

# North Central Workforce Development Area

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## LOCAL DIRECTIVE

Directive #: <u>20-23</u> Date: <u>January 5, 2022</u>
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TO:                      WorkSource Center and Affiliates, WIOA Title I-B Providers, Wagner-Peyser & Trade Adjustment Act Providers

FROM:                      Lisa Romine, Executive Director

SUBJECT:                      Equal Opportunity and Nondiscrimination

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The attached state policy outlines current requirements including Notice and Communication, Affirmative Outreach, Minimum Requirements for Ensuring Equal Opportunity and Nondiscrimination, EO and Nondiscrimination Compliance Monitoring and Corrective Actions and Sanctions.

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**I. PURPOSE:**

The purpose of this directive is to affirm the commitment of SkillSource and Washington State to the principles of nondiscrimination and equal opportunity, and to provide for the observance and enforcement of those principles in the administration and operation of the programs and activities under its oversight.

**II. BACKGROUND:**

All recipients under the Workforce Innovation and Opportunity Act (WIOA) Title I are responsible for ensuring equal opportunity (EO) and nondiscrimination in programs and activities funded in whole or in part under WIOA. This responsibility includes compliance with all nondiscrimination requirements in the administration and operation of programs, activities and employment as provided by WIOA Section 188 (Nondiscrimination and Equal Opportunity) and 29 CFR Part 38 (Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Innovation and Opportunity Act). The regulations apply to all programs and activities that are operated by One-Stop partners as part of the One-Stop delivery system. Recipients are defined at 29 CFR §38.4.

Please direct any questions re: this policy to your program manager or the LWDB EO Officer.



# Employment Security Department

WASHINGTON STATE

## Workforce Innovation and Opportunity Act Policy Employment System Administration and Policy

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Washington envisions a nationally recognized fully integrated One-Stop system with enhanced customer access to program services, improved long-term employment outcomes for job seekers and consistent, high quality services to business customers. In order to achieve this vision, Employment System Administration and Policy sets a common direction and standards for Washington's WorkSource system through the development of WorkSource system policies, information memoranda, and technical assistance.

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**Policy Number:** 5402, Revision 3

**To:** Washington WorkSource System

**Effective Date:** March 10, 2021

**Subject:** Equal Opportunity and Nondiscrimination

### 1. Purpose:

The purpose of this policy is to affirm the commitment of Washington State to the principles of nondiscrimination and equal opportunity, and to provide for the observance and enforcement of those principles in the administration and operation of the programs and activities under its oversight.

### 2. Background:

All recipients under the Workforce Innovation and Opportunity Act (WIOA) Title I are responsible for ensuring equal opportunity (EO) and nondiscrimination in programs and activities funded in whole or in part under WIOA. This responsibility includes compliance with all nondiscrimination requirements in the administration and operation of programs, activities and employment as provided by WIOA Section 188 (Nondiscrimination and Equal Opportunity) and 29 CFR Part 38 (Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Innovation and Opportunity Act). The regulations apply to all programs and activities that are operated by One-Stop partners as part of the One-Stop delivery system. Recipients are defined at 29 CFR §38.4.

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WorkSource is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance services for limited English proficient individuals are available free of charge.

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## Compliance Standards

All recipients under WIOA Title I are directly responsible for compliance with:

- Federal nondiscrimination laws, regulations, guidelines, and directives;
- State nondiscrimination laws, executive orders, regulations, and guidelines;  
Local nondiscrimination ordinances;
- Equal opportunity and nondiscrimination policies, procedures, administrative directives, and the Nondiscrimination Plan (NDP); and
- Terms and conditions of contracts and agreements established by ESD.

### **3. Policy:**

Washington is committed to providing equal opportunity and equal access in WIOA Title I programs and services to all individuals.

The following requirements are provided in 29 CFR Part 38, the EO/Nondiscrimination regulations for WIOA Section 188 (Nondiscrimination):

#### **a. Notice and Communication**

A recipient must provide initial and continuing, notice that it does not discriminate in the delivery of programs and services or employment on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, sex stereotyping, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, or political affiliation or belief, or, against any beneficiary of, applicant to, or participant in programs financially assisted under Title I of the Workforce Innovation and Opportunity Act, on the basis of the individual's citizenship status or participation in any WIOA Title I-financially assisted program or activity.

