



IMPERIAL COUNTY WORKFORCE DEVELOPMENT BOARD

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| POLICY | ORIGINAL DATE | LAST REVISION |
|--|------------------|--------------------|
| Nondiscrimination and Equal Opportunity Procedures | FISCAL YEAR 2017 | September 26, 2018 |

POLICY OVERVIEW:

The purpose of this policy is to provide guidance and establish procedures regarding nondiscrimination and equal opportunity for Workforce Innovation and Opportunity Act (WIOA) Title I financially assisted programs or activities.

REFERENCES:

- *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* (Public Law 93-112) Title V, Section 504
- *Age Discrimination Act of 1975* (Public Law 94-135)
- Americans with Disability Act of 1990 (ADA) Public Law 101-336)
- WIOA Sections 121(b), 183(c), and 188
- Title 20 Code of Federal Regulations (CFR) Sections 658.400
- Title 28 CFR Part 35, Subpart
- 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

BACKGROUND:

The nondiscrimination and equal opportunity provisions found in Section 188 of WIOA and 29 CFR Part 38 prohibit discrimination 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; 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 activity.

ASSURANCES:

Imperial County Workforce and Economic Development Office (ICWED) shall ensure contracts, cooperative agreements, job training plans, and policies and procedures must contain the nondiscrimination assurance. The nondiscrimination assurance will state that the ICWED will “comply fully with the nondiscrimination and equal opportunity provisions of the WIOA” (29 CFR Part 38 Preamble) and acknowledge the government’s right to seek judicial enforcement of the nondiscrimination assurance.

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EQUAL OPPORTUNITY (EO) OFFICER:

ICWED shall designate an Equal Opportunity (EO) Officer responsible for coordinating its obligation under these regulations. ICWDO shall notify the EDD's Equal Employment Opportunity (EEO) Office whenever the designation of the EO Officer changes.

The ICWED EO Officer's responsibilities include the following:

- Serving as the liaison with the EDD EEO Office.
- Investigating and monitoring the Local Area's and its sub-recipients' WIOA Title I funded activities and programs.
- Reviewing the Local Area's organizations' and its sub-recipients' written policies.
- Developing, publishing, and enforcing the Local Area's discrimination complaint procedures.
- Conducting outreach and education about equal opportunity and nondiscrimination requirements and how an individual may file a complaint.
- Participating in continuing training and education.
- Informing participants, employees, and program beneficiaries of their equal opportunity rights and responsibilities, and how the discrimination complaint process works.
- Establish a logging system to record discrimination complaints.
- Provide a copy of the ICWED complaint log annually to EDD EEO Office.
- Develop and publish procedures (including alternative dispute resolution) for resolving allegations for noncompliance with applicable nondiscrimination and equal opportunity provisions.
- Develop and publish procedures for resolving allegations against service providers for noncompliance with applicable nondiscrimination and equal opportunity provisions. The service providers must then follow those procedures.
- ICWED shall document the facts of an alleged complaint. The facts should be used to advise the participant of any recourse available and to determine if the ICWED should continue to utilize the services of the vendor

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NOTICE AND COMMUNICATION:

ICWED shall provide initial and continuing notices that it does not discriminate on any prohibited basis. The "Equal Opportunity is the Law" form contains notice, along with the right to file a complaint under "What to Do if You Believe You Have Experienced Discrimination." The "Discrimination Complaint Form" should be used by anyone who wishes to file a discrimination complaint.

ICWED shall ensure that published or broadcast program information in the news media, publications and broadcasts state that the WIOA Title I-financially assisted programs or activity 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.

ICWED shall ensure that during presentations provided 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, ICWED shall include a discussion of rights and

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responsibilities under the nondiscrimination and equal opportunity provisions of WIOA including the right to file a complaint of discrimination with the ICWED or the Director of the DOL's Civil Rights Center (CRC).

