

## **Nondiscrimination and Affirmative Action**

### **Nondiscrimination**

The ESD is committed to an educational and working environment free from discrimination and harassment as described in this policy. The Superintendent will develop and implement procedures that carry out this policy. A civil rights compliance officer will be appointed to oversee actions taken under this policy or accompanying procedure. The policy and accompanying procedure prohibit discriminatory harassment of any staff member, volunteers, and contractors who work on behalf of the ESD.

### **Equal Employment Opportunity**

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 a legally protected characteristic, which includes: race, creed, religion, color, national origin, age, sex, sexual orientation, gender expression or identity, honorably discharged veteran or military status, marital status, disability, or use of a trained guide dog or service animal by a person with a disability.

ESD will publish its nondiscrimination statement on its' website, on the pages on the website where ESD 112 jobs are advertised, on its employment application and in recruitment materials.

### **Discriminatory Harassment**

Discriminatory harassment is unwelcome conduct that:

1. Is directed toward a person based on a protected characteristic;
2. Is sufficiently severe or pervasive;
3. Unreasonably interferes with a person's work environment or ability to perform job duties; and
4. Is the cause of an intimidating, hostile, or offensive environment.

Examples of discriminatory harassment include, but are not limited to:

- Unwelcome jokes or comments about a legally protected characteristic (e.g., racial or ethnic jokes);
- Disparaging remarks to or about a person's legally protected characteristic (e.g., negative or offensive remarks or jokes about a person's religion or religious garments);
- Displaying negative or offensive posters or pictures about a legally protected characteristic;
- Physical conduct toward a person due to that person's legally protected characteristic;
- All communications, including those conveyed electronically, such as by e-mail, telephone or voicemail, text messaging, or social media or other internet use, that directly or indirectly implicates a legally protected characteristic; or
- Any other unwelcome conduct that implicated a legally protected characteristic.

In most instances, discriminatory harassment does not include supervisory or evaluative practices.

### **Employment of Persons with Disabilities**

In order to fulfill its commitment of nondiscrimination to those with disabilities, the following conditions will prevail:

1. No qualified person with disabilities will, solely by reason of a disability, be subjected to discrimination and the ESD will not limit, segregate or classify any applicants for employment or any staff member in any way that adversely affects his/her

opportunities or status because of a disability. This prohibition applies to all aspects of employment from recruitment to promotions, and includes fringe benefits and other elements of compensation.

2. The ESD will make reasonable accommodation to the known physical or mental limitations of an otherwise qualified disabled applicant or staff member unless it is clear that an accommodation would impose an undue hardship on the operation of the ESD program.

In determining whether or not accommodation would impose an undue hardship on the ESD, factors to be considered include the nature and cost of the accommodation.

3. The ESD will not use any employment tests or criteria that screen out people with disabilities unless the test or criteria is clearly and specifically job-related. Also, the ESD will not use such tests or criteria if alternative tests or criteria (that do not screen out persons with disabilities) are available.
4. While the ESD may not make pre-employment inquiry as to whether an applicant has a disability or as to the nature and severity of any such disability, it may inquire into an applicant's ability to perform job-related functions.
5. Any staff member who believes that there has been a violation of this policy or the law prohibiting discrimination because of a disability may request an informal resolution of the staff member's complaint or file a complaint. Complaints will be handled in accordance with the procedures for sex discrimination complaints.

#### **Nondiscrimination for Military Service**

The ESD will not discriminate against any person who is a member of, applies to be a member or performs, has performed, applies to perform or has an obligation to perform service in a uniformed service, on the basis of that participation in a uniformed service. This includes initial employment, retention in employment, promotion or any benefit of employment. The ESD will also not discriminate against any person who has participated in the enforcement of these rights under state or federal law.

#### *Legal References:*

*RCW 49.60 Discrimination — Human rights commission.*

*RCW 28A.642 Discrimination prohibition.*

*RCW 28A.400.310 Law against discrimination applicable to districts' employment practices.*

*RCW 28A.640.020 Regulations, guidelines to eliminate discrimination—Scope—Sexual harassment policies.*

*RCW 49.60.030 Freedom from discrimination — Declaration of civil rights.*

*RCW 49.60.180 Unfair practices of employers.*

*RCW 49.60.400 Discrimination, preferential treatment prohibited. RCW 73.16 Employment and Reemployment.*

*WAC 392-190 Equal Education Opportunity — Unlawful Discrimination Prohibited.*

*WAC 392-190-0592 Public school employment — Affirmative action program.*

*42 USC-2000e1-2000e10 Title VII of the Civil Rights Act of 1964.*

*20 USC – 1681–1688 Title IX Educational Amendments of 1972.*

*42 USC 12101-12213 Americans with Disabilities Act.*

*8 USC 1324 (ICRA) Immigration Reform and Control Act of 1986.*

*38 USC § 4301-4333 Uniformed Services Employment and Reemployment Rights Act.*

*29 USC 794 Vocational Rehabilitation Act of 1973.*

*34 CFR § 104 Nondiscrimination on the basis of handicap in Programs or activities receiving federal financial assistance.*

Adoption Date: **1-20-77**

Revised Dates: **3-29-88; 3-26-91; 5-29-07; 6-23-09; 3-26-13; 1-1-17; 11-26-24**

Renumbered: **316 to 5010 1-1-17**