

300 PERSONNEL, continued

316 Nondiscrimination/Affirmative Action

The ESD shall provide equal opportunity and treatment of all applicants and staff in recruitment, hiring, retention, assignment, transfer, promotion, and training. Such equal employment opportunity shall be provided without discrimination with respect to race, creed, color, national origin, age, families with children, sex, honorably discharged veteran or military status, marital status, sexual orientation, or non job-related physical, sensory, or mental disabilities, or use of a trained guide dog or service animal, except insofar as such factors are valid occupational qualifications. It shall be the policy of the ESD to undertake a good faith effort to correct any disparity in the utilization of members of protected classes where it may exist in the work force. Chapter 49.60 RCW.

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R316.1 Employment of Persons with Disabilities

Unlawful discrimination includes, but is not limited to, an employer's failure to make reasonable accommodations to the known physical or mental limitations of an otherwise qualified applicant or employee with a disability.

The ESD recognizes its obligation under applicable federal, state and local laws to provide reasonable accommodation to allow qualified individuals with disabilities to apply for jobs and to perform the essential functions of their jobs. A request or the need for reasonable accommodation does not adversely affect an individual's consideration for employment, training, promotion, or opportunity to enjoy equal terms, benefits, privileges, or conditions of employment, including employer-supported social or recreational activities.

This policy is based on the Americans with Disabilities Act (ADA) of 1990, as amended; the Rehabilitation Act of 1973 (P.L. 93-11) and 45 CFR Part 84; Chapter 49.60 RCW; Chapter 162-22 WAC; and WAC 357-46-160 through 357-46-175.

R316.1a Requesting Accommodation

If an applicant has a disability and needs reasonable accommodation in the application process, he or she should let the hiring official and/or Human Resources Department know as soon as possible. If an employee has a disability and needs reasonable accommodation to perform the essential functions of his or her job, he or she should let his or her supervisor or the Human Resources Department know as soon as possible. Applicants/employee's who request accommodation must follow applicable procedures established by the ESD.

R316.1b Response to Request for Accommodation

The ESD will develop procedures to implement this policy, and engage in an interactive process with the qualified applicant/employee to identify and implement necessary reasonable accommodations.

So long as the applicant/employee is otherwise qualified for and able to perform the essential functions of the job with or without reasonable accommodation, the ESD shall make those reasonable accommodations that are necessary for the

applicant/employee to perform the essential functions of the job, **provided** such accommodation can be made without undue hardship on the ESD.

If an employee becomes unable to perform the essential functions of his or her job, even with reasonable accommodation, the ESD shall provide the employee with assistance in identifying and applying for other jobs with the ESD that may become available and for which he or she may be qualified.

R316.2

Sexual Harassment

The Board of Directors recognizes its responsibility to provide a working and educational environment that is free from all types of discrimination, including sexual harassment.

Sexual harassment, as used in this policy and administrative regulations, means unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact, or other verbal or physical conduct or communication of a sexual nature between two or more individuals when:

1. submission to that conduct or communication is an explicit or implicit condition of employment or obtaining an education; or
2. submission to or rejection of such conduct or communication by an individual is used as a factor in employment or academic decisions affecting such individual, or
3. the conduct or communication has the purpose or effect of unreasonably interfering with an individual's performance or creating an intimidating, hostile, or offensive work or educational environment.

ESD 112 prohibits sexual harassment of employees, students and others involved in agency activities.

ESD 112 will take prompt, equitable and remedial action within its authority on reports and complaints alleging sexual harassment that come to the attention of the agency, either formally or informally. Allegations of criminal misconduct will be reported to law enforcement and suspected child abuse will be

reported to law enforcement or Child Protective Services. Persons found to have been subjected to sexual harassment will have appropriate agency services made reasonably available to them and adverse consequences of the harassment shall be reviewed and remedied, if appropriate.

All staff are responsible for receiving informal complaints and reports of sexual harassment and informing administrators of the complaint or report for investigation and resolution. All staff are also responsible for directing complainants to an ESD administrator and the ESD 112 policy and administrative regulations pertaining to sexual harassment.

Retaliation against any person who makes or is a witness in a sexual harassment complaint is prohibited and will result in appropriate discipline.

It is in violation of this policy to knowingly report false allegations of sexual harassment. Persons found to knowingly report or corroborate false allegations will be subject to appropriate discipline.

The Board directs the Superintendent to develop and implement procedures that provide for receiving, investigating, and resolving promptly any complaints or reports of sexual harassment.

R316.2a Informal Complaint Process

R316.2a1 Anyone may use informal procedures to report and resolve complaints of sexual harassment. Informal reports may be made to any staff member. Staff members shall inform complainants of their right to and the process for filing a formal complaint. They shall also direct potential complainants to an appropriate administrator who can explain the informal and formal complaint processes.

R316.2a2 Informal remedies include, but are not limited to:

- 1) an opportunity for the complainant to explain to the alleged harasser that his or her conduct is unwelcome, offensive or inappropriate, either in writing or face-to-face.
- 2) a statement from a staff member or administrator to the alleged harasser that the alleged conduct is not appropriate and could lead to discipline if repeated; or

3) a general public statement from administration reviewing the agency sexual harassment policy.

R 316.2a3 Informal complaints may become formal complaints at the request of the complainant or because agency administration believes the complaint needs to be more thoroughly investigated.

R316.2b Formal Complaint Process

R316.2b1 Anyone may initiate a formal complaint of sexual harassment, even if the informal complaint process is being utilized. The Superintendent or Human Resources administrator may determine that the agency needs to conduct an investigation based on information in his/her possession regardless of the complainant's interest in filing a formal complaint.

R316.2b2 Upon receipt of a written, signed complaint, or information that the Superintendent or Human Resources administrator believes requires further investigation, he or she will promptly carry out a thorough investigation and will endeavor to protect the rights of both the complainant and the alleged harasser while doing so.

R316.2b3 When the investigation is completed, the Human Resources administrator shall compile a full written report of the complaint and the results of the investigation.

R316.2b4 Any employee who has been found, after appropriate investigation, to have been in violation of this policy will be subject to disciplinary action up to and including discharge in accordance with Administrative Regulation R303.2 and R317, or involuntary transfer per Administrative Regulation R304.2.

R316.2c This policy and related procedures shall be posted in a place available to staff, students, and visitors.

The policy and procedures will be provided to all staff. A component of ESD 112 orientation sessions for staff will introduce the elements of this policy. Staff will be provided information on recognizing and preventing sexual harassment, will be informed of the formal and informal complaint processes, and their responsibilities under the policy and administrative regulations.

Students participating in instructional programs provided by the ESD will be provided with age-appropriate information on the recognition and prevention of sexual harassment and their rights and responsibilities under this policy and student rules.

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