Printed material will indicate that ICWED may be reached by voice telephone, and provide the TTY number or equally effective communications system. The California Relay Service can be reached by dialing 711 or 1-800-735-2922. The CRS relays messages to deaf person via the telephone. A caller can contact the relay service by voice to TDD/TTY, and an operator will contact the party to be called using voice or TDD/TTY. A TDD/TTY or relay services should be available where services provided by telephone are major function of the program or activity.

Executive Order 13166, titled "Improving Access to Services for Persons with Limited English Proficiency" mandates that LEP individuals have equal access to federally funded programs as required regarding the prohibition against national origin discrimination as it affects LEP individuals. As such, ICWED will ensure that individual having LEP receiving the language assistance necessary to afford them meaningful access to program, services and information provided by the recipients.

The Dymally-Alatorre Bilingual Services Act (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.

DATA AND INFORMATION COLLECTION AND MAINTENANCE:

ICWED shall collect and maintain nondiscrimination data. The system kept shall be designed to allow the Governor and the CRC to conduct statistical or other quantifiable data analyses to verify the recipient's compliance with Section 188 of the WIOA and 29 CFR Part 38.

Nondiscrimination data shall include, records on applicants, registrants, eligible applicants/registrants, participants, terminees, employees, and applicants for employment. ICWED shall record the race/ethnicity, sex, age, and where known, disability status, of every applicant, registrant, participant, terminee, applicant for employment, and employee. Such information shall 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, shall be collected on separate forms. All such information, whether in hard copy, electronic, or both, shall 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).

In compliance with 29 CFR Sections 38.37 through 38.41 and Section 188 of WIOA, any entity to which financial assistance under WIOA Title I is extended, excluding beneficiaries, must:

- Collect demographic data on race/ethnicity, sex, age, and, where known, disability status, of

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each individual, registrant, eligible individual/registant, participant, terminee, individual for employment, and employee.

- Maintain records of data in a system designed to allow the State and CRC to conduct statistical or other quantifiable analyses to verify compliance.
- Safeguard the confidentiality of the required information. Confidential information should only be used for the purposes of recordkeeping and reporting; determining eligibility, where appropriate, for a WIOA Title I financially assisted program or activity; determining if the recipient is operating its WIOA program in a nondiscriminatory manner; or other use authorized by law.
- Maintain a log of complaints filed alleging discrimination on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship (citizen or authorization to work in the U.S.) or participation in a WIOA Title I financially assisted program and activity. The log must include: (1) name and address of the complainant, (2) grounds of the complaint, (3) description of the complaint, (4) date complaint was filed, (5) disposition and date of disposition of complaint, and (6) any other pertinent information. ICWED must provide a copy of the complaint log to the EEO Office annually (each calendar year).
- Promptly notify the CRC of any administrative enforcement actions or lawsuits filed against a ICWED alleging discrimination on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship status or participation in a WIOA Title I financially assisted program or activity. Provide a brief description of the findings in any civil rights compliance review where the applicant or recipient was found in noncompliance and keep a log containing certain information regarding complaints filed with it according to procedures set by the CRC.
 - Retain records, including records of complaints, for a period of not less than three years from the close of the applicable program year or date of resolution of complaint.
 - Adopt procedures for responding to complaints of discrimination.

AFFIRMATIVE OUTREACH:

ICWED shall take appropriate steps to ensure universal access to WIOA Title I financially assisted programs and activities by doing the following:

- Implementing an outreach and recruitment plan to solicit participation of WIOA Title I potentially eligible reportable individuals in the entire locale.
- Creating an outreach and recruitment plan that will reach specific target populations through media, schools, and community services groups.
- Considering a pool of individuals for participation that includes members of both sexes, various racial, ethnic, and age groups; and individuals with disabilities.
- Establishing a hiring and eligibility process that is accessible to qualified individuals with disabilities.
- Utilizing facilities designed to provide reasonable accommodations to individuals with disabilities in the following areas: training, job structure, work schedule, work procedures, work equipment, and auxiliary aids.

