



Oregon Department of Education

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DEPUTY SUPERINTENDENT OF PUBLIC INSTRUCTION
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AUGUST 22, 2014

Affirmative Action Plan
2015 – 2017 Biennium

**AFFIRMATIVE ACTION PLAN
2015-2017 BIENNIUM**

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Oregon Department of Education

John A. Kitzhaber, MD, Governor

Office of the Deputy Superintendent

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To: Governor's Affirmative Action Office and Department of Administrative Services

The policies of the State Board of Education and the Oregon Department of Education provide that there will be no discrimination or harassment on the grounds of race, color, sex, marital status, sexual orientation, religion, national origin, age, mental or physical disability, or any reason prohibited by state or federal law.

Oregon recognizes that a passive prohibition of discriminatory acts is not enough, and that is why one of my priorities has been and will continue to be support for affirmative action and equal opportunity.

Therefore, I have directed the Oregon Department of Education to update the Agency's Affirmative Action Plan for the 2015-2017 biennium in order to set out a specific plan to promote equal opportunities for all individuals, based on merit, ability, and potential.

At the Oregon Department of Education, we are guided by the following mission and values:

Mission

The Oregon Department of Education fosters excellence for every learner through innovation, collaboration, leadership, and service to our education partners.

Values

- **Equity for Every Student.** We strive to eliminate Oregon's achievement gap. We expect every student will meet or exceed high standards and fulfill his or her potential in an adaptive environment of respect and skilled instruction.
- **High Quality Education.** We support our education partners in delivering high quality curriculum and instruction, while fostering a love of learning and attending to the needs and wellness of the whole child. We accomplish this by promoting excellent teaching, effective leadership, and continuous improvement at all levels of the system.

- **Results Focused.** We act with urgency and focus on equitable results because our work is important and the stakes are high. Our state and the public have entrusted us to be the stewards of our public resources for education, to be the definitive source of data about a schools performance, and to intervene on behalf of Oregon’s students when improvement is needed.
- **Service.** We know that excellent service to Oregon’s districts, schools, parents, youth, and communities is central to our work. We commit to timely, accurate, efficient, and reliable service.
- **Leadership.** We lead by example and hold ourselves and our work to the highest standard. We champion our schools, safeguard our education system, promote best practice, and act as responsible stewards of our resources.
- **Teamwork.** We work as a team, across units, to build strong relationships based on trust and seek positive impact in all of our interactions.
- **People Are Our Greatest Asset.** We know diversity adds strength to our workforce. We seek to attract, develop, and retain the best talent in our organization. We cultivate and celebrate employees who exceed expectations, deliver results, demonstrate a can-do attitude, and foster collaboration.

The goals and objectives which will help us achieve our mission were developed through an equity lens and encompass not only our agency values, but our commitment to achieving a diverse and inclusive environment throughout Oregon’s education enterprise so that every student reaches their full potential. This commitment is evidenced by the following goals:

Goal 1 – Learners

Every student graduates from high school and is ready for college, career, and civic life.

Goal 2 – Educators

Every P-12 organization is led by an effective administrator, and every student is taught by an effective teacher.

Goal 3 – Schools & Districts

Increase performance for all schools and districts in order to create systems of excellence across the state.

Goal 4 – Communities

ODE meaningfully engages parents, stakeholders, and the larger community to help make Oregon’s schools the best in the country.

Goal 5 – ODE

Make ODE the best place to work.

The objectives under each of these goals can found on pages 39 – 40. In order to achieve these goals, I have directed my staff to take the following actions:

- Monitor our progress in reaching our diversity goals each quarter.
- Market job openings to diverse recruitment sources to provide outreach to underrepresented groups, including job fairs, internet-based publications, email listservs, and specialized recruiting firms;
- Encourage alternate methods of filling jobs, including job rotation and developmental assignments, to create additional opportunities for current employees;
- Identify and utilize effective training and development opportunities sponsored by the state of Oregon such as the Management Development Series and Leadership Oregon through the Department of Administrative Services, and external entities such as the Executive Forum's Leadership Lab;
- Hold managers accountable for promoting work environments of respect, dignity, and professionalism agency-wide;
- Hold all employees accountable, through annual performance evaluations, for work environments that are professional and respectful;
- Promote tolerance and acceptance among all employees, stakeholders, customers, and students by increasing awareness and knowledge of the rich cultural diversity in the state of Oregon; and
- My leadership team is filling out the Coalition of Communities of Color organizational equity assessment, and our entire staff will be asked to take Unity Works' diversity climate survey so we can establish an understanding of our policies, procedures, and staffs' values around equity so we can continue to improve upon it in the coming year.

I am proud of the progress the Oregon Department of Education has already made, especially that we continue to seek ways to increase our overall representation of people of color in many offices. As you see in this report, there is more work to do, but progress has been made, and I remain committed to the successful completion of this important work.

Sincerely,

A handwritten signature in black ink, appearing to read "Rob S. Saxton", with a stylized, flowing script.

Rob S. Saxton
Deputy Superintendent of Public Instruction

I. AGENCY DESCRIPTION

A. Mission and Objectives

The Oregon Department of Education (ODE) functions under the direction and control of the State Board of Education, with the Deputy Superintendent of Public Instruction serving as an administrative officer for public school matters and as agency administrator. Administrative functions of the State Board of Education are exercised through ODE, and ODE exercises all administrative functions of the state relating to the supervision, management, and control of schools not conferred by law on some other agency.

The Deputy Superintendent of Public Instruction exercises, under the direction of the State Board of Education, a general superintendence of public schools, and acts as an administrative officer of the State Board of Education and the executive head of ODE. As such, the Deputy Superintendent directs and supervises all agency activities.

