central location on campus and not scattered around campus. In addition, faculty contact for FMLA, currently non-existent, needs to be established, preferably in OLR. The person responsible for implementation of this recommendation and addressing the implicit need for additional resources for OLR is the Chancellor.

Appendix A – Descriptions of Campus Resources

Direct and Formal Service Providers

Department of Equal Opportunity/ADA Coordinator

The Department of Equal Opportunity offers a variety of services related to providing equal educational and employment opportunity, as well as physical and programmatic access to the Boulder campus community. The ADA Coordinator is responsible for advising the university's administration on the accessibility of campus programs.

Human Resources, Employment Services

Employment Services provides the Boulder campus and System Administration of the University of Colorado with services related to administration of the Colorado State Personnel System, including recruitment and testing. As the unit responsible for the application process, they provide accommodations for tests to prospective employees (classified staff) with disabilities as appropriate.

Human Resources, Labor Relations

The Office of Labor Relations provides guidance and information to classified and professional exempt employees regarding employee relations matters and leave issues involving the Family Medical Leave Act of 1993, Short Term Disability Insurance and long term disability leave. OLR provides trainings on how to appropriately administer FMLA. OLR also oversees formal employee relations procedures such as the Reasonable Employer Process, which is designed to evaluate an employee's ability to perform the essential functions of their position once they reach Maximum Medical Improvement (MMI) following an on-the-job injury, or when an employee suffers an injury or illness unrelated to work and who, as a result, may be disabled under the ADA. In cases of illness or injury that do not qualify as a disability under the ADA, effort is still made to return the employee to his/her job with workplace adjustments whenever possible.

Office of Discrimination and Harassment

The Office of Discrimination and Harassment is a neutral fact-finding office charged with investigating allegations of violations of the University of Colorado at Boulder Policy on Discrimination and Harassment, the University Policy on Sexual Harassment and the University Policy on Conflict of Interest in Cases of Amorous Relationships. This office is available to assist anyone in the campus community believing s/he has been discriminated against or harassed based upon the protected class of disability or who believes she/he has been denied an accommodation under the ADA.

University Risk Management (System)

The mission of University Risk Management (URM) programs is to save lives, prevent injuries and protect the health and safety of all employees, students, and visitors. URM works to identify hazardous workplace conditions and/or operations. Potential hazards include, but are not limited to, snow/ice removal, ergonomic issues, improper lifting techniques, and/or general unsafe work conditions. URM attempts to remove the hazard by redesigning the job or work site. For example, URM's ergonomics program is designed so that each employee can easily learn the basics of workstation ergonomics.

Facilities Management

The Department of Facilities Management provides for the physical environment of the university. It conducts Accessibility Reviews, ADA-related technical compliance studies, in conjunction with the ADA Coordinator and the Chancellor's Program Accessibility Committee. Facilities Management assists in the updating of the online Campus Accessibility Guide and maintains maps of the campus with accessibility paths of travel.

Indirect and Informal Service Providers for Employees

Disability Services

Disability Services is an informal resource for faculty and staff with disabilities. The *primary* mission of Disability Services is to provide students with disabilities the tools, reasonable accommodations, and support services to fully participate in the academic environment. In addition, Disability Services promotes an accessible and culturally sensitive campus through outreach and by building partnerships within the university community and beyond.

Chancellor's Program Accessibility Committee

The Chancellor's Program Accessibility Committee (PAC) assists the administration and the ADA Coordinator in ensuring that people with disabilities are afforded access to programs, services, information technology, and activities offered by the University of Colorado at Boulder. PAC objectives include: manage funding appropriated for ADA improvements; assist in educating the campus on the ADA and disability issues; review UCB programs for compliance with the ADA; and advise the administration and the ADA Coordinator on compliance issues.

Faculty and Staff Assistance Program

The Faculty and Staff Assistance Program is a confidential counseling/consulting service designed to provide assistance to faculty and staff for personal or work-related concerns that may interfere with job performance.

Ombuds Office

The Ombuds Office provides informal, impartial, and confidential dispute resolution services for students, staff, and faculty. The Ombuds Office assists people with interpersonal misunderstandings or disputes as well as those with concerns about academic or administrative issues. The Ombuds Office operates independently as a supplement to existing administrative or formal grievance procedures and has no formal decision-making authority. Staff do not act as advocates for either side in a dispute.

Office of Diversity and Equity

The Office of Diversity and Equity provides dedicated leadership for campus diversity by fostering, developing, and supporting programs and policies related to increasing diversity on campus. The Office of Diversity and Equity encourages open communication about diversity and multicultural issues. It is responsible for monitoring and evaluating campus diversity efforts, including those efforts related to disability as diversity.

Appendix B – Data on Employees with Disabilities

Instructors with Disabilities Survey, Report and Recommendations

In 2003-2004, a campus-wide online survey meant to target faculty and instructors with disabilities was sent via Buff E-memo to all CU faculty and instructors by Dr. Laura Border, Director Graduate Teacher Program. Dr. Border's research found that:

- The majority of respondents received no instructional support as a result of their disability.
- Only 2 respondents out of 27 reported that they would tell their students about their disability.
- Over half of all respondents reported receiving negative or no feedback about their disability from colleagues.
- Almost all respondents believed that the university should provide additional services to help them teach better.
- Many respondents indicated that the university should hold training sessions or workshops for faculty and/or students about recognizing and understanding disabilities.

The following recommendations are a result of the survey:

- The university should provide greater flexibility in classroom assignment and access to technology for instructors with disabilities.
- The university should provide workshops on sensitivity toward individuals with disabilities.
- One office should provide individualized services as well as disability-specific workshops and/or training programs for instructors with both visible and non-visible disabilities.
- The office assigned to provide services for instructors with disabilities should formalize the process for communication among instructors and departments about disability-related, appropriate teaching support issues.

Staff with Disabilities Survey

An online survey modeled after the Instructors with Disabilities survey created by Dr. Border was developed by a subcommittee of this task force for the purpose of gathering quantitative and qualitative information on staff with disabilities. This survey, coordinated by Cindy Donahue, Director, Disability Services, is to be administered to the CU-Boulder campus in FY 2007.

The examples below address specific issues known by members of the task force.

Faculty specific examples

- Faculty have been told by their departments or colleges that they do not qualify for leave as stipulated under FMLA, even with the medical condition of cancer.
- Faculty requests for particular time slots due to medical conditions or disabilities have been denied. Sometimes the denial is couched with language that indicates the request is a symptom of laziness or "slacking."
- Faculty fear that taking leave for medical conditions will hurt their chances for tenure.

- A faculty member with cancer was given the largest introductory classes because she had the least seniority, even though this assignment added additional stress during a time when her energy was needed for medical treatment.

Graduate Student Employees specific examples

- Providing accommodations for a graduate student instructor who is Deaf was wrought with confusion and disagreement among all parties involved.
- Graduate students are reluctant to ask for accommodations or assistance from department chairs, academic mentors, or dissertation committee members due to fear of being stigmatized or receiving negative consequences.
- A graduate teaching instructor reported being reluctant to tell the students in his class that he had a non-visible disability due to fear of being stigmatized.

Staff specific examples

- A supervisor with knowledge of an employee's learning disability asked the employee to write on a blackboard during a meeting with students and then humiliated the employee for making errors.
- An employee missed staff meetings due to department's lack of information on how to request a sign language interpreter, as well as a reluctance to do so.
- Staff with disabilities report lack of support by coworkers.