DISCRIMINATION PROHIBITED BASED ON DISABILITY:

ICWED 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, shall 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.

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- 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

ACCESSIBILITY REQUIREMENTS:

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. Recipients that are subject to Title II of ADA of 1990 must also ensure that new facilities or alterations of facilities that began construction after January 26, 1992, 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*. In addition, recipients that receive federal financial assistance must meet their accessibility obligations under Section 504 of the *Rehab Act* and the implementing regulations at 29 CFR Part 32. Some recipients may be subject to additional accessibility requirements under other statutory authority, including Title III of the ADA that is not enforced by the CRC. As indicated in Section 38.3(d)(10), compliance with this part does not affect a recipient's obligation to comply with the applicable ADA Standards for Accessible Design.

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.

REASONABLE ACCOMMODATION AND REASONABLE MODIFICATIONS FOR INDIVIDUALS WITH DISABILITIES:

With regard to any aid, benefit, service, training, and employment, a recipient must provide reasonable accommodations to qualified individuals with disabilities who are applicants, registrants, eligible applicants/registrants, participants, employees, or applicants for employment, unless providing the accommodation would cause undue hardship. For more information on what would constitute undue hardship as it relates to a reasonable accommodation of individuals with disabilities, please see the definition of "undue burden or undue hardship" found in 29 CFR Section 38.4(rrr)(1).

With regard to any aid, benefit, service, training, and employment, a recipient must also make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless making the modifications would fundamentally

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alter the nature of the service, program, or activity, which would constitute a fundamental alteration. For more information, see the definition of "fundamental alteration" found in 29 CFR Section 38.4(z).

In those circumstances where a recipient believes that the proposed accommodation would cause undue hardship, or the proposed modification would fundamentally alter the program, the recipient has the burden of proving that compliance with this section would result in such hardship and alteration. The recipient must make the decision that the accommodation would cause such hardship or result in such alteration only after considering all factors listed in the definitions of "undue hardship" and "fundamental alteration." The decision must be accompanied by a written statement of the recipient's reasons for reaching that conclusion. The recipient must provide a copy of the statement of reasons to the individual(s) who requested the accommodation or modification.

SERVICE ANIMALS:

ICWED shall modify its policies, practices, or procedures to permit the use of a service animal by an individual with a disability.

MOBILE AIDS AND DEVICES:

ICWED shall permit individuals with mobility disabilities to use wheelchairs and manually-powered mobility aids, such as walkers, crutches, canes, braces, or other similar devices designed for use by individuals with mobility disabilities, in any areas open to pedestrian use.

INTIMIDATION AND RETALIATION IS PROHIBITED:

ICWED shall not discharge, intimidate, retaliate, threaten, coerce, or discriminate against any individual because the individual has filed a complaint alleging a violation of WIOA; opposed a practice prohibited by the nondiscrimination and equal opportunity provisions of the WIOA; or furnished information to, or assisted or participated in any manner in an investigation, review, hearing, or any other activity related to administration of, exercise of authority under, or exercise of privilege secured by the nondiscrimination and equal opportunity laws of WIOA or Title 29

CFR Part 38. The sanctions and penalties contained in these procedures may be imposed against any recipient who engages in any such retaliation or intimidation or fails to take necessary steps to prevent such activity.

ACTION:

Please bring this policy to the attention of ICWDB, AJCC system staff and appropriate WIOA funded service providers and sub-recipients. This policy is effective immediately. All submitted forms are live documents and subject to change according to local, State, and Federal needs. Once the forms and exhibits pertaining to this policy are approved by the ICWDB, they will not require board approval if other changes occur, unless the change affects protocols. Should you have any questions, please feel free to contact ICWDB staff at (442) 265-4974, (442) 265-4959, (442) 265- 4955 or the Program and Compliance Manager (442) 265-4963.