Rob Saxton was appointed as the Acting Deputy Superintendent of Instruction on July 31, 2012, and was formally confirmed by the Oregon Senate on September 14, 2012, as Oregon's first appointed head of the Oregon Department of Education. As Deputy Superintendent, he provides leadership for all elementary and secondary students in Oregon's public schools and education service districts. He is responsible for statewide standards and instruction programs, school improvement efforts, and Oregon's statewide assessment system. His leadership also extends to the Early Learning Division, the Youth Development Division, the state School for the Deaf, regional programs for children with disabilities and education programs in Oregon's youth correctional facilities. In addition, ODE acts as a liaison and monitors implementation for a variety of state and federal programs.

Deputy Superintendent Saxton's priority is to focus the state's efforts on ensuring all students, regardless of background, graduate from high school prepared for college, career, and citizenship. Oregon's legislatively adopted goal is that by the year 2025, 100 percent of Oregonians will earn a high school diploma or its equivalent, 40 percent will earn a post-secondary credential, and 40 percent will obtain a bachelor's degree or higher.

The Deputy State Superintendent, working with the Chief Education Officer, the Oregon Education Investment Board, the State Board of Education and ODE staff, has set the following major priorities for Oregon students and the performance of the agency:

- **Equity.** Ensuring that the equity lens we've adopted is central in all of our work such that each and every student, regardless of circumstances receives a high quality education.
- **Outcomes.** Building a unified system of education from birth to college & career so that students can move along the pathway seamlessly.

- **Transitions & Barriers.** Working with education leaders and community partners to support key educational transitions (from pre-school programs to elementary schools, and from high school to college or the workforce) and driving efforts to mitigate barriers to more effectively move students along the education continuum.
- **Investments.** Making recommendations to the Governor and legislature as to how the state can resource education to produce the best outcomes for students including: strategic investments and budgeting to outcomes.

To accomplish the goals listed above, the Oregon Department of Education has established the following mission and values:

Mission

The Oregon Department of Education fosters excellence for every learner through innovation, collaboration, leadership, and service to our education partners.

Values

- **Equity for Every Student.** We strive to eliminate Oregon's achievement gap. We expect every student will meet or exceed high standards and fulfill his or her potential in an adaptive environment of respect and skilled instruction.
- **High Quality Education.** We support our education partners in delivering high quality curriculum and instruction, while fostering a love of learning and attending to the needs and wellness of the whole child. We accomplish this by promoting excellent teaching, effective leadership, and continuous improvement at all levels of the system.
- **Results Focused.** We act with urgency and focus on equitable results because our work is important and the stakes are high. Our state and the public have entrusted us to be the stewards of our public resources for education, to be the definitive source of data about a school's performance, and to intervene on behalf of Oregon's students when improvement is needed.
- **Service.** We know that excellent service to Oregon's districts, schools, parents, youth, and communities is central to our work. We commit to timely, accurate, efficient, and reliable service.
- **Leadership.** We lead by example and hold ourselves and our work to the highest standard. We champion our schools, safeguard our education system, promote best practice, and act as responsible stewards of our resources.
- **Teamwork.** We work as a team, across units, to build strong relationships based on trust and seek positive impact in all of our interactions.

- **People Are Our Greatest Asset.** We know diversity adds strength to our workforce. We seek to attract, develop, and retain the best talent in our organization. We cultivate and celebrate employees who exceed expectations, deliver results, demonstrate a can-do attitude, and foster collaboration.

B. Agency Administrator

Rob S. Saxton, Deputy Superintendent of Public Instruction
255 Capitol Street NE
Salem, Oregon 97310
(503) 947-5600

C. Governor's Policy Advisor for the Oregon Department of Education

Dani Ledezma, Governor's Education Policy Advisor
900 Court Street NE, Suite 160
Salem OR 97301
(503) 378-3072

D. Agency Affirmative Action Representative

Serilda Summers-McGee, Director of Human Resources
255 Capitol Street NE
Salem, Oregon 97310
(503) 947-5885
serilda.summers-mcgee@ode.state.or.us

The Affirmative Action Representative is located in the Human Resources section in the Office of the Deputy Superintendent.

E. Positions Designated by Working Title as Related to “Diversity”, “Inclusion”, “Access”, or “Equity”

The Department of Education has a number of positions in the agency, in addition to the Affirmative Action Representative listed above, that are dedicated in whole or part to protecting and promoting the rights of underrepresented groups. These positions include:

OFFICE OF LEARNING – Education Equity Unit

Assistant Superintendent

David Bautista
255 Capitol Street NE
Salem, Oregon 97310
(503) 947-5750
david.bautista@ode.state.or.us

Education Specialist

Timothy Blackburn
255 Capitol Street NE
Salem, Oregon 97310
(503) 947-5688
timothy.blackburn@ode.state.or.us

Advisor to the Deputy Superintendent on Indian Education

April Campbell
255 Capitol Street NE
Salem, Oregon 97310
(503) 947-5810
april.campbell@ode.state.or.us

Civil Rights Specialist

Winston Cornwall
255 Capitol Street NE
Salem, Oregon 97310
(503) 947-5675
winston.cornwall@ode.state.or.us

Education Specialist

Jonathan Fernow
255 Capitol Street NE
Salem, Oregon 97310
(503) 947-5807
jonathan.fernow@ode.state.or.us

Education Specialist

Martha Martinez
255 Capitol Street NE
Salem, Oregon 97310
(503) 947-5778
martha.martinez@ode.state.or.us

Education Specialist

Kimberly Miller
255 Capitol Street NE
Salem, Oregon 97310
(503) 947-5712
kim.a.miller@ode.state.or.us

Education Specialist

Karin Moscon
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Education Specialist

