

Internal
Audit
Report

*Division of Human Resources - Department of Human Resources
Operations*

**Americans with Disabilities Act (ADA)
Accommodations Audit**

June 2024

**Office of Equal Employment
Opportunity**



Baltimore County Public Schools
Office of Internal Audit

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ADA Accommodations Audit

Background

Titles I of the Americans with Disabilities Act of 1990 (ADA) and the ADA Amendments Act of 2008 require an employer to provide reasonable accommodation to an employee or job applicant with a disability, unless doing so would cause significant difficulty or expense for the employer. The EEO Office is responsible for resolving requests for workplace accommodations under the ADA.

Objective

The purpose of the audit is to determine if the BCPS ADA accommodations activities are compliant with district policies and procedures, and ADA laws and regulations.

Results in Brief

Our audit identified two commendations and two findings:

1. Standard Operating Procedures (SOPs) have not been updated recently and are not always reflective of current practices.
2. ADA documentation was inconsistently maintained.

Potential Risks

- Potential legal liability
- Inability to ensure equal access and fairness in the workplace

Recommendations

1. Management should continue to regularly review, update, and communicate SOPs.
2. Management should continue to evaluate existing procedures to ensure that they are clearly defined and consistently applied.

Corrective Action

1. Management has agreed to continue to regularly review, update, and communicate SOPs.
2. Management is establishing education and training programs and will conduct a routine review of select ADA files.

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BACKGROUND

Organizational Status and Purpose

The Office of EEO is within the Department of Human Resources Operations and is responsible for the following:

- Receives requests for workplace accommodations from employees who have disabilities or require certain adjustments in the workplace to perform the essential functions of the job.
- Engages employees and supervisors in an interactive process to resolve workplace accommodations requests in compliance with state and federal disability laws.
- Makes accommodation determinations and maintains confidential files.
- Offers support for employees who are disabled or become disabled, including referrals to CIGNA, the BCPS external employee assistance program provider.
- Consults with staff from other offices to coordinate appropriate services to employees who require accommodation(s).

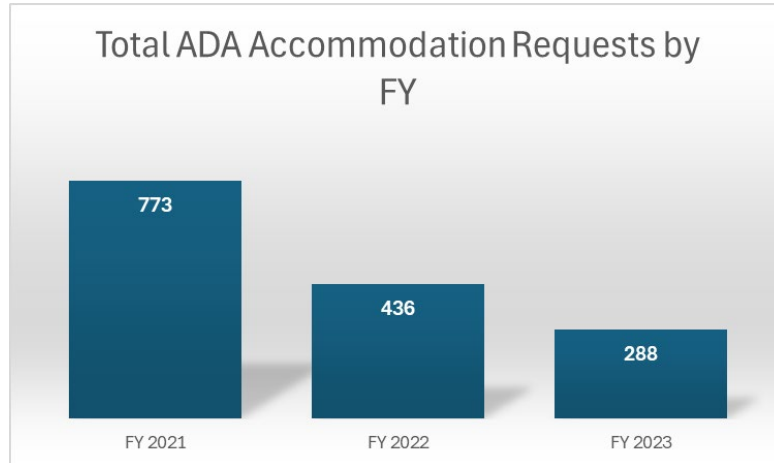
Applicable Laws

Under Title I of the Americans with Disabilities Act (ADA) and the ADA Amendments Act of 2008, a reasonable accommodation is a modification or adjustment to a job, the work environment, or the way things are usually done during the hiring process. These modifications enable an individual with a disability to have an equal opportunity not only to get a job, but successfully perform their job tasks to the same extent as people without disabilities. The ADA requires reasonable accommodations as they relate to three aspects of employment: 1) ensuring equal opportunity in the application process; 2) enabling a qualified individual with a disability to perform the essential functions of a job; and 3) making it possible for an employee with a disability to enjoy equal benefits and privileges of employment.