The following specific wording is placed on EO Notice posters and in written EO policy statements:

#### **Equal Opportunity is the Law**

"It is against the law for this recipient of Federal financial assistance to discriminate on the following bases:

Against any individual in the United States, on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, sex stereotyping, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, or political affiliation or belief or,

Against any beneficiary of, applicant to, or participant in programs financially assisted under Title I of the Workforce Innovation and Opportunity Act, on the basis of the individual's citizenship status or participation in any WIOA Title I—financially assisted program or activity.

The recipient must not discriminate in any of the following areas:

Deciding who will be admitted, or have access, to any WIOA Title I—financially assisted program or activity; providing opportunities in, or treating any person with regard to, such a program or activity; or making employment decisions in the administration of, or in connection with, such a program or activity.

Recipients of federal financial assistance must take reasonable steps to ensure that communications with individuals with disabilities are as effective as communications with others. This means that, upon request and at no cost to the individual, recipients are required to provide appropriate auxiliary aids and services to qualified individuals with disabilities.

If you think that you have been subjected to discrimination under a WIOA Title I—financially assisted program or activity, you may file a complaint within 180 days from the date of the alleged violation with either: the recipient's Equal Opportunity Officer (or the person whom the recipient has designated for this purpose); or the Director, Civil Rights Center (CRC), U.S. Department of Labor, 200 Constitution Avenue NW, Room N-4123, Washington, DC 20210.

If you file your complaint with the recipient, you must wait either until the recipient issues a written Notice of Final Action, or until 90 days have passed (whichever is sooner), before filing with the Civil Rights Center (see address above).

If the recipient does not give you a written Notice of Final Action within 90 days of the day on which you filed your complaint, you may file a complaint with CRC before receiving that Notice. However, you must file your CRC complaint within 30 days of the 90-day deadline (in other words, within 120 days after the day on which you filed your complaint with the recipient).

If the recipient does give you a written Notice of Final Action on your complaint, but you are dissatisfied with the decision or resolution, you may file a complaint with CRC. You must file your CRC complaint within 30 days of the date on which you received the Notice of Final Action.”

This notice, in the form of Washington's WIOA EO Notice Poster, must be posted prominently in reasonable numbers and places where customers and staff frequent, in both English and Spanish.

## **b. Affirmative Outreach**

Recipients must take appropriate steps to ensure that they are providing equal access to their WIOA Title I-financially assisted programs and activities. These steps should involve reasonable efforts to include members of the various groups protected by these regulations including but not limited to persons of different sexes, various racial and ethnic/national origin groups, various

religions, individuals with limited English proficiency, individuals with disabilities, and individuals in different age groups.

Such efforts may include, but are not limited to:

- (a) Advertising the recipient's programs and/or activities in media, such as newspapers or radio programs, that specifically target various populations;
- (b) Sending notices about openings in the recipient's programs and/or activities to schools or community service groups that serve various populations; and
- (c) Consulting with appropriate community service groups about ways in which the recipient may improve its outreach and service to various populations.

**c. Minimum Requirements for Ensuring Equal Opportunity and Nondiscrimination:**

The following EO and Nondiscrimination requirements will be followed:

**i. Local Workforce Development Board (LWDB) Equal Opportunity Officer**

All LWDBs will designate an EO Officer who is responsible for ensuring EO and Nondiscrimination in the administration and operation of programs and services within the One-Stop system in the workforce development area.

Job duties of LWDB EO Officer will include, in part:

- Conducting EO and Nondiscrimination monitoring reviews of One-Stop Centers, affiliates and other service providers that are part of the local One-Stop system to ensure compliance with the provisions of this policy and 29 CFR Part 38, and adhering to the NDP;
- Conducting EO training for staff and service providers;
- Processing and investigating discrimination complaints;
- Reviewing LWDB written policies to ensure they are nondiscriminatory;
- Developing or publishing LWDB procedures for processing discrimination complaints;
- Coordinating responsibilities under 29 CFR Part 38;
- Reporting EO matters directly to his or her top official;
- Ensuring implementation of the NDP; and,
- Undergoing EO and Nondiscrimination training to maintain competency.