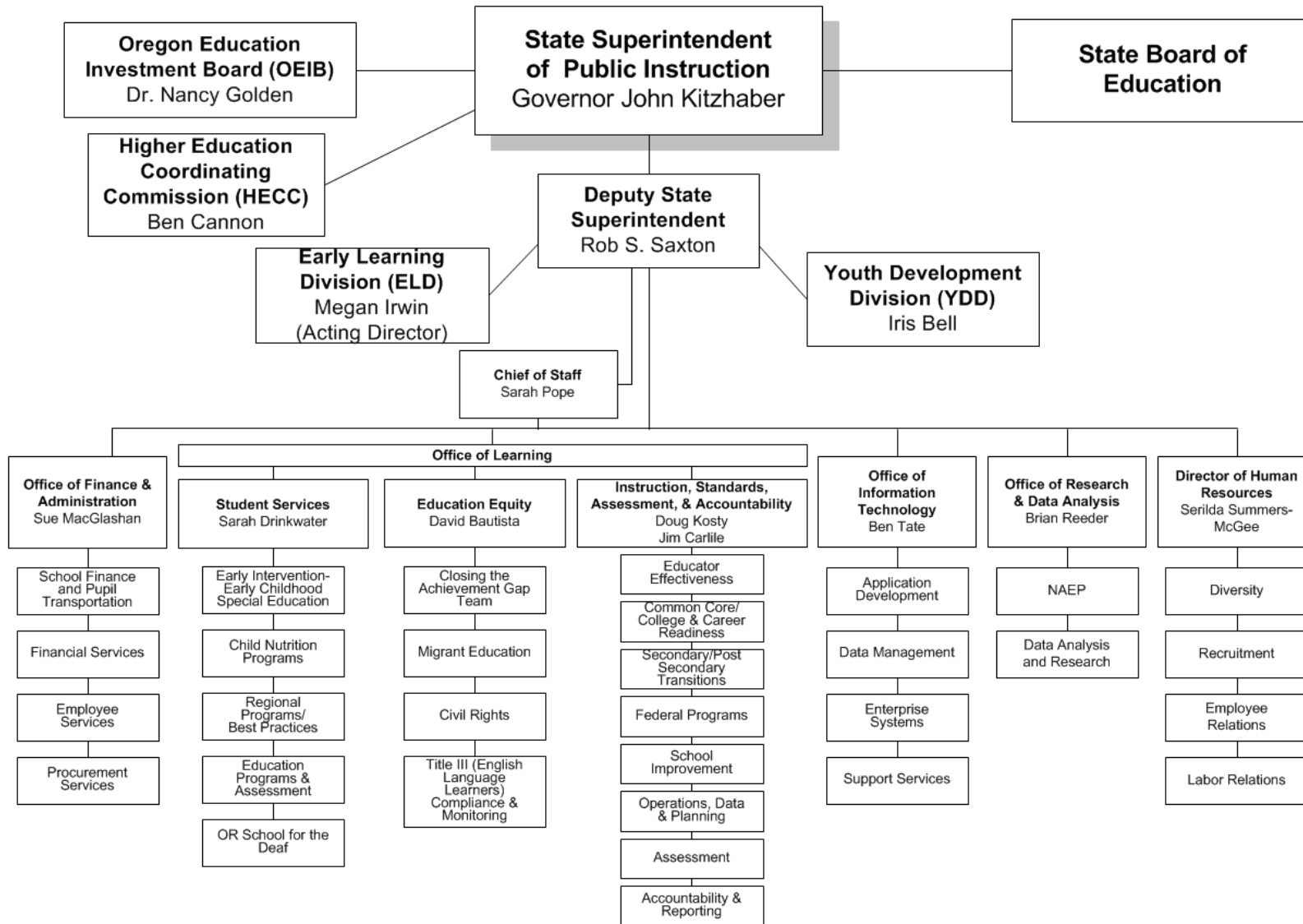
Rudyane Rivera-Lindstrom
255 Capitol Street NE
Salem, Oregon 97310
(503) 947-5617
rudyane.lindstrom@ode.state.or.us

Education Specialist

Markisha Smith
255 Capitol Street NE
Salem, Oregon 97310
(503) 947-5669
markisha.smith@ode.state.or.us

F. Organization Chart

OREGON DEPARTMENT OF EDUCATION Organization Overview



II. AFFIRMATIVE ACTION PLAN

A. Affirmative Action Policy Statement

Administrator's Equal Employment Opportunity/Affirmative Action (EEO/AA) Policy Statement

The Department of Education's 2015-2017 Affirmative Action Plan has been prepared to provide a specific program to promote equal opportunities for all individuals to seek employment, to work, and to be promoted on the basis of merit, ability, and potential. It is the policy of the State Board of Education and a priority of the Oregon Department of Education and the Deputy State Superintendent of Public Instruction that there will be no discrimination or harassment on the grounds of race, color, sex, marital status, sexual orientation, religion, national origin, age, mental or physical disability, or any reason prohibited by state statute or federal regulation. ODE recognizes that a passive prohibition of discriminatory acts is not enough. The directives and guidelines of the Governor's Statewide Affirmative Action Plan will be approached with a positive attitude and purposeful effort by all employees of ODE.

ODE's plan provides the umbrella for (1) assessing diversity efforts within ODE; (2) creating an inclusive work environment that encourages employees to reach their full potential; and (3) guiding ODE to become an "Employer of Choice."

It is the policy of the Department of Education to provide an environment for each employee and each applicant that is free from sexual harassment, as well as harassment and intimidation because of an individual's race, color, religion, gender, sexual orientation, national origin, age, or disability.

To achieve this inclusive work environment, ODE will carry out an Affirmative Action program that provides procedures for the consideration of protected class candidates in all aspects of human resource management.

