

# PROPOSED REVISION



5010  
Page 1 of 7

## HUMAN RESOURCES

### Affirmative Action and Nondiscrimination and Affirmative Action

In correlation with [Board Policy 0010](#), Diversity, Equity, Inclusion, and Belonging, Everett Public Schools is committed to an educational working environment free from discrimination and harassment **based on a person's protected status, as described in this policy. This policy and accompanying procedure prohibit discrimination and harassment of any staff member, volunteers, and contractors who work on behalf of the district.**

### Definition

**"Protected status" is short for the phrase "age, sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation, gender expression, gender identity, marital status, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability."**

### Nondiscrimination

**The district will not deny any person the benefit of, or subject any person to discrimination in employment, recruitment, promotion, advancement, consideration, or selection in connection with employment based on their protected status.**

**The district will make all employment decisions in a non-discriminatory manner and will not limit, segregate, or classify any person in a way that could adversely affect their employment opportunities or status based on their protected status.**

**The district will not enter into any contractual or other relationship that directly or indirectly results in the discrimination of any person in connection with employment based on their protected status.**

**The district will not grant preferential treatment to applications for employment based on an applicant's enrollment at any education institution or entity that only predominantly admits students based on sex, race, color, or national origin if the giving of such preferences has the effect of discriminating based on sex, race, color, or national origin.**

### Equal Employment Opportunity

The district shall provide equal employment opportunity and treatment for all applicants and employees **and will not tolerate unlawful discriminatory practices** in recruitment, hiring, retention, assignment, transfer, promotion, and training. **Such equal employment opportunity will be provided without discrimination with respect to a legally protected characteristic, which include the following: race, color, national origin, creed, religion, sex, sexual orientation including gender expression or identity, marital status, age, honorably discharged veteran or military status, disability, or the use of a trained dog guide or service animal by a person with a disability.**

# PROPOSED REVISION

5010  
Page 2 of 7

## Examples of Employment Discrimination

Employment discrimination may include the following:

1. Unfair treatment based on an employee's protected status, including unfair or separate treatment in pay scale, assignment of duties, opportunities for advancement, conditions of employment, hiring practices, leaves of absence, hours of employment, and assignment of instructional and non-instructional duties.
2. Harassment based on an employee's protected status by supervisors, co-workers, or others in the workplace that is so severe or persistent that it creates a hostile environment.
3. Denial of a reasonable workplace accommodation that an employee needs because of religious beliefs or a disability.
4. Retaliation because an employee complained about employment discrimination or assisted with an employment discrimination investigation or lawsuit.
5. Making employment or placement decisions based on stereotypes or assumptions about one's protected status.
6. Discriminating against individuals married to or otherwise associated with people of a certain group.
7. Prohibiting an employee from using the restroom consistent with their gender identity.

These are examples of employment discrimination and are not an exhaustive list.

## Discriminatory Harassment

The district prohibits discriminatory harassment in the workplace. Discriminatory harassment is unwelcome or offensive conduct directed toward a person based on their protected status that is sufficiently severe or pervasive to create an environment that a reasonable person would consider intimidating, hostile, or offensive. Petty slights, annoyances, or isolated incidents, unless extremely serious, will not rise to the level of discriminatory harassment.

Harassing conduct may include, but is not limited to, offensive jokes, slurs, epithets, name-calling, physical assaults, threats, intimidation, ridicule, mockery, insults, put-downs, offensive objects or pictures, and interference with work performance.

When the district becomes aware of potential discriminatory harassment, it will promptly investigate the conduct and, as appropriate, take reasonable steps to prevent and promptly correct the harassing conduct.