**ii. EO Tagline and Washington Relay Service**

Recruitment brochures and other materials, including pamphlets, flyers, and other publications distributed or communicated in written or oral form, electronically or on paper, for customers, staff or the general public that describe programs financially assisted under Title I of WIOA or the requirements for participation by recipients and participants will include the following EO Tagline:

“(name of recipient) is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities.”

Program information that is broadcast in the news media and electronically such as on television and radio or on a large screen monitor must also include the tagline.

If a phone number is included, the Washington Relay Service number must also be provided. This should be: Washington Relay Service: 711, which can alternatively be placed at the end of the EO tagline.

### **iii. Language Services**

Language services, interpretation or translation, must be made available free of charge for limited English proficiency (LEP) individuals. When a significant number or proportion of the eligible population needs information in a language other than English to be effectively informed about the program or to be able to participate, the following four factors must be considered in determining the language services to provide:

- 1) The number or proportion of LEP persons served or encountered in the eligible service population;
- 2) The frequency with which LEP individuals come in contact with the program;
- 3) The nature and importance of the program, activity or service provided; and,
- 4) The resources available and costs.

It may be determined, as a result of the analysis, that different language assistance measures are sufficient for the different programs or activities provided.

Regardless of the number or proportion of individuals, reasonable efforts must be made to meet the particular language needs of LEP individuals.

### **iv. Assurance**

Each contract, agreement or application for financial assistance under Title I of WIOA will include, in its entirety without changes, the following EO/Nondiscrimination assurance language found at 29 CFR Part 38.25 (a)(ii):

“(i) As a condition to the award of financial assistance from the Department of Labor under Title I of WIOA, the grant applicant assures that it has the ability to comply with the nondiscrimination and equal opportunity provisions of the following laws and will remain in compliance for the duration of the award of federal financial assistance:

- (A) Section 188 of the Workforce Innovation and Opportunity Act (WIOA), which prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, or political affiliation or belief, or against beneficiaries on the

basis of either citizenship status or participation in any WIOA Title I-financially assisted program or activity;

- (B) Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the bases of race, color and national origin;
- (C) Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against qualified individuals with disabilities;
- (D) The Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age; and
- (E) Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in education programs.

- (ii) The grant applicant also assures that, as a recipient of WIOA Title I financial assistance, it will comply with 29 CFR Part 38 and all other regulations implementing the laws listed above. This assurance applies to the grant applicant's operation of the WIOA Title I financially assisted program or activity, and to all agreements the grant applicant makes to carry out the WIOA Title I-financially assisted program or activity. The grant applicant understands that the United States has the right to seek judicial enforcement of this assurance.

In lieu of including the assurances language in its entirety for smaller contracts or agreements (such as OJT contracts, etc.), the following reference to the language may be used: "The nondiscrimination assurances at 29 CFR Part 38.25 apply to this [contract/agreement/etc]."

#### **v. Programmatic and Architectural Accessibility**

Each program or activity, must be operated in a manner that makes it readily accessible to qualified individuals with a disability. A qualified individual with a disability is an individual who, with or without a reasonable accommodation for his or her disability, meets eligibility requirements.

Program accessibility requires the provision of reasonable accommodations for individuals with disabilities, making reasonable modifications to policies, practices, and procedures, administering programs in the most integrated setting appropriate, communicating with persons with disabilities as effectively as with others, and providing appropriate auxiliary aids or services, including assistive technology devices and services, where necessary to afford individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, the program or activity.

In determining what types of auxiliary aids and services are necessary, a recipient must give primary consideration to the requests of individuals with disabilities. In order to be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability. Some examples include: qualified interpreters, video remote interpreting service, text and video-based telecommunications products and systems, videotext displays, and telephone handset amplifiers.