Affirmative Action Representative

Our Affirmative Action Representative, Serilda Summers-McGee, is located in the Human Resources section of the Office of the Deputy Superintendent. She can be reached by telephone at (503) 947-5885 or by email at serilda.summers-mcgee@ode.state.or.us. It is our intention that the Affirmative Action Representative attends the Governor's Diversity and Inclusion/Affirmative Action/Equal Employment Opportunity (DI/AA/EEO) meetings as well as trainings provided by the US Equal Employment Opportunity Commission (EEOC). Our Affirmative Action Representative shall encourage a workplace that is polite, courteous and respectful and advocate our policy for the Promotion and Maintenance of a Respectful Workplace. (see Appendix A).

Recruitment Activities

The Department of Education is an equal-opportunity employer that is committed to a proactive role in the recruitment and selection process. We will use diverse recruitment strategies to identify and attract candidates, and establish interview panels that represent protected class groups.

Individuals with Disabilities

The Department of Education will not discriminate, nor tolerate discrimination, against any applicant or employee because of physical or mental disability in regard to any position for which the known applicant for employment is qualified.

Additionally, we agree to take affirmative action to employ, advance in employment, and otherwise treat known qualified individuals with disabilities without regard to their physical or mental disabilities in all human resources selection and decision practices. This includes: advertising, benefits, compensation, discipline, layoff, employee facilities, performance evaluations, recruitment, and training. We will continue to administer these practices without regard to race, color, religion, gender, sexual orientation, national origin, age or disability.

Reasonable Accommodation

ODE is committed to engage in an interactive discussion with all employees who request an accommodation.

It is the policy of the Oregon Department of Education to provide reasonable accommodation to any qualified person with a disability. The agency will make every reasonable effort to ensure that qualified applicants and employees are able to continue to perform the essential job functions of the position, including modifications or adjustments to the job application process, the work environment, and/or the manner in which a job is performed.

"Reasonable accommodation" is defined as a modification or an adjustment to the job or the work environment that will enable a qualified applicant or employee with a disability to perform essential job functions. This includes adjustments to ensure that a qualified individual with a disability has rights and privileges in employment equal to those of non-disabled employees. Reasonable accommodation is required unless it would cause the agency undue hardship.

"Undue hardship" is defined as an action requiring significant difficulty or expense when considered in light of factors such as an employer's size, financial resources, the nature and structure of its operation, and the cost and nature of the accommodation.

Employees may request reasonable accommodation at any time during employment. It is the responsibility of the individual seeking accommodation to inform the agency of the need for accommodation.

Members of the Uniformed Services

The Department of Education will not discriminate, or tolerate discrimination, against any employee because they are a member, or apply to be a member, or perform, have performed, applied to perform or have an obligation to perform service in a uniformed service.

The term “uniformed services” means the Armed Forces; the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty; the commissioned corps of the Public Health Service; and any other category or persons designated by the President in time of war or national emergency.

Veterans applying for positions with ODE are given preference during the recruitment process.

Performance Evaluations

It is the responsibility and expectation of all agency managers and supervisors, under the guidance of the agency’s Affirmative Action Representative, Serilda Summers-McGee, to successfully implement the 2015-2017 Affirmative Action Plan. Managers and supervisors are held accountable for successful implementation and administration of the plan through the agency’s annual performance evaluation process for managers and supervisors. All performance evaluations are reviewed by the Affirmative Action Representative, Serilda Summers-McGee, to ensure managers and supervisors are held accountable. EEO/AA statistical progress and claim information related to discrimination and/or harassment will be monitored and addressed in the performance evaluation process.

Complaint Procedures

All applicants and employees are protected from coercion, intimidation, interference, or discrimination for filing a complaint or assisting in an investigation under this policy.

Complaint procedures are addressed in both ODE policy 581-210, Promotion and Maintenance of a Respectful Workplace and DAS Statewide policy 50.010.01, Discrimination and Harassment Free Workplace. (See Appendix A)

Employees who feel they have been harassed or discriminated against are encouraged to bring such behavior to the attention of the Affirmative Action Representative and/or management via the procedures outlined in the agency’s Respectful Workplace policy. (see Appendix A) Employees who feel they are being harassed or employees who are aware of harassing behavior should report this to the Affirmative Action Representative, Serilda Summers-McGee, a manager or Union representation. The agency’s Affirmative Action Representative, Serilda Summers-McGee, is located in the Human Resources section in the Office of the Deputy Superintendent. She can be reached by telephone at (503) 947-5885 or by email at serilda.summers-mcgee@ode.state.or.us.

This message is communicated to employees in numerous ways. For example: all-staff emails, agency and individual unit newsletters and various internal meetings held throughout the agency. Because of our excellent working relationship with our Labor leaders we have been assisted in carrying that message to represented staff at additional times.

The policy also spells out external agencies that can receive complaints from employees such as the Governor's Affirmative Action Office which can be reached by telephone at (503) 986-6524 or by email at frank.garcia@state.or.us; the United States Equal Employment Opportunity Commission (EEOC) which can be reached by telephone at (800) 669-4000, (800) 669-6820 (TTY), or by email at info@eeoc.gov; or the Civil Rights Division of the Oregon Bureau of Labor and Industries which can be reached by telephone at (971) 673-0764 or by email at crdemail.boli@state.or.us. Additionally, employees may contact their union or the Department of Administrative Services (DAS).

Training and Career Growth

ODE is committed to providing broad and culturally enriched training, career growth and developmental opportunities to all employees on an equal basis, enabling them to further advance and promote their knowledge, skills, and abilities.

