



## Nondiscrimination and EEO Policy Directive

Department: Office of Economic & Workforce Development

Effective Date: January 1, 2020

Directive # WDD 20-22

Supersedes: 18-22

### **PURPOSE**

This directive provides guidance and establishes policy regarding nondiscrimination and equal opportunity. This policy applies to all OEWD Service Providers.

### **REFERENCES**

- EDD WSD 17-01 Nondiscrimination and Equal Opportunity Procedures (August 1, 2017)
- *Civil Rights Act of 1964* (Public Law 88-352) Titles VI and VII
- *Education Amendments of 1972* (Public Law 92-318) Title IX
- *Rehabilitation Act of 1973* (Rehab Act) (Public Law 93-112) Title V, Section 504
- *Age Discrimination Act of 1975* (Public Law 94-135), as amended
- *Americans with Disabilities Act of 1990* (ADA) (Public Law 113-128)
- *Workforce Innovation and Opportunity Act* (WIOA) (Public Law 113-128) Sections 121(b), 183(c), and 188
- Title 20 *Code of Federal Regulations* (CFR) Section 658.400
- Title 28 CFR Part 35, Subpart A
- Title 29 CFR Parts 31, 32, 34, 38, and 1690-1691
- Title 41 CFR Part 101-19, Subpart 101-19.6
- Title 45 CFR Part 90, Subpart D, Section 90.43(c)(3)
- Executive Order 13166, *Improving Access to Services for Persons with Limited English Proficiency* (LEP)
- *Fair Employment and Housing Act*, Government Code, Section 12900-12996
- *Dymally-Alatorre Bilingual Services Act (DABSA)*, Government Code, Section 7290-7299.8

### **POLICY:**

It is the policy of the Workforce Investment Board of San Francisco (WISF) to foster and ensure equal opportunity and nondiscrimination in the operation of OEWD funded programs consistent with the guidelines of WIOA (Public Law 113-128) programs and activities.

#### **A. General Principles**

1. Programs shall be open to all qualified individuals. No one shall be excluded from participation, denied benefits, subjected to discrimination, subjected to retaliation, or denied gainful employment because of race; color; religion; sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity); national origin (including LEP); age; disability; political affiliation or belief, or, for beneficiaries, applicants, and participants only, on the basis of citizenship status or participation in a WIOA Title I-financially assisted program or act. In addition, sexual

harassment is against the law. Acts of sexual harassment are grounds for a discrimination complaint based on sex under Title VII of the Civil Rights Act of 1964.

2. OEWD clients, applicants, participants, and provider staff shall be free to file complaints and participate in hearings, alternative dispute resolution, investigations, or compliance reviews without the threat of intimidation, coercion, or discrimination. There shall be no retaliation or reprisal against an individual who has opposed a practice prohibited by the nondiscrimination and equal opportunity provisions of the WIOA or an individual who has otherwise exercised any rights and privileges under the WIOA nondiscrimination and equal opportunity provisions.
3. Efforts shall be made to develop programs that contribute to lifelong learning, occupational development, upward mobility, development of new careers, and overcoming gender stereotyping in occupations.
4. Fair employment practices shall be maintained in recruiting, hiring, transferring, promoting, training, and compensating all staff. These same principles shall apply to layoffs and terminations.

#### B. Services for Limited English Speakers

Service Providers must take reasonable steps to ensure that individuals having Limited English Proficiency (LEP) receive the language assistance necessary to afford them meaningful access to programs, services, and information provided by the Service Provider. Program documents must be published in languages other than English to convey program information to limited English speaking applicants, and participants and members of the public interested in job training information and programs, as appropriate.

In California, the DABSA requires that when state and local agencies serve a "substantial number of non-English-speaking people," they must employ a "sufficient number of qualified bilingual staff in public contact positions" and translate documents explaining available services in their clients' language. The DABSA establishes specific legal mandates for state agencies, but allows local agencies discretion in establishing the level and extent of bilingual services they provide.

#### C. Notice Requirements

Initial and continuing notice of nondiscriminatory practices and the right to file a complaint will be:

- a) Posted in prominent locations;
  - b) Disseminated in internal memoranda and other written or electronic communications;
  - c) Included in handbooks, manuals, brochures, broadcasts, and other communications;
  - d) Included in each participant's file. The participant must sign a copy of acknowledgement of receipt. Where the participant's file is maintained electronically, a record of such notice shall be documented in the participant's file;
  - e) The notice shall be provided in appropriate formats to individuals with visual impairments. A record of such notice shall be documented in the participant's file;
- and

f) Given to:

- Applicants/registrants;
- Eligible applicants/registrants;
- Participants;
- Applicants for employment;
- Employees;
- Unions or professional organizations holding collective bargaining or professional agreements with the WIB; and
- Recipients of WIOA Title I funds.

As it concerns communication, service providers must indicate that the WIOA Title I-financially assisted program or activity in question is an “equal opportunity employer/program,” and that “auxiliary aids and services are available upon request to individuals with disabilities.” This must be included on recruitment brochures and other materials that are ordinarily distributed or communicated in written and/or oral form, electronically and/or on paper to staff, clients, or the public at large, to describe programs financially assisted under WIOA Title I or the requirements for participation by recipients and participants.

