

## **EMPLOYEE MEDICAL EXAMINATIONS POLICY**

### **Pre-Employment Medical Examinations**

In accordance with the Americans with Disabilities Act, as amended, Southern Westchester BOCES (SWBOCES) will not require applicants for positions to undergo a medical examination prior to an offer of employment.

Further, SWBOCES shall not make inquiries of a job applicant as to whether the applicant is an individual with a disability or as to the nature or severity of a disability. However, SWBOCES may make pre-employment inquiries into the ability of an applicant to perform job-related functions.

### **Employee Medical Examinations**

The Board, District Superintendent, Chief Operating Officer, or designee, reserve the right to request a medical examination of an employee at any time during employment, in order to determine the physical and mental capacity of an employee to perform the essential functions of the position with or without reasonable accommodation. SWBOCES reserves the right to select the physician and the cost of such examination shall be borne by SWBOCES. However, an employee may elect to have a health examination at his/her own expense by a healthcare provider of his/her own choice.

Annual or more frequent examination of any employee may be required when, in the judgment of the SWBOCES District Superintendent, Chief Operating Officer, or designee, such examination is deemed necessary.

Each bus company under contract to SWBOCES shall ensure that all of its bus drivers and substitute bus drivers have yearly medical examinations. Each bus driver employed by SWBOCES shall have a medical examination within four (4) weeks prior to the beginning of service and yearly thereafter. In no case shall the interval between medical examinations exceed a thirteen (13)-month period.

The final acceptance or rejection of a medical report with reference to the health of an employee lies within the discretion of SWBOCES. The decision of the healthcare provider designated by SWBOCES, as the determining healthcare provider, shall take precedence over all other medical advice.

All medical and health-related information will be kept in accordance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

### **Acceptable Examinations and Inquiries**

SWBOCES may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees. SWBOCES may make inquiries into the ability of an employee to perform job-related functions.

## **Prohibited Examinations and Inquiries**

SWBOCES shall not require a medical examination, and shall not make inquiries as to whether such employee is an individual with a disability or as to the nature or severity of the disability, unless the examination or inquiry is shown to be job related and consistent with business necessity.

## **Defenses**

It may be a defense to a charge of discrimination that an alleged application of qualification standards, tests, or selection criteria that screen out or tend to screen out or otherwise deny a job or benefit to an individual with a disability has been shown to be job related and consistent with business necessity, and such performance cannot be accomplished by reasonable accommodation.

## **References:**

- [Americans with Disabilities Act Amendments Act \(ADAAA\) of 2008, Public Law §§110-325](#)
- [Health Insurance Portability and Accountability Act of 1996 \(HIPAA\), Public Law §§104-191](#)
- [45 CFR Parts 160 and 164](#)
- [NYS Education Law §§913 and 3624](#)
- [NYS Sanitary Code](#)
- [8 NYCRR §156.3\(2\)](#)
- [10 NYCRR Part 14](#)
- [15 NYCRR Part 6](#)