ODE maintains a copy of the Affirmative Action Plan on the website for all employees to access. Managers shall participate and encourage others to participate in the activities designed to promote affirmative action. The agency's Management Team will make necessary decisions and monitor the accomplishment of this plan on an ongoing basis and make plan adjustments as necessary. This includes reviewing personnel practices, procedures, and the work climate to identify possible roadblocks to equal employment opportunity and upward mobility, and then taking appropriate remedial action.

A handwritten signature in black ink, appearing to read "Rob S. Saxton", with a stylized, flowing script.

Rob S. Saxton
Deputy Superintendent of Public Instruction

Date: August 22, 2014

B. Diversity & Inclusion Statement

Diversity is understood as a fundamental paradigm shift and systemic change in workplace culture. It requires the conscious management of diversity, with the aim of fostering and retaining a qualified and productive workforce. By supporting open and respectful environments, and by offering a spectrum of approaches, the organization as a whole, as well as individual potential, will be strengthened.

Inclusion helps to ensure that employees from diverse backgrounds are able to contribute, remain with the agency, and flourish.

The ultimate goal of having a diverse workforce and an inclusive work environment is to deliver better services to our customers (internal and external) and meet the needs of our stakeholders. We see with stark clarity that our effectiveness in providing responsive public services is dependent on our ability to rapidly adapt to the changing dynamics of our global environment. The transformation of an organization's culture to this end requires a long-term commitment. Effective leadership and accountability are critical to sustaining this organization-wide commitment. The following strategies and objectives are aimed at facilitating and sustaining the effort to achieve the ultimate goal of diversity and inclusion.

Diversity and Inclusion Representative

Our Diversity and Inclusion Representative, Serilda Summers-McGee, is located in the Human Resources section of the Office of the Deputy Superintendent. She can be reached by telephone at (503) 947-5885 or by email at serilda.summers-mcgee@ode.state.or.us. It is our intention that the Diversity and Inclusion Representative attends the Governor's Diversity and Inclusion/Affirmative Action/Equal Employment Opportunity (DI/AA/EEO) meetings as well as trainings provided by the US Equal Employment Opportunity Commission (EEOC). Our Diversity and Inclusion Representative shall encourage a workplace that is polite, courteous and respectful and advocate our policy for the Promotion and Maintenance of a Respectful Workplace. (see Appendix A)

Diverse Workforce

It is the policy of ODE to strive to eliminate the effects of past and present discrimination, intended or unintended, that are evident by analysis of present employment patterns and practices. We are committed to establishing and maintaining a diverse workforce reflective of the diverse population within the State of Oregon.

Inclusion programs are developed, crafted, and implemented with regard to employees at all levels of the organization.

Individuals with Disabilities

The Department of Education will not discriminate, nor tolerate discrimination, against any applicant or employee because of physical or mental disability in regard to any position for which the known applicant for employment is qualified.

ODE is committed to engage in an interactive discussion with all employees who request an accommodation.

Additionally, we agree to take affirmative action to seek to employ, advance in employment, and otherwise treat known qualified individuals with disabilities without regard to their physical or mental disabilities in all human resources selection and decision practices. This includes: advertising, benefits, compensation, discipline, layoff, employee facilities, performance evaluations, recruitment, and training. We will continue to administer these practices without regard to race, color, religion, gender, sexual orientation, national origin, age or disability.

Reasonable Accommodation

It is the policy of the Oregon Department of Education to provide reasonable accommodation to any qualified person with a disability. The agency will make every reasonable effort to ensure that qualified applicants and employees are able to continue to perform the essential job functions of the position, including modifications or adjustments to the job application process, the work environment, and/or the manner in which a job is performed.

"Reasonable accommodation" is defined as a modification or an adjustment to the job or the work environment that will enable a qualified applicant or employee with a disability to perform essential job functions. This includes adjustments to ensure that a qualified individual with a disability has rights and privileges in employment equal to those of non-disabled employees. Reasonable accommodation is required unless it would cause the agency undue hardship.

"Undue hardship" is defined as an action requiring significant difficulty or expense when considered in light of factors such as an employer's size, financial resources, the nature and structure of its operation, and the cost and nature of the accommodation.

Employees may request reasonable accommodation at any time during employment. It is the responsibility of the individual seeking accommodation to inform the agency of the need for accommodation.

Members of the Uniformed Services

The Department of Education will not discriminate, or tolerate discrimination, against any employee because they are a member, or apply to be a member, or perform, have performed, applied to perform or have an obligation to perform service in a uniformed service.

The term “uniformed services” means the Armed Forces; the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty; the commissioned corps of the Public Health Service; and any other category or persons designated by the President in time of war or national emergency.

Veterans applying for positions with ODE are given preference during the recruitment process.

Diversity and Inclusion Steering Committee

ODE currently has a Diversity and Inclusion Steering Committee. Members were specifically identified and asked to participate from all areas of the agency. Members were selected because of their unique experience within underrepresented populations. The Diversity and Inclusion Representative serves as the facilitator. We have developed a charter to help the committee meet clear goals, and to help the agency meet its goals around diversity and inclusion. (see Appendix A)

The Department of Education defines diversity in its broadest context to include all that makes us unique: race, color, gender, religion, national origin, age, disability status, culture, sexual orientation, gender identity, parental status, educational background, socioeconomic status, intellectual perspective, organizational level, and more. By doing so, we are able to harvest the full performance advantages our diversity offers. Inclusion is the means by which we harvest this talent. It is the deliberate effort to leverage diversity and empower all voices to contribute to the mission.