Recipients that publish or broadcast program information in the news media must ensure that such publications and broadcasts state that the WIOA Title I-financially assisted programs or activity in question is an equal opportunity employer/program (or otherwise indicate that discrimination in the WIOA Title I-financially assisted program or activity is prohibited by Federal law) and indicate that auxiliary aids and services are available upon requests to individuals with disabilities.

A recipient must not communicate any information that suggests, by text or illustration, that the recipient treats beneficiaries, registrants, applicants, participants, employees or applicants for employment differently on any prohibited basis, except as such treatment is otherwise permitted under federal law or regulation.

Where such materials indicate that the service provider may be reached by voice telephone, the materials must also provide the TTY number or equally effective communications system, such as a videophone, captioned telephone, or a relay service. The California Relay Service can be reached by dialing 711 or 1-800-735-2922. During each presentation to orient new participants, new employees, and/or the general public to its WIOA Title I-financially assisted programs or activity, whether this be in person or over the internet or using other technology, a service provider must include a discussion of rights and responsibilities under the nondiscrimination and equal opportunity provisions of WIOA Section 188 and 29 CFR Part 38, including the right to file a complaint of discrimination with the recipient or the Director of the CRC. This information must be communicated in appropriate languages as required in 29 CFR Section 38.9 and in formats accessible for individuals with disabilities as required in 29 CFR Part 38 and specified in Section 38.15.

D. Affirmative Outreach

1. As required in Title 29 CFR Section 38.40, service providers must take steps to ensure equal access to WIOA Title I-financially assisted programs and activities. These steps should involve reasonable efforts to include members of the various groups protected by 29 CFR Part 38 including but not limited to persons of different sexes, various racial and ethnic/national origin groups, various religions, LEP individuals, individuals with disabilities, and individuals in different age groups. Such efforts may include, but are not limited to, the following:
  - Advertising the recipient's programs and/or activities in media such as newspapers or radio programs that specifically target various populations.
  - Sending notices about openings in the recipient's programs and/or activities to schools or community service groups that serve various populations.
  - Consulting with appropriate community service groups about ways in which the recipient may improve its outreach and service to various populations.

#### E. Discrimination Prohibited Based on Disability

In providing any aid, benefit, service, or training under a WIOA Title I-financially assisted program or activity, whether directly or through contractual, licensing, or other arrangements, on the basis of disability, a service provider must not do any of the following:

- Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, service, or training, including meaningful opportunities to seek employment and work in competitive integrated settings.
- Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefits, services, or training that is not equal to that afforded others.
- Provide a qualified individual with a disability with any aid, benefit, service, or training that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others.
- Provide different, segregated, or separate aid, benefit, service, or training to individuals with disabilities, or to any class of individuals with disabilities, unless such action is necessary to provide qualified individuals with disabilities with any aid, benefit, service, or training that is as effective as those provided to others, and consistent with the requirements of the Rehab Act as amended by the WIOA, including those provisions that prioritize opportunities in competitive integrated employment.
- Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards.
- Otherwise limit a qualified individual with a disability in enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, service, or training.

No qualified individual with a disability may be excluded from participation in, or be denied the benefits of a service provider's service, program, or activity or be subjected to discrimination by any service provider because the service provider's facilities are inaccessible or unusable by individuals with disabilities. Furthermore, all WIOA Title I-financially assisted programs and activities must be programmatically accessible. This includes providing 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.

Please see EDD WSD 17-01 for further details on reasonable accommodation, service animals, and mobile aids and devices.

#### F. Data and Information Collection and Maintenance

Each service provider must collect and maintain nondiscrimination data. The system and format in which the records and data are kept must be designed to allow the Governor and the CRC to conduct statistical or other quantifiable data analyses to verify the service provider's compliance with Section 188 of the WIOA and 29 CFR Part 38.

Nondiscrimination data must include, but is not limited to, records on applicants, registrants, eligible applicants/registrants, participants, terminees, employees, and applicants for employment. Each recipient must record the race/ethnicity, sex, age, and where known, disability status, of every applicant, registrant, participant, terminee, applicant for employment, and employee. Such information must be kept for a period of not less than three years from the close of the applicable program year, stored in a manner that ensures confidentiality, and must be used only for the purposes of any of the following:

- Recordkeeping and reporting.
- Determining eligibility, where appropriate, for WIOA Title I-financially assisted programs or activities.
- Determining the extent to which the recipient is operating its WIOA Title I-financially assisted program or activity in a nondiscriminatory manner.
- Other use authorized by law.

Any medical or disability-related information obtained about a particular individual, including information that could lead to the disclosure of a disability, must be collected on separate forms. All such information, whether in hard copy, electronic, or both, must be maintained in one or more separate files, apart from any other information about the individual, and treated as confidential. Whether these files are electronic or hard copy, they must be locked or otherwise secured (e.g., through password protection).

As indicated in 29 CFR Section 38.41, “LEP and preferred language” has been added to the list of categories of information that each service provider must record about each applicant, registrant, eligible applicant/registant, participant, and terminee. It should be noted that this data collection obligation would not apply to applicants for employment and employees because the obligation as to LEP individuals in 29 CFR Section 38.9 does not apply to those categories of individuals. A service provider’s collection of information relates directly to serving (not employing) LEP individuals.

### **INQUIRIES**

Inquiries regarding this guidance should be addressed [workforce.development@sfgov.org](mailto:workforce.development@sfgov.org).

*OEWD and its service providers shall follow this policy. This policy will remain in effect from the date of issue until such time that a revision is required.*