DATA ANALYSIS

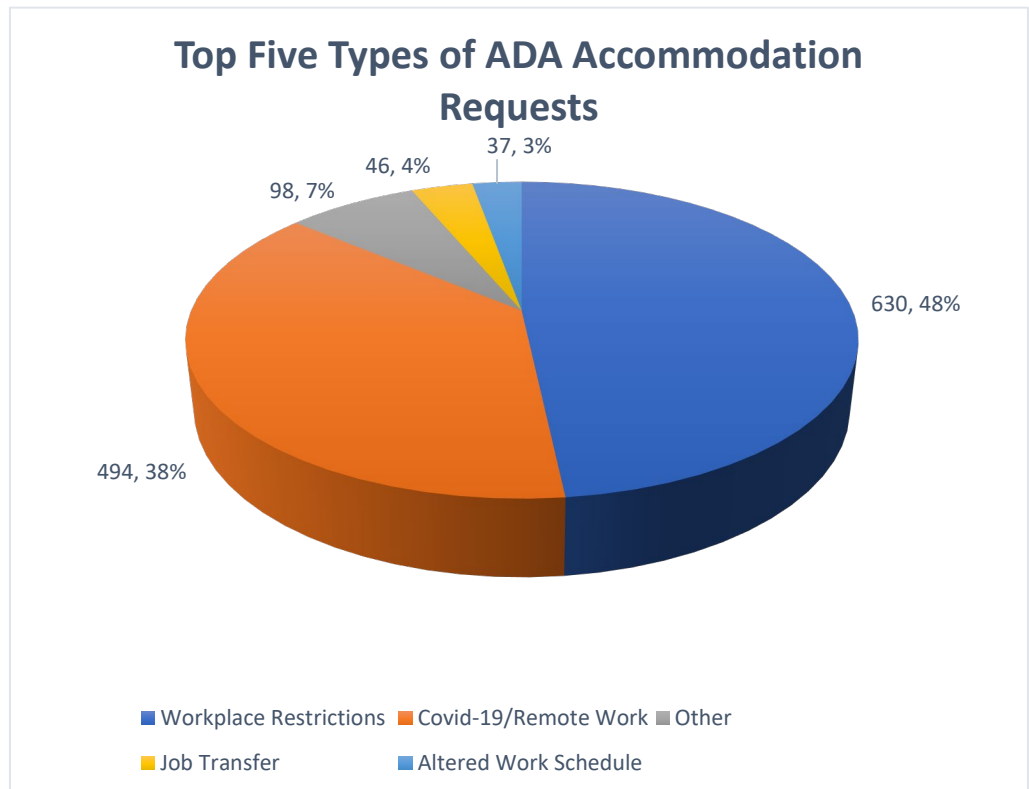
Number of ADA Requests by Fiscal Year

The number of ADA requests has decreased over the last three fiscal years because of the decrease in COVID-19 related requests.



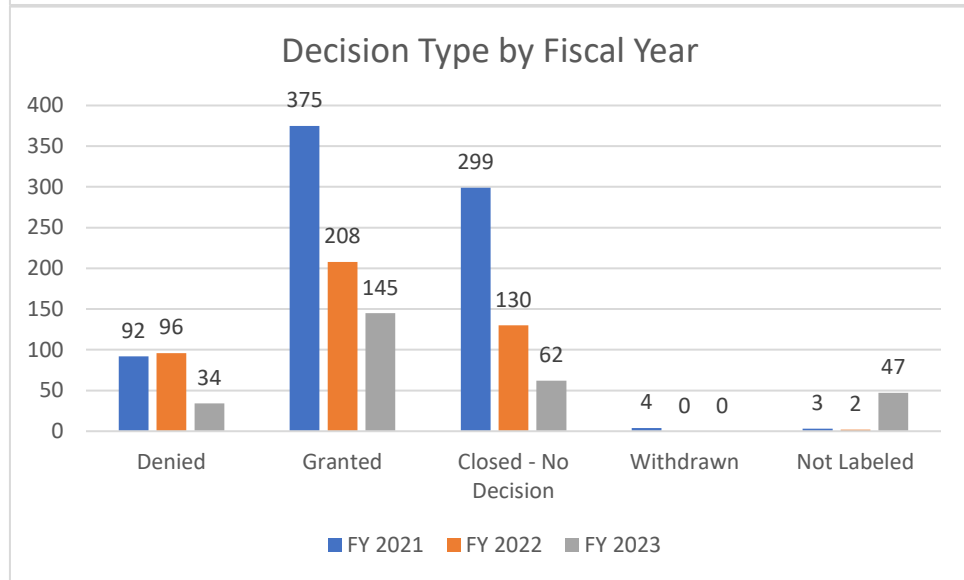
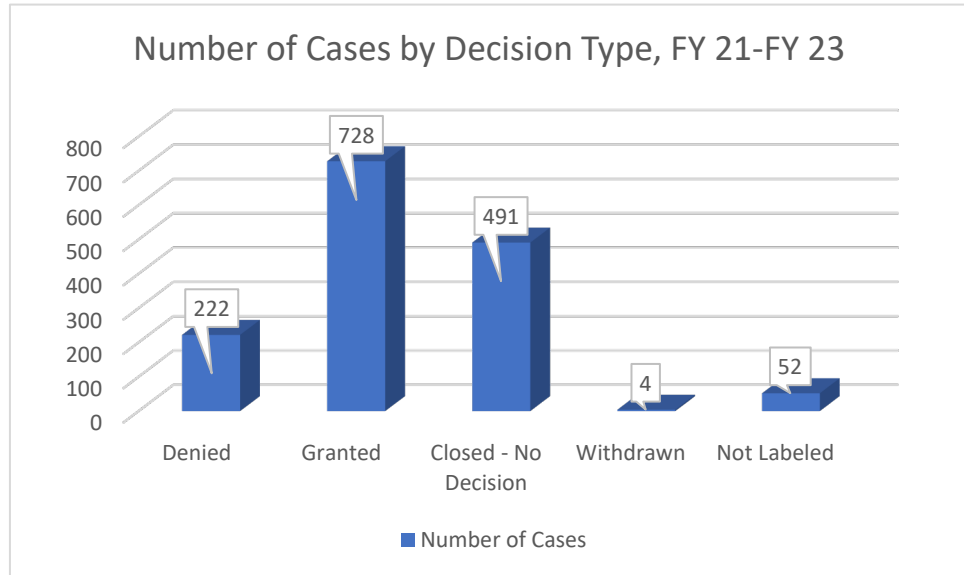
Most Frequent Types of ADA Accommodation Requests