The committee realizes ODE must have conditions in place to ensure that diverse perspectives are heard and all contributors are empowered. To achieve this, we must look internally at our organizational cultures and the institutional processes that impact employees’ ability to fully participate and contribute to the mission. The committee is assisting the agency to examine and eliminate systemic barriers to inclusion in all aspects of the organizations. The aim is to build an inclusive organization as characterized by equal access to opportunity, culturally competent norms, transparent communications, participatory work processes and decision-making, constructive conflict management, leadership development, equitable rewards systems, and shared accountability. These inclusion characteristics are drivers of our committee’s engagement and organizational performance. We believe that inclusion holds the key to actualizing the performance potential of workforce diversity.

Performance Evaluations

It is the responsibility and expectation of all agency managers and supervisors, under the guidance of the agency's Diversity and Inclusion Representative, Serilda Summers-McGee, to successfully implement the 2015-2017 Affirmative Action Plan. Managers and supervisors are held accountable for successful implementation and administration of the plan through the agency's annual performance evaluation process for managers and supervisors. All performance evaluations are reviewed by the Diversity and Inclusion Representative, Serilda Summers-McGee, to ensure managers and supervisors are held accountable. EEO/AA statistical progress and claim information related to discrimination and/or harassment will be monitored and addressed in the performance evaluation process.

Managers are directed and encouraged to conduct interactive discussions with employees to discern what goals and achievements employees are interested in, and to align employees' professional development to their annual evaluation. ODE tracks data from employees' personal learning plans to monitor the alignment of professional development with annual evaluations.

Complaint Procedures

All applicants and employees are protected from coercion, intimidation, interference, or discrimination for filing a complaint or assisting in an investigation related to diversity and inclusion.

Complaint procedures are addressed in both ODE policy 581-210, Promotion and Maintenance of a Respectful Workplace and DAS Statewide policy 50.010.01, Discrimination and Harassment Free Workplace. (see Appendix A)

Employees who feel they have been harassed or discriminated against are encouraged to bring such behavior to the attention of the Diversity and Inclusion Representative and/or management via the procedures outlined in the agency's Respectful Workplace policy. (see Appendix A) Employees who feel they are being harassed or employees who are aware of harassing behavior should report this to the Diversity and Inclusion Representative, Serilda Summers-McGee, a manager or Union representation. The agency's Diversity and Inclusion Representative, Serilda Summers-McGee, is located in the Human Resources section in the Office of the Deputy Superintendent. She can be reached by telephone at (503) 947-5885 or by email at serilda.summers-mcgee@ode.state.or.us.

This message is communicated to employees in numerous ways. For example: All-staff emails, agency and individual unit newsletters, and various internal meetings held throughout the agency. Because of our excellent working relationship with our Labor leaders we have been assisted in carrying that message to represented staff at additional times.

The policy also spells out external agencies that can receive complaints from employees such as the Governor's Affirmative Action Office which can be reached by telephone at (503) 986-6524 or by email at frank.garcia@state.or.us; the United States Equal Employment Opportunity Commission (EEOC) which can be reached by telephone at (800) 669-4000, (800) 669-6820 (TTY), or by email at info@eeoc.gov; or the Civil Rights Division of the Oregon Bureau of Labor and Industries which can be reached by telephone at (971) 673-0764 or by email at crdemail@boli.state.or.us. Additionally, employees may contact their union or the Department of Administrative Services (DAS).

Training and Career Growth

During August and September of 2014, ODE's leadership team is completing the Coalition of Communities of Color organizational equity assessment, all agency staff will be asked to take the Unity Works' diversity climate survey, and training on equity will be provided at the agency's all-staff meeting. In addition, we plan to work with a contractor to provide additional training on equity to our managers. The intention of these efforts is to help us establish an understanding of our policies, procedures, and staffs' values around equity, and continue to improve upon them in the coming year.

ODE is committed to providing broad and culturally enriched training, career growth and developmental opportunities to all employees on an equal basis, enabling them to further advance and promote their knowledge, skills, and abilities, and their values of diversity.

Finally, any training that is undertaken incorporates proven adult learning techniques to affect the behavioral changes required to truly progress the organization toward its goals.

Our human resource staff regularly engages in individual coaching for both supervisory and classified staff.

The agency maintains a copy of the Affirmative Action Plan on the website for all employees to access. Managers shall participate and encourage others to participate in the activities designed to promote diversity and inclusion. The agency's Management Team will make necessary decisions and monitor the accomplishment of this plan on an ongoing basis and make plan adjustments as necessary. This includes reviewing personnel practices, procedures, and the work climate to identify possible roadblocks to diversity and inclusion, and then taking appropriate remedial action.



Rob S. Saxton
Deputy Superintendent of Public Instruction

Date: August 22, 2014

C. Training, Education and Development Plan

In support of Deputy Superintendent Saxton's priorities and pursuant to the provisions of a variety of initiatives related to increased efforts around education equity and culturally responsive pedagogy and practice, House Bill 3233 provided the funding to create and support a twelve employee Education Equity Unit. The Oregon Department of Education has provided increased resources and professional development to school districts, community-based organizations, and post-secondary institutions focused on increasing academic and social outcomes for ALL students.

The Equity Unit's work includes monitoring and addressing Civil Rights issues, efforts to close the achievement and opportunity gaps for students of color and English Learners, and addressing the cultural and academic needs of English Learners, and immigrant students. The Equity Unit has distributed funding to school districts, community based organizations, post-secondary institutions, and other educational stakeholder organizations in the form of grants to support collaborative efforts to design, implement, improve, expand, or otherwise infuse culturally responsive pedagogy and practices to increase student academic achievement, successful dual language programs, high school completion, and successful engagement in post-secondary educational opportunities.

Additional examples of agency work in the area of education equity and diversity includes but is not limited to direct contact with the 9 Oregon Confederated Tribes and their leadership; participation in the Oregon Tribal Government-to-Government process; formation of the Community Advisory Group; participation on various House and Senate Bill committees related to education equity; participation in the Interagency Council for Hunger and Homelessness; and membership on the Governor's Diversity and Inclusion Task Force.

