

## **INDIVIDUALIZED ASSESSMENT OF POSSIBLE DIRECT THREAT INSTRUCTIONS AND FORM**

### **Instructions**

The attached form may be used to conduct an individualized assessment of an applicant's or student's possible direct threat to self or others.

Job Corps requires that applicants not have conditions, disabilities, or behaviors that (1) pose a direct threat to the health or safety of themselves, other students, or staff; and (2) cannot be eliminated by reasonable accommodations or modifications. Like any qualification standard, this requirement must apply to all applicants and students, not just to those with disabilities, and must be evaluated on an individual basis, with a focus on current behavior. This document provides Job Corps health and wellness staff, or other individuals who may conduct such an assessment, with guidance designed to help them properly and lawfully assess an individual applicant's or student's ability to safely participate in the Job Corps program.

The law defines a "direct threat" as **a significant risk of substantial harm to the health and safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation or modification.** A "significant risk" means a high, not a slight, probability; a speculative or remote risk is insufficient.

- In the case of an applicant, a direct-threat assessment only may be done: (1) after the applicant has received conditional assignment to a Job Corps center and has completed the questions on the 6-53 Health Questionnaire; *and* (2) after specific, objective, factual information about that particular conditionally enrolled applicant is gathered that is medically related to any "yes" responses given to the questions in sections 8 or 9 of the questionnaire; *if* (3) the initial review of this specific, objective, factual information supports a reasonable belief that the conditionally enrolled applicant may have a condition, disability, or behavior that (a) poses a significant risk of substantial harm to the health or safety of the individual or others, *and* (b) cannot be eliminated or reduced by reasonable accommodation or modification. If all of these criteria are satisfied, the health and wellness manager will forward the applicant's information to the appropriate licensed health provider employed by the center for a detailed direct-threat assessment.
- In the case of a current student, a direct-threat assessment may only be done where all the following circumstances are satisfied: there is a reasonable belief, based on objective evidence, that the student may have a condition, disability, or behavior that poses a "direct threat" as defined above.

### **Who May Conduct the Assessment?**

The clinical assessment of risk and degree of potential harm is a medical matter properly determined by licensed health providers. Such providers employed by Job Corps include nurses, physicians, center mental health consultants, dentists, and Trainee Employee Assistance Program

(TEAP) specialists. This group, therefore, has a significant role to play in determining whether, in a given Job Corps setting, a particular individual's condition, disability, or behavior poses a significant risk of substantial harm to the health or safety of himself/herself or others. Medical health conditions that may pose a direct threat should be assessed by nurses and/or physicians; mental health conditions should be assessed by mental health consultants; oral health conditions should be assessed by dentists; and conditions related to substance use should be assessed by TEAP specialists. In some cases, it may be necessary to consult an outside specialist with expertise in the particular condition, disability, or behavior and its effects.

### **Basis for the Assessment**

The determination that an individual has a condition, disability, or behavior that poses a "direct threat" must be based on an individualized assessment of the individual's present ability to safely participate in the Job Corps program. This assessment must be made by a licensed health provider, based on a reasonable medical judgment that relies on the most current medical knowledge and the best available objective evidence. Before conducting a direct-threat assessment, the assessor may need to educate himself or herself about the current state of medical knowledge, and about the specific facts of the particular individual's medical history and/or the circumstances in which he or she has been or will be placed in the Job Corps program.

As noted above, the assessment must focus on the current condition, disability, or behavior of the specific individual named on the form. The determination cannot be based on generalizations about the condition, disability, or behavior; the assessor must identify the specific risk that is posed by the named individual in the applicable Job Corps context. Additionally, the harm must be serious and likely to occur, not remote and speculative. Subjective perceptions, irrational fears, patronizing attitudes, and stereotypes have no place in the assessment process.

*Psychiatric disabilities or conditions.* To find that an individual applicant or student poses a direct threat because of a psychiatric disability or condition, the assessor must identify the specific behavior on the part of the individual that would pose the direct threat. The law makes clear that an individual does not pose a direct threat simply because he or she has a history of psychiatric disability, or is currently receiving treatment for a psychiatric disability.

### **Factors to Be Considered**

In determining whether an individual has a condition, disability, or behavior that poses a direct threat, the assessor must consider four specific factors: duration of the risk, nature and severity of the risk, likelihood that the potential harm will occur, and imminence of the potential harm.

