

Regulation

AFFIRMATIVE ACTION/ NONDISCRIMINATION

Evaluation and Monitoring of Affirmative Action

Plan evaluation and monitoring of the affirmative action plan will be accomplished on a continuing basis and will be conducted by the Affirmative Action Officer. Under the direction of the superintendent, internal monitoring and maintenance of records will be completed by the Affirmative Action Officer. Reports will be submitted to the Board of Education.

Employment and Placement

Procedures relating to employment and placement will be reviewed and amended as necessary to ensure nondiscrimination:

- A. Qualifications needed for a job and job descriptions will be reviewed by the Affirmative Action Officer and superintendent to ensure that they are realistic and do not involve inadvertent discrimination.
- B. Application forms will be reviewed and revised by the Affirmative Action Officer and superintendent.
- C. Any testing procedures which might be used in the future for selection and/or placement will be validated for job relatedness.
- D. Personnel policies will be revised to comply with federal and State fair employment regulations.

Administrators' and Supervisors' Roles in Equal Employment Opportunity: Interviewing and Hiring

This section provides guidelines to help in interviewing and selecting candidates for positions with this school district. Each guideline is followed by a brief explanation of the reasons certain actions or bases for decisions may be considered discriminatory. One of the most important factors in any hiring decision is that the applicant be able to do the job for which he/she is applying.

Congress did not intend by Title VII to guarantee a job to every person regardless of qualifications. In short, the act does not command that any person be hired simply because he/she was formerly the subject of discrimination, or because he/she is a member of a minority group. Discriminatory preference for any group, minority or majority, is precisely and only what

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Congress has proscribed. What is required by Congress is the removal of artificial, arbitrary, and unnecessary barriers to employment when the barriers operate invidiously to discriminate on the basis of racial or other impermissible classifications.

Educational Requirements

Guidelines: An employer must be prepared to demonstrate why a job requires the employee to have a specified level of education.

Explanation: In geographic areas where there are significant differences in the average educational levels of minorities and non-minorities, the employer who requires a specific level of educational attainment for certain positions automatically eliminates from consideration a disproportionate percentage of minorities.

Consequently, unless the employer can demonstrate why the educational requirement is needed, the Equal Employment Opportunity Commission (EEOC) is likely to find it unlawful. The (EEOC) and the courts will accept evidence from an employer that a specified level of education is necessary for satisfactory job performance or that there is a clear and close relationship between educational level and performance on the job.

Family Status: Pregnancy and Dependents

Guidelines: Applicants should not be questioned by interviewing supervisors about their dependents, family plans, or a condition of pregnancy.

Explanation: The Supreme Court has held that women with pre-school children must be hired on the same basis as men with small children unless the employer can show that this practice would seriously affect the operation. Employers may not presume that child care is the responsibility of woman and that a working mother's reliability will be more affected by child care problems than a working father's. Regarding pregnancies, the EEOC has held that any written or unwritten employment policy or practice which discriminates against applicants because of pregnancy is in violation of Title VII. The EEOC also has held that a company policy of refusing to hire unwed parents/guardians discriminates against women as a class. Even if the illegitimacy standard were applied equally to males and females, the policy would have a disparate effect on women since it would be easier for an employer to know that a female applicant had a child out of wedlock than it would be to know that a male applicant has fathered an illegitimate child.

Arrest and Conviction Records

Guidelines: An employer may not automatically disqualify an applicant from employment consideration because the applicant has a police record.

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Explanation: There is ample evidence that blacks as a class are arrested and convicted much more frequently than whites. Therefore, to use an applicant's police record as a rigid standard of employment eligibility would automatically disqualify a disproportionate percentage of blacks. For this reason, the EEOC, with court approval, considers such policies in violation of Title VII, unless an employer can demonstrate "business necessity" for retaining the policy. The EEOC suggests that employers handle the matter of an applicant's police record on a case-by-case basis, considering the type of charge, how long ago the incident occurred, the applicant's age at the time of the incident, whether the charge resulted in a conviction, and the applicant's subsequent behavior. In this school district, authority to make this kind of determination rests with the superintendent. Prospective employees should not be questioned about police records except by authorized personnel representatives.

Accommodation to Religious Beliefs

Guideline: Supervisors are expected to make some accommodation to the religious needs of applicants when this will not have a serious affect on operations.

Explanation: Under Title VII, employers are obligated to make "reasonable accommodations to the religious needs" of their employees, where such accommodations do not force a serious hardship on the employer. It is up to the employer to prove that such religious accommodations cause a serious hardship to his/her business. The "religious need" of employees could include a required mode of dress, time off for Sabbath observance or inability to work on certain prescribed days for religious reasons. Supervisors should not, however, make employment decisions based on applicant's religious needs without first consulting the superintendent.

Citizenship

Guideline: If the applicant is not a United States citizen, he/she must possess a permanent visa to be eligible for employment.

Explanation: The courts have held that it is not unlawful under Title VII for an employer to require U.S. citizenship as a condition of employment if the requirement is established for sufficient reason (e.g., security) and is not intended to restrict the employment of minorities. However, this school district does, as a matter of employment policy, require U.S. citizenship or a permanent visa as a condition of employment. Supervisory personnel may, therefore, use an applicant's citizenship status as an eligibility standard. The superintendent may request, however, that as a condition of employment alien applicants provide proof of permanent residence in the United States.

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Manner of Speaking

Guideline: It is unlawful to reject an applicant because of the applicant's foreign accent or lack of fluency in English unless either condition will unquestionably affect satisfactory job performance.

Explanation: The EEOC will find unlawful the rejection of an applicant because of his/her manner of speaking if the manner of speech is peculiar to the applicant's race or national origin. This guideline is applied most often when applicants speak with a foreign accent. However, it also applies to applicants who have difficulty with English and to jobs for which fluency in English is a factor in satisfactory performance. The final decision regarding an applicant whose manner of speaking has been questioned will be made by the superintendent.

Sexual Harassment

The Board of Education guarantees to all persons equal access to all categories and conditions of employment, retention and advancement regardless of race, creed, color, national origin, ancestry, age, sex, affectional or sexual orientation, marital status, domestic partnership status, familial status, liability for service in the Armed Forces of the United States, atypical hereditary cellular or blood trait of any individual, nonapplicable disability or because of genetic information or refusal to submit to or make available the results of a genetic test.

An affirmative action program shall be a part of every aspect of employment, including, but not limited to: upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation including fringe benefits, employment selection or selection for training and apprenticeship, promotion or tenure.

The Board of Education shall maintain a working environment that is free from sexual harassment. Sexual harassment shall consist of unwelcome sexual advances, request for sexual favors and other inappropriate verbal or physical conduct of a sexual nature. Sexual harassment may include, but is not limited to, the following:

- A. Verbal harassment or abuse;
- B. Pressure for sexual activity;
- C. Repeated remarks to a person with sexual or demeaning implications;
- D. Unwelcome touching;
- E. Suggesting or demanding sexual involvement accompanied by implied or explicit threats concerning one's job.

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The superintendent will make it clear to all staff that sexual harassment is prohibited in the workplace or educational setting.

Staff may file a formal grievance related to sexual harassment. The Affirmative Action Officer will receive all complaints and will carry out a thorough investigation. The right to confidentiality, both of the complainant and of the accused, will be respected, consistent with the school district's legal obligations and with the necessity to investigate allegations of misconduct and take corrective action when this conduct has occurred. Filing of a grievance or otherwise reporting sexual harassment will not reflect upon the status of the complainant nor will it affect future employment or work assignments.

A substantiated charge against a staff member in the school district shall subject such staff member to disciplinary action, including termination.

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