Another key focus of the work of the ODE Equity Unit is increasing and maintaining the number and percentage of schools with a high percentage of culturally, ethnically, racially, and linguistically diverse teaching staff. The educator diversity gap, in addition to a focus on whether academic achievement gaps are closing for diverse student populations, is reported via ODE's key performance measures (KPM). The goal of these key performance measures is report on the current progress in closing gaps for students and teachers. Examples of initiatives that ODE participates in to reach this goal include:

- Partnering with nine Confederated Tribes to preserve and teach Native American indigenous language and culture in schools;
- The Oregon Leadership Network initiative has sponsored a number of summits and school demonstration sites that focus on cultural competency and comprehensive literacy with participation by state policy makers, college and university teacher and administrator preparation programs, and Kindergarten-12th grade teachers and administrators;
- New standards for administrative licensure that include knowledge and skills related to equity and cultural competence.

- Awards for the Oregon Minority Educator Pipeline Models Grant and the Oregon Minority Educator Retention Grant. Each project focuses specifically on the recruitment and retention of educators of color and those who are linguistically diverse.
- Formation of the Oregon Educator Equity Advisory Group to inform and support state efforts to close the educator equity gap.
- Awards for the Culturally Responsive Pedagogy and Practices Grant. Each project focuses on professional development for in-service and pre-service educators related to culturally responsive systemic change.
- Supports for the transition to the new ELP Standards and the ELPA 21 assessment.
- Facilitation of a Spanish language assessment.
- Showcasing best practices around Dual Language programs across the state.

Information regarding education equity and cultural responsiveness is currently available to school district personnel, as well as members of the general public. This includes specific professional development resources and information about education equity and cultural responsiveness on the ODE Equity Unit website. Periodic scheduled professional development opportunities provided by ODE cover various diversity topics including Title III, Title IIC, ELP Standards, ELPA21, and technical assistance to Strategic Investments grantees.

[Link to the Education Equity Unit Website](#)

Employees

While a formal succession plan has not been developed, the agency has a data base of statistics on staff training, education, and development. Our agency is bound by a Collective Bargaining Agreement and DAS policies which dictate the recruitment and hiring process. Data is being tracked and analyzed to assist with identifying staff who are ready now to assume key positions, those who will be ready in six months, and those who will be ready in twelve months. The data provides information necessary for identifying staff with potential for advancement, and those who may be ready to advance now or in the future. It also enables the agency to ensure that opportunities for training and advancement are provided to all employees in an equitable manner. Additionally, we have been able to work some employees out of their classification as promotional, developmental and learning opportunities. We have allowed some employees to participate in job rotations in other agencies for development of their skill and knowledge base. These types of actions allow employees to make known their desires for advancement and gain necessary skills to prepare them for upcoming opportunities.

Although training dollars are limited, we continue to provide in-house training opportunities to help our employees enhance their skills. Our in house training programs include performance evaluation, progressive discipline, recruitment, interviewing, and writing position descriptions. ODE is facilitating the use of iLearnOregon, an online learning management system. This allows us to create and manage our own agency trainings, providing the opportunity to tailor trainings specifically to our agency and create them in-house, resulting in better accuracy and cost savings. Additionally, iLearn Oregon is

accessible to state and non-state employees, requires nothing more than an internet connection and an email address, and the system keeps a record of each individual's trainings. The Child Nutrition Programs and Pupil Transportation units conduct many of their trainings via iLearnOregon with excellent results thus far. In their experience, iLearnOregon has meant less overtime due to travel to training sites throughout the state, as well as better satisfaction on the part of their sponsors who were able to receive their required certification at their place of work, rather than traveling to a specific location.

The use of this program allows people from all areas of the state to attend required training without the hardship of travel and additional expenses.

To use the limited dollars in the most efficient way we, in a group setting, have attended webinars presented by EEOC and well respected private companies. The webinars include hiring practices, people skills and management techniques.

In addition, agency staff will continue to have the opportunity to take advantage of the various training sessions provided by the Oregon Department of Justice. Sessions include:

- Disability Law
- Effective Supervision
- Performance Evaluations: Why They Are So Important and How To Do them Well
- Foundational Role of "Just Cause" for Personnel Matters
- Disciplinary Documentation
- Airtight Investigations
- Social Media in Personnel Investigations
- Managing Social Media: Off Duty Implications

We look at the employee as a whole, and encourage their development in all areas. We support employees through our tuition reimbursement policy. (see Appendix A) The agency has been active in the Certificate of Public Management (CPM) program through Willamette University, using this program to develop possible managers and supervisors. We also have sent employees to Leadership Lab and topics provided by Executive Forum. ODE remains committed to employee development and will continue to offer or facilitate training opportunities when possible.

The agency has regular labor/management committee meetings. The committee consists of an equal number of labor and management representatives. The management representatives are from the Management Team. The committee meets quarterly or sooner if needed to discuss issues that may concern either group. The vision statement of the group is "A quality and productive workplace." The goals of the committee are to (1) facilitate early resolution of worksite concerns, (2) develop recommendations for improved workplace quality and productivity, (3) build mutual respect, and (4) communicate outcomes. The committee is committed to treating all with dignity and respect. Any employee of ODE, whether management or represented, may bring an issue to the labor/management committee. This

information is posted on the agency's website. ODE's Diversity, Inclusion, and Affirmative Action Representative serves the committee in an advisory capacity.

Every newly-hired employee receives a letter with a written confirmation of the job offer. In addition, ODE has developed an onboarding process that will be instrumental to agency efforts to successfully integrate new employees in a collaborative and proactive manner that will foster and encourage inclusion.