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

# PROPOSED REVISION

5010  
Page 3 of 7

**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 email, 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.**

## **Affirmative Action**

**The district, as a recipient of public funds, is committed to undertake affirmative action which will make effective equal employment opportunities for all employees and applicants for employment. Such affirmative action shall include a review of programs, the setting of goals and the implementation of corrective employment procedures to increase the ratio of aged, persons with disabilities, ethnic minorities, women, and veterans who are under-represented in the job classifications in relationship to the availability of such persons having requisite qualifications. Affirmative action plans may not include hiring or employment preferences based on gender or race, including color, ethnicity or national origin. Such affirmative action will also include recruitment, selection, training, education and other programs.**

**The superintendent or designee will develop an affirmative action plan which specifies the personnel procedures to be followed by staff of the district and will ensure that no such procedures discriminate against any individual. Reasonable steps will be taken to promote employee opportunities of those classes that are recognized as protected groups—aged, persons with disabilities, ethnic minorities and women and veterans, although under state law, racial minorities, and women may not be treated preferentially in public employment.**

## **Employment of Persons with Disabilities**

**In order to 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 district will not The district will not discriminate against a qualified individual based on their disability, nor will the district** limit, segregate, or classify any applicants for employment or any staff member in any way that adversely affects their opportunities or status because of **a their** disability. This prohibition applies to all aspects of employment from recruitment to promotions and includes fringe benefits and other elements of compensation.

# PROPOSED REVISION

5010

Page 4 of 7

2. The district will ~~make reasonable accommodation to~~ **reasonably accommodate** 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 district program.~~ **Such reasonable accommodations may include: making facilities used by staff readily accessible and usable by persons with disabilities; job restructuring; part-time or modified work schedules; acquisition or modification of equipment or devices; the provision of readers or interpreters; and other similar actions.**

~~a. Making facilities used by staff readily accessible and usable by persons with disabilities; and~~

~~b. Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters and other similar actions.~~

**An undue hardship means an accommodation would be unduly costly, extensive, substantial or disruptive or would fundamentally alter the nature or operation of the district.** In determining whether ~~or not an~~ accommodation would impose an undue hardship on the district, **the district may consider, among other things, factors to be considered include the nature and the cost of the accommodation, the district's size, the district's financial resources, and the nature and structure of its operations.**

3. The district will not use any employment tests or criteria that screen out persons with disabilities unless the test or criteria is clearly and specifically job-related, ~~and. Also,~~ the district 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 district may not make ~~a~~ pre-employment ~~inquiry~~ **inquiries** 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 initiate a grievance through the procedures for staff complaints.~~

## Nondiscrimination for Military Service

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

## Affirmative Action Program

**The district will develop an affirmative action employment plan or program that includes appropriate provisions designed to eliminate discrimination based on protected status.**

# PROPOSED REVISION

5010  
Page 5 of 7

**Regarding sex discrimination, the district's affirmative action employment plan or program must include the requirements to maintain credential requirements for all personnel without regard to sex; make no differentiation in pay scale based on sex; make no differentiation in the assignment of school duties based on sex except where an assignment would involve duty areas or situations such as, but not limited to, a shower room, where persons might be disrobed; provide the same opportunities for advancement for males and females; and make no differentiation in conditions of employment based on sex, including, but not limited to, hiring practices, leaves of absence, hours of employment, and assignment of or payment for instructional or noninstructional duties.**

## **Complaint Procedure**

**The district will adopt a complaint procedure in accordance with [Chapter 392-190 WAC](#).**

**Annually, the district will publish a notice of the complaint procedure in a way that is reasonably calculated to inform all employees of it. The district will provide the notice in a language each employee can understand, which may require language assistance in accordance with [Title VI of the Civil Rights Act of 1964](#) for those with limited English proficiency.**

**The district will not adopt any policy, procedure, or practice that would limit a person's right to file a complaint under the complaint procedure.**

## **Compliance Officer**

**The superintendent will designate an employee who is responsible for monitoring and coordinating the district's compliance with [Chapter 392-190 WAC](#) and the guidelines the Office of the Superintendent of Public Instruction has adopted under [WAC 392-190-005](#).**

**The compliance officer is responsible for ensuring that all complaints filed under the complaint procedure are promptly investigated and resolved.**

## **Retaliation Prohibited**

**The district will not intimidate, threaten, coerce, or discriminate against any individual who seeks to secure their rights under this policy or [Chapter 392-190 WAC](#) or because the individual has filed a complaint under the complaint procedure. Further, the district will not tolerate someone else retaliating against another because they sought to secure their rights under this policy or [Chapter 392-190 WAC](#) or because they have filed a complaint under the complaint procedure.**