The most frequent types of ADA accommodation requests were COVID-19/Remote Work, Workplace Restrictions, Other, Job Transfer, and Altered Work Schedule.



*ADA
Accommodation
Request
Decisions*

ADA decisions were categorized as denied, granted, closed – no decision, withdrawn, and some were not labeled. Most requests were granted. The closed – no decision requests were due to lack of complete information from the requestor.



COMMENDATIONS

Communication

The EEO Officer provided responses to our requests, along with explanations when follow-up was needed.

*Employee
Accessibility to ADA
Accommodation
Information and
Request Procedures*

ADA accommodation information and request procedures are easily accessible on the BCPS EEO website. There are links to instructions and packets of information necessary for an ADA request. Employees can enter the request directly online if they choose. There is a dedicated BCPS email address for ADA accommodations.

RESULTS

1. SOPs have not been updated recently and are not always reflective of current practices.

Criteria	SOPs should be regularly reviewed and updated to ensure they reflect current practices, technologies, and regulations. SOPs should cover all necessary steps and considerations for performing a task or activity from start to finish. They should leave no room for ambiguity or uncertainty.
Finding	ADA process SOPs were last updated in 2021, except for the student intern process, which was updated in 2023.
Cause	Management changes and staffing shortages prevented the routine review and update of SOPs.
Effect	Outdated procedures can pose risks to operations and compliance and cause reduced efficiency, increased errors, noncompliance with regulatory requirements and industry standards, difficulty in training, and operational disruptions. Additionally, potential legal ramifications and the inability to ensure equal access and fairness in the workplace may occur.
Recommendation	Management should continue to regularly review, update, and communicate SOPs to mitigate risk, align with current practice and ensure ongoing operational excellence. Additionally, SOPs should be properly documented, including version control, revision history, and approval processes. This ensures accountability and traceability in case of audits or reviews. Information related to these current processes should be included: <ol style="list-style-type: none">1. ADA decision appeals2. ADA accommodation expiration and renewals3. ADA management review process

Management's Corrective Action

1. All existing ADA SOPs will be reviewed. Existing SOPs will be updated to reflect current practice and compliance with applicable law.
2. New SOPs will be drafted to reflect processes for ADA decision appeals, ADA accommodation expiration and renewals, and ADA management review process.
3. Management will conduct a review of SOPs each fiscal year and will make updates as needed. Updates will be reviewed with EEO Office personnel responsible for processing accommodations.

Responsible Person(s)

Chief Human Resources Officer, Director, Employment Dispute Resolution, EEO Officer,
Office of Law

Anticipated Completion Date(s)

- | | |
|--------------------|--|
| August 10, 2024 | <ul style="list-style-type: none">• Review and update of existing SOPs• Draft SOP for ADA decision appeals• Draft new SOPs for ADA accommodation expiration and renewals and ADA management review process |
| September 10, 2024 | <ul style="list-style-type: none">• Review and approval of newly created ADA decision appeals SOP by Office of Law |
| Ongoing | <ul style="list-style-type: none">• Review of SOPs by office management and communication of review of updates with EEO Office personnel responsible for processing accommodations – fiscal year basis |

2. ADA documentation was inconsistently maintained.

Criteria It is essential for employers and organizations to carefully review, evaluate, and retain documentation provided in support of accommodation requests under the ADA.