Regarding physical accessibility, no qualified individual with a disability may be excluded from participation in, or be denied the benefits of a recipient's service, program, or activity or be subjected to discrimination by any recipient because a recipient's facilities are inaccessible or unusable by individuals with disabilities. Facilities must comply with the applicable federal accessible design standards, such as the ADA Standards for Accessible Design (1991 or 2010) or the Uniform Federal Accessibility Standards and recipients must meet their accessibility obligations under Section 504 of the Rehabilitation Act and the implementing regulations at 29 CFR Part 32.

#### **d. EO and Nondiscrimination Compliance Monitoring**

The LWDB EO Officer will monitor all service provider programs, services and activities annually. The purpose of the review is to ensure programs are administered in a nondiscriminatory manner in compliance with the EO and Nondiscrimination requirements of this policy and 29 CFR Part 38, and that adheres to the NDP. LWDB EO Officers must use a monitoring instrument approved by the State-Level EO Officer and must develop review reports that include any findings and due dates for corrections. LWDB EO Officers must submit review reports with follow-up actions to the State-Level EO Officer prior to the State-Level EO Officer's monitoring review.

EO data will be collected for all WIOA Title I-financially assisted programs for applicants, registrants, eligible applicants/registrants, participants, terminees, employees, and applicants for employment by race/ethnicity, sex, age, and where known, disability status. While it is required that the data is requested from the individual, the person cannot be required to provide the information.

Monitoring reviews must include a statistical analysis of records and data including analyses by race/ethnicity, sex, age and disability status. The analyses must determine if there are any significant differences in participation in programs in services. An investigation of significant differences will be conducted to determine if these differences may be caused by adverse impact discrimination. Adverse impact discrimination is non-intentional discrimination occurring when a neutral policy or practice has an adverse effect on a demographic group. If found and unless adequate justification is provided, the effects must be eliminated or mitigated.

Discrimination complaints must be investigated or mediated by, or under the direction of, the LWDB EO Officer in accordance with the direction provided in WorkSource System Policy [1017](#), Discrimination Complaint Processing Policy and [Handbook](#).

The LWDB EO Officer must maintain discrimination complaint logs with the name and address of the complainant, the basis of the alleged discrimination (e.g., race, color, religion, sex, national origin, etc), a brief description of the complaint, the date filed and the disposition of the complaint.

The State-Level EO Officer will monitor the LWDBs, ESD programs, and the operation of the State Workforce Development Board annually for meeting the nondiscrimination requirements of this policy and 29 CFR Part 38.



## e. Corrective Action and Sanctions

Recipients at the state and LWDB level will apply corrective actions or sanctions if voluntary efforts in seeking compliance fail, when they find violations of this policy or 29 CFR Part 38. Corrective actions are to be designed to completely address each violation and may result from an EO and Nondiscrimination monitoring review, a discrimination complaint or both. Timeframes must be established to set the minimum time necessary to completely redress the violation. Follow-up monitoring will occur as necessary to ensure that commitments to take corrective and remedial actions have been fulfilled. Local areas are required to establish policies and procedures for obtaining prompt corrective action. The LWDB EO Officer will notify the State Level EO Officer of violation(s) discovered, corrective action(s) implemented, and timeframe(s) for completion.

Corrective action is indicated in the following circumstances:

- An assessment of the circumstances surrounding a discrimination complaint investigation reveals barriers to equal opportunity or equal access.
- An LWDB EO Officer or the State-Level EO Officer's monitoring review identifies a violation, a failure to follow through on written assurances, a barrier to accessibility, or significant differences in participation in programs or services without investigation, mitigation or justification.

Corrective actions should be completed by the date(s) provided in the review report. If a recipient does not undertake the corrective actions specified, a conciliation agreement should be initiated and completed. Instructions on developing and implementing a conciliation agreement are found in the NDP and at 29 CFR Part 38.93.

Sanctions will be considered as a last resort. Sanctions may be necessary when a recipient refuses to implement voluntary corrective action, submit requested data or documentation, or refuses to provide access to premises or records during an EO and Nondiscrimination compliance review.

At the state level, after all efforts for voluntary compliance have been exhausted, the State-Level EO Officer notifies the ESD Commissioner in writing. This request for a final determination specifies the following:

- Efforts made to achieve voluntary compliance, along with the areas of disagreement (if known);
- The apparent violation(s) and relevant EO and Nondiscrimination provision(s) of this policy and 29 CFR Part 38, and conflict with the NDP;
- The corrective action the recipient must take to address the violation(s).