**Any person who retaliates will be subject to appropriate discipline.**

Cross references:	<a href="#">Board Policy 0010</a>	Diversity, Equity, Inclusion, and Belonging
	<a href="#">Board Policy 2030</a>	Service Animals in Schools
	<a href="#">Procedure 5010P</a>	<del>Affirmative Action and</del> Nondiscrimination
		<b><u>and Affirmative Action</u></b>
	<a href="#">Board Policy 5161</a>	Civility in the Workplace
	<a href="#">Board Policy 5320.6</a>	Military Leave

# PROPOSED REVISION

5010

Page 6 of 7

Legal references:	<a href="#">RCW 28A.400.310</a>	Law against discrimination applicable to districts' employment practices
	<a href="#">RCW 28A.640.020</a>	Regulations, guidelines to eliminate discrimination—Scope—Sexual harassment policies
	<a href="#">Chapter 28A.642 RCW</a>	Discrimination prohibition
	<a href="#">Chapter 49.60 RCW</a>	Discrimination—Human rights commission
	<a href="#">RCW 49.60.030</a>	Freedom from discrimination—Declaration of civil rights
	<a href="#">RCW 49.60.180</a>	Unfair practices of employers
	<a href="#">RCW 49.60.400</a>	Discrimination, preferential treatment prohibited
	<a href="#">Chapter 73.16 RCW</a>	Employment and reemployment
	<a href="#">WAC 162-22-025</a>	Unfair practice
	<a href="#">Chapter 392-190 WAC</a>	Equal educational opportunity—Unlawful discrimination prohibited
	<del><a href="#">WAC 392-190-0592</a></del>	<del>Public school employment—Affirmative action program</del>
	<del><a href="#">WAC 392-190-060</a></del>	<del>Compliance—School district or public charter school—Designation of responsible employee—Notification</del>
	<del><a href="#">WAC 392-190-065</a></del>	<del>Compliance—Complaint procedure—School district or public charter school</del>
	<del><a href="#">WAC 392-190-070</a></del>	<del>Compliance—Appeal procedure—School district or public charter school</del>
	<del><a href="#">WAC 392-190-075</a></del>	<del>Compliance—Complaint procedure—Office of superintendent of public instruction</del>
	<del><a href="#">WAC 392-190-076</a></del>	<del>Monitoring—Duty of the superintendent of public instruction</del>
	<del><a href="#">WAC 392-190-077</a></del>	<del>Monitoring procedures—Results</del>
	<del><a href="#">WAC 392-190-079</a></del>	<del>Monitoring—Appeal procedure</del>
	<del><a href="#">WAC 392-190-080</a></del>	<del>Violations—Permissible sanctions</del>
	<del><a href="#">WAC 392-190-081</a></del>	<del>Concurrent claims and remedies</del>
	<del><a href="#">WAC 392-190-082</a></del>	<del>Informing citizens about complaint procedures</del>
	<a href="#">8 U.S.C. § 1324</a>	Aliens and nationality—Bringing in and harboring certain aliens
	<a href="#">20 U.S.C. § 1681-1688</a>	Title IX of the Educational Amendments of 1972
	<a href="#">29 U.S.C. § 794</a>	Nondiscrimination under Federal grants and programs
	<a href="#">34 CFR § 104</a>	Nondiscrimination on the basis of handicap in programs or activities receiving Federal financial assistance
	<a href="#">38 U.S.C. § 4212</a>	Veterans' employment emphasis under Federal contracts
	<a href="#">38 U.S.C. § 4301-4333</a>	Veterans' Benefits—Employment and reemployment rights of members of the uniformed services
	<a href="#">42 U.S.C. § 2000e</a>	Title VII of the Civil Rights Act of 1964
	<a href="#">42 U.S.C. § 12101-12213</a>	Equal Opportunity for Individuals with Disabilities

# PROPOSED REVISION

5010  
Page 7 of 7

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