Finding Internal Audit reviewed a sample of 67 ADA requests (40 granted, 27 denied) during the period July 1, 2020 through June 30, 2023 to determine if the documentation on file supported the decision for the accommodation. We found that there was missing documentation in employee files and documentation from other employees in the files.

ITEM	NUMBER	%
Missing accommodation request form	14	20.9%
Missing medical documents	2	3.0%
Missing employee job description	63	94.0%
Missing HR Advantage documents	18	26.9%
Missing evidence that interactive process was performed	7	10.4%
Missing the decision letter	3	4.5%
Other employee's documents in file	4	6.0%

Cause Management changes, staffing shortages, and the increase in requests related to the COVID pandemic contributed to the inconsistent application of processes that included the collection and retention of ADA documentation.

Effect The lack of documentation to support ADA accommodations or denials can have significant consequences for both individuals with disabilities and organizations, ranging from: legal risks, non-compliance, missed opportunities for accommodations, employee relation issues, lowered productivity and performance, and the inability to ensure equal access and fairness in the workplace.

Recommendation Management should continue to evaluate existing procedures to ensure that they are clearly defined and consistently applied. They should also provide training and education to EEO Office personnel responsible for obtaining and retaining the ADA documentation. Additionally, management should routinely conduct and document reviews of ADA files to identify any inconsistencies or gaps. This may involve reviewing accommodation files, tracking documentation completeness and accuracy, and addressing any other issues identified in the review.

Management's Corrective Action

1. Human Resources Administration and Compliance (HRAC) is working with an external consultant to provide education and training on leave under the ADA and intersection with other laws to HRAC management employees as well as all EEO Office personnel responsible for processing workplace accommodations requests.
2. Education on workplace accommodations related to pregnancy will be provided to all HRAC staff, including all EEO Office personnel responsible for processing workplace accommodations requests.
3. Training on office processes for review of workplace accommodations processes will be provided by Director, EDR to all EEO Office personnel responsible for processing workplace accommodations.
4. A routine review of select ADA files will be conducted by office management.

Responsible Person(s)

Chief Human Resources Officer, Director, Employment Dispute Resolution, EEO Officer

Anticipated Completion Date(s)

June 30, 2024	Education training on pregnancy accommodations
July 31, 2024	External consultant training on leaves accommodations
September 30, 2024	Internal processes training
Ongoing	Routine review of select files by office management – commence by September 30, 2024, and occur thereafter in accordance with newly drafted ADA management review process

HR GENERAL RESPONSE

We appreciate the time and effort that went into preparing this report, as well as the Office of Internal Audit’s willingness to discuss how the EEO Office might overcome obstacles that have contributed to certain findings. The EEO Office has faced significant staffing challenges during the past two years, including position vacancies and high employee turnover within a small office. Notwithstanding these obstacles, thorough review and revision of ADA accommodations procedures, forms, and templates was prioritized and completed by new management in FY23. In addition, laws governing employer obligations related to requests for workplace accommodations due to disability require assessment on an individualized “case-by-case basis”.¹ The legal standard is fundamentally at odds with a prescribed process and timeframe and thus requires a balancing act when crafting standard operating procedures. Lastly, because the audit period includes FY21 to FY23, data is skewed by requests made during the COVID-19 pandemic when, among other things, the law was in flux and the EEO Office was doing its best to operate under unprecedented circumstances.

OBJECTIVE, SCOPE & METHODOLOGY

- Objective** The purpose of the audit is to determine if BCPS' ADA activities are compliant with district policies and procedures, and ADA laws and regulations.
- Scope** The audit period is ADA Accommodations requests from FY 21 to FY 23.
- Methodology** To achieve the audit objectives, we performed the following:
- Reviewed ADA law and BCPS SOPs for ADA processes.
 - Discussed ADA procedures with EEO Office staff to ensure an understanding of the process.
 - Determined employee accessibility to information and ADA accommodation request process.
 - Reviewed a sample of ADA requests to analyze length of time from receipt to completion.
 - Reviewed a sample of ADA requests to determine if supporting documentation was sufficient.
 - Reviewed security of ADA documents and determined if retention requirements were met.
 - Performed data analysis on FY 21 to FY 23 data related to ADA accommodation requests.

¹ U.S. Equal Employment Opportunity Commission *Enforcement Guidance on Reasonable Accommodations and Undue Hardship under the ADA* at: <https://www.eeoc.gov/laws/guidance/enforcement-guidance-reasonable-accommodation-and-undue-hardship-under-ada> (10/17/2002).