The ESD Commissioner may secure voluntary compliance with the recipient through a written assurance and/or conciliation agreement. The ESD Commissioner considers sanctions only if the recipient does not agree to take voluntary corrective action. Sanctions that may be imposed include, but are not limited to:

- Termination of future funding;

- Disallowance of selected costs;
- Restriction from bidding on competitive or discretionary funds; and
- Reduction in funding.

If sanctions are necessary, the precise nature of the sanction will be determined by the deliberateness, seriousness, and frequency of the violation. In situations where sanctions are to be applied, the recipient will be notified and will be provided an opportunity to respond prior to sanctions being applied.

At the LWDB level, it is the responsibility of the LWDB Executive Director to implement sanctions, if needed. LWDBs will follow the above model for applying corrective actions and sanctions.

#### **4. Definitions:**

None.

#### **5. References:**

- WIOA Section 188
- 29 CFR Part 38, "Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Innovation and Opportunity Act" (December 2, 2016);
- Title VI of the Civil Rights of 1964, as amended (P.L. 88-352) and USDOL regulations at 29 CFR Part 31;
- Title VII of the Civil Rights Act as amended by the Equal Opportunity Act (P.L. 92-261) and the Pregnancy Discrimination Act (P.O. 95-555), and the guidelines established by the Equal Employment Opportunity Commission (EEOC) including:
  - "Guidelines on Sexual Harassment in the Workplace" (29 CFR Part 1604);
  - "Guidelines on Discrimination on the Basis of Religion" (29 CFR Part 1605);
  - "Guidelines on Discrimination on the Basis of National Origin" (29 CFR Part 1606);
  - "Guidelines of Employee Selection Procedures" (29 CFR Part 1607);
- The Rehabilitation Act of 1973, as amended (P.L. 93-112) Section 504 and regulations established by USDOL at 29 CFR Part 32;
- The Age Discrimination Act (P.L. 94-135) and USDOL regulations at 29 CFR Part 35;
- The Age Discrimination in Employment Act of 1967, as amended (P.L. 95-256) and regulations established by the U.S. EEOC (29 CFR, Parts 1625 and 1627); • Title IX of Education Amendments of 1972, as amended (P.L. 92-318);
- American with Disabilities Act of 1990, as amended (P.L.101-336).

Other federal laws, regulations, guidelines, and directives may also apply and their omission here is not to be construed as exclusions.

State Laws, Executive Orders, Regulations, and Guidelines:

- The Washington Law Against Discrimination (RCW 49.60) and regulations established by the Washington State Human Rights Commission, including:
  - Pre-Employment Inquiries (WAC 162.12);

- Employment Discrimination (WAC 162.16);
- Age Discrimination in Public Employment (WAC 162.20);
- Public Accommodations, Disability Discrimination (WAC 162.26); and • Sex Discrimination (WAC 162.30)
- Washington State Building Code (RCW 19.27);
- Washington State Rules and Regulations for Barrier Free Design (Title 51 WAC)

**6. Supersedes:**

WIOA Policy 5402, Revision 2 – Equal Opportunity and Nondiscrimination dated 12/12/18.

**7. Website:**

[Workforce Professionals Center](#)

**8. Action:**

Local Workforce Development Boards and their contractors must distribute this policy broadly throughout the system to ensure that WorkSource System staff are familiar with its content and requirements.

**9. Attachments:**

None.

**Direct Inquiries To:**

*State-Level EO Officer  
Employment Security Department  
P.O. Box 9046  
Olympia, WA 98507-9046  
Telephone: (360) 480-5708 WA  
Relay Service: 711  
[esdqpeo@esd.wa.gov](mailto:esdqpeo@esd.wa.gov)*

**Direct Other Inquiries To:**

*Employment System Administration and Policy Unit  
Employment System Policy and Integrity Division  
Employment Security Department  
P.O. Box 9046  
Olympia WA 98506-9046  
[SystemPolicy@esd.wa.gov](mailto:SystemPolicy@esd.wa.gov)*