If the assessor considers these four factors and determines that a direct threat is posed, he or she must consider whether the risk can be eliminated or reduced to an acceptable level by accommodation or modification.

Relevant factors in making the assessment (including the consideration of whether the risk may be lessened or eliminated) may include:

- Input from the individual with the condition, disability, or behavior.

- The medical history of the individual, including his or her experience in previous situations similar to those he or she would encounter in the program.
- Opinions of medical doctors, rehabilitation counselors, or therapists who have expertise in the condition involved and/or direct knowledge of the individual.

Under the law, the burden is on Job Corps to prove that a particular individual has a condition, disability, or behavior that poses a direct threat. This means that if the objective, factual evidence is equivocal, or is insufficient to prove that the participation of that specific individual would pose a direct threat, the assessor must assume that no direct threat exists.

The four factors for determining direct threat are described below.

1. **Nature and severity of the risk.** In the professional judgment of the assessor:
  - a. What *kind of harm* is potentially posed by this individual's condition, disability, or behavior? List the specific information on which the judgment is based.
  - b. What is the *seriousness of the potential harm* in this particular case (e.g., death, incapacitation, serious injury, minor injury/emotional distress)? List the specific information on which the judgment is based.
2. **Duration of the risk.** In the professional judgment of the assessor, how long will the risk last? List the specific information on which the judgment is based.
3. **Likelihood that the potential harm will occur.** In the professional judgment of the assessor, is the likelihood that potential harm will occur high, moderate, or low? List the specific information on which the judgment is based.
4. **Imminence of the potential harm.** In the professional judgment of the assessor, how soon is the harm likely to occur? List the specific information on which the judgment is based.

Taking all four of these factors into consideration, the assessor should determine whether the applicant's or student's condition poses a significant risk of substantial harm.

## FORM FOR INDIVIDUALIZED ASSESSMENT OF POSSIBLE DIRECT THREAT

Student's Name: \_\_\_\_\_

Date of Review: \_\_\_\_\_

Interview conducted: \_\_\_\_\_ by telephone \_\_\_\_\_ in person

In determining whether, in your professional judgment, the individual named above has a condition, disability, or behavior that poses a direct threat, consider the following and respond accordingly.

Factors to be considered in determining whether a "significant risk of substantial harm" exists include: (1) duration of the risk, (2) nature and severity of the potential harm, (3) likelihood that the potential harm will occur, and (4) imminence of the potential harm.

Under the law, the burden is on Job Corps to prove that a specific individual poses a direct threat. Therefore, if the objective, factual information about the specific individual named above is equivocal, or is insufficient to *prove* that a direct threat exists, you must assume that the individual's disability, condition, or behavior does not pose a direct threat.

If you determine that a "significant risk of substantial harm" exists, consider whether any accommodations or modifications would reduce the risk, and list any suggested accommodations or modifications. Do not consider whether, in your view, a particular accommodation or modification is "reasonable."

1. What factors triggered review of the individual's file for possible direct threat?
  
  
  
  
  
  
  
  
  
  
2. What is the nature and severity of the potential harm?
  - a. What kind of harm is potentially posed by this individual's condition, disability, or behavior?
  
  
  
  
  
  
  
  - b. What is the seriousness of the potential harm in this particular case (e.g., death, incapacitation, serious injury, minor injury/emotional distress)?
  
  
  
  
  
  
  
  
  
  
3. What is the duration of the risk (i.e., how long will the risk last)?

4. What is the likelihood that the potential harm will occur (i.e., high, moderate, or low)?
  
5. What is the imminence of the potential harm (i.e., how soon is the harm likely to occur)?
  
6. Based on the factors above, does the named individual have a condition, disability, or behavior that poses a significant risk of substantial harm to the safety of himself/herself or of others if he or she participates, or continues to participate, in Job Corps?

\_\_\_\_\_ In my professional judgment, the individual's participation poses a direct threat.

\_\_\_\_\_ In my professional judgment, the individual's participation does not pose a direct threat.

If you have concluded that the individual's participation poses a direct threat, list below any accommodations or modifications that could either eliminate the risk or reduce it to an acceptable level. The determination whether such accommodations or modifications would be "reasonable" will be made by the Center Director.

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Printed or Typed Name and Title of Licensed Health Provider Completing Form

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Signature of Licensed Health Provider Completing Form

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Date