

Policy: 5010P

Nondiscrimination

To ensure fairness and consistency, the following procedure governs complaints involving ESD employees, volunteers, or contractors who work on behalf of the ESD. It specifically governs employment problems covered by state and federal equal employment opportunity laws. No employee's status with the ESD will be adversely affected in any way because the employee member utilized this procedure.

Accommodations

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/employees who request accommodation must follow applicable procedures established by the ESD.

The ESD will develop standard operating procedures to respond to requests for accommodations. HR will 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.

Discrimination Complaints

This procedure applies to a complaint which has been filed by a complainant relating to alleged violations of any state or federal anti-discrimination laws. A "complaint" means an oral or written allegation that requests ESD to investigate and determine whether specific acts, conditions or circumstances violate non-discrimination laws, excluding sexual harassment or sex-based discrimination. A "complainant" is an employee, volunteer or contractor who submits a complaint. A "respondent" is a person alleged to be responsible or who may be responsible for the violation alleged in the complaint.

The primary purpose of this procedure is to secure an equitable solution to a justifiable complaint in support of equal employment opportunities and a work place that is free from unlawful discrimination. To this end, the ESD will:

1. Make efforts, when required and appropriate, to work toward a full utilization of aged persons, persons with disabilities, racial and ethnic minorities, women, and veterans in various job categories.

2. Ensure that all applicants and employees are considered on the basis of bona fide job-related qualifications. The ESD will continue to emphasize in all recruitment contacts that nondiscrimination is a basic element in the ESD's personnel procedures.
3. Be responsible for reviewing all employment procedures and programs to assure that there is no indication of discriminatory practices. The ESD will continue to use aged persons, persons with disabilities, racial and ethnic minorities, women and Vietnam veterans in the recruitment and employment process.
4. Include provisions in contracts for the purchase of all goods and services from persons, agencies, vendors, contractors, and organizations that require the contractors to comply with laws and executive orders regarding discrimination.
5. Take appropriate action to attract and retain aged persons, persons with disabilities, racial and ethnic minorities, women and veterans at all levels and in all segments of the ESD's work force. Criteria for selecting staff will be reviewed regularly to assure that such statements relate directly to the requirements for specific positions.

Responding to Complaints

To ensure fairness and consistency in addressing discrimination complaints, the following review procedures will be used:

1. The time period for filing a complaint is one year from the date of the occurrence that is the subject matter of the complaint. However, a complaint filing deadline may not be imposed if the complainant was prevented from filing due to: 1) Specific misrepresentations by the ESD that it had resolved the problem forming the basis of the complaint; or 2) Withholding of information that the ESD was required to provide under WAC 392-190-065 or WAC 392-190-005. Complaints may be submitted by mail, fax, e-mail or hand-delivery to a supervisor, ESD administrator or the ESD Civil Rights Compliance Officer. Any ESD employee who receives a complaint will promptly notify the compliance officer.
2. The ESD and its employees will not intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with their right to file a complaint.
3. The ESD and its employees will not retaliate against an individual for filing a complaint.

Informal Resolution

When an employee, volunteer, or contractor has an employment concern related to equal employment opportunities, they will discuss the concern with their immediate supervisor, the program director, the assistant superintendent for HR or the civil rights compliance officer within 60 days of the date the circumstances that created the concern. The employee, volunteer, or contractor may ask the compliance officer to participate in a meeting with the immediate supervisor or program director and to facilitate informal resolution of the concern. When requested by the complainant, it is intended that the informal discussion will resolve the concern. If the employee, volunteer, or contractor feels they cannot approach the supervisor because of the supervisor's involvement in the alleged discrimination, the person may directly contact the compliance officer before pursuing

formal procedures. If the discussion with the officer, immediate supervisor, program director or assistant superintendent does not resolve the concern, the complainant may initiate the formal resolution procedures. During the course of the informal process, the ESD will notify complainant of their right to file a formal complaint.

Formal Resolution

Formal resolution is initiated by filing a complaint which sets forth the specific acts, conditions, or circumstances alleged to be discriminatory in violation of state and federal laws. Upon receipt of a complaint, the compliance officer will provide the complainant a copy of this procedure. The compliance officer will notify the respondent and initiate an investigation within 14 calendar days. The ESD and complainant may agree to resolve the complaint in lieu of an investigation. If an investigation is done, the civil rights compliance officer will provide the superintendent with a written report of the complaint and the results of the investigation.

The superintendent or designee will respond to the complainant with a written decision as expeditiously as possible, but in no event later than 30 calendar days following receipt of the written complaint, unless otherwise agreed to by the complainant or if exceptional circumstances related to the complaint require an extension of the time limit. In the event an extension is needed, the ESD will notify the complainant in writing of the reason for the extension and the anticipated response date.

The decision of the superintendent or designee will include: 1) a summary of the results of the investigation; 2) a conclusion of whether the ESD failed to comply with non-discrimination laws; 3) if non-compliance is found, corrective measures the ESD deems necessary to correct it; and 4) notice of the complainant's right to appeal to the ESD Board of Directors, and the necessary filing information. The superintendent's or designee's response will be provided in a language the complainant can understand and may require language assistance for complainants with limited English proficiency in accordance with Title VI of the Civil Rights Act of 1964.

Any corrective measures deemed necessary will be instituted as expeditiously as possible, but in no event later than 30 calendar days following the superintendent's mailing of a written response to the complaining party unless otherwise agreed to by the complainant.

Appeal to Board of Directors

If a complainant disagrees with the superintendent's or designee's written decision, the complainant may file a written notice of appeal with the secretary of the board within ten (10) calendar days following the date upon which the complainant received the response. The board will schedule a hearing within twenty (20) calendar days following the filing of the written notice of appeal unless otherwise agreed to by the complainant and the superintendent or for good cause. Both parties will be allowed to present witnesses and testimony as the board deems relevant and material. Unless otherwise agreed to by the complainant, the board will render a written decision within thirty (30) calendar days following the hearing and provide the complainant with a copy of the decision. The decision of the board will be provided in a language the complainant can understand, which may require language assistance for complainants with limited English proficiency in accordance with Title VI of the Civil Rights Act.

Preservation of Records

The files containing copies of all correspondence relative to each complaint communicated

to the ESD and the disposition, including any corrective measures instituted by the ESD, will be retained in the office of the ESD compliance officer for a period of 6 years.