All staff members are afforded the opportunity for advancement. Human Resources staff members are available to provide career counseling and developmental planning for employees. This includes job rotations, opportunities to work out of classification, tuition reimbursement, and informational interviews. Managers and supervisors are encouraged to create development plans for staff and discuss career paths, and record this information in performance evaluations annually.

Wherever possible, the agency has established career ladders to provide advancement opportunities for employees, and to attract applicants interested in career opportunities. Information regarding training, education, and development is provided to employees by email, through internal communication publications, paper-based information posted on bulletin boards in all work locations, or disseminated in office or work unit staff meetings that are held regularly on a weekly, bi-weekly, or monthly basis. The agency has a tuition payment policy that allows staff to obtain needed education and advance their skills. This policy recognizes that benefits of education are portable and are shared by the agency and the individual.

We recently began providing new employees with a New Employee Orientation (NEO) curriculum through iLearn Oregon. In the past, due to scheduling conflicts, many new employees would miss NEO training or were unable to attend until several months after their hire date. With the introduction of NEO via iLearn, new employees are able to receive pertinent job information as early as their second day on the job. We provide employees with information on parking and carpool matching, Smart Commuter programs, and bus passes. We fully explain sick and vacation leave, holidays, and personal leave. We provide links to our policies. We inform them of training opportunities, including a link to learn American Sign Language. This is especially useful as we operate the School for the Deaf. Individual units within ODE also provide orientation specific to the employee's work program. During orientation, we discuss our policy on affirmative action and provide a link to the policy. The new employees also receive information on our employee assistance program. We have received positive feedback from new employees on the NEO's applicability and convenience; the training lasts approximately 25 minutes, can be viewed from the comfort of the employee's desk, and covers a myriad of topics including facilities information, timesheet and paystub explanation, agency organization chart, and more.

The agency comes together for all-staff meetings twice each year. These meetings are held to bring agency employees together for information sharing and training, and to provide a forum to build inclusivity and support for ODE's mission and goals.

We have a Safety Committee that is very active in ensuring all employees have a safe work environment. We arrange for flu shot clinics and wellness fairs. The Department is very proactive in conducting ergonomic assessments so that we can accommodate employees should they have any specific physical needs. To keep employees comfortable and productive in the workplace we have purchased special chairs and work surfaces that are adjustable. ODE staff members have been certified to conduct medical ergonomic assessments.

Volunteers

Volunteers are utilized in various areas throughout the agency. In addition to unpaid interns working in agency operations, the Oregon School for the Deaf regularly uses volunteers for their programs. All volunteers have access to the agency's Affirmative Action Plan through ODE's public website and may receive a paper copy upon request. Agency coordinators will inform individuals about the agency's affirmative action plan when they begin volunteering and will provide information to them on how to access the plan. Training is provided both initially to volunteers and on an as needed basis; the nature or need for training is determined by the type of activity they are assigned to perform.

Due to the varied nature of the services provided, meetings with volunteers to discuss the Affirmative Action Plan in detail are not feasible. Efforts are made to ensure volunteers know where and how to access ODE's Affirmative Action Plan.

Contractors/Vendors

The 2015-2017 Affirmative Action Plan will be made available to all providers and vendors through the agency's public website, and a paper copy of the plan will be available to them upon request. Due to the varied nature of the agency's work, group meetings with providers and vendors to discuss the Affirmative Action Plan in detail are not feasible. Efforts are made ensure all providers and vendors know where and how to access ODE's Affirmative Action Plan.

D. Programs

Internship Programs

ODE provides formal internship opportunities that are designed to provide experience for students in the areas of educational policy and administration, political science and public administration, communications/marketing, information technology, community schools, and finance and accounting. The program allows students a chance to apply textbook theories to real world problems while developing an understanding of the agency and its mission. Internships are available to both undergraduate and graduate students of all majors or disciplines who are interested in state government. This program has benefited both the

student interns and ODE, and several past interns have been selected for permanent positions within the agency following their internships.

ODE supports exposure to state service in a variety of informal ways, including “Take Your Child to Work Day” and supporting employee involvement in schools.

Mentorship Programs

Internally, ODE has incorporated the assignment of mentors as part of our onboarding process and Human Resources staff members will be tracking whether it occurs, and holding hiring managers accountable if it does not occur.

Externally, the Oregon Mentoring Program is an important component of the state’s Network of Quality Teaching and Learning. Conceptualized and passed by the Oregon legislature in HB 3233, the Network provides funding for a comprehensive system of support for educators that creates a culture of leadership, professionalism, continuous improvement and excellence for teachers and leaders across the state’s education enterprise. Nearly five million dollars were awarded as part of Oregon’s 2013-2014 Mentoring Grant for Beginning Teachers and Administrators, and resulted in a total of 1,128 teachers and 135 principals/superintendents being assigned mentors.

Community Outreach Programs

ODE sent representatives to the Oregon Professional Educator Job Fair in April of 2013 and the Warner Pacific College Job Fair in May of 2014. One of the upcoming job fairs the agency is planning to attend is the Innovating Inclusion Panel and Job Fair on September 24, 2014. Attending career fairs will contribute to ODE’s goal to attract and recruit quality applicants of a diverse background. Other methods used are posting job openings on our website and the State jobs page, forwarding job announcements to the deaf community and the Governor’s Affirmative Action Office, utilizing organizations such as Mosaic Metier and Partners in Diversity to publicize job openings, and outreach to specific groups and individuals.

We have developed a training program for staff who participate on interview panels. A quarter of the training program covers unlawful discrimination and the importance of treating all candidates fairly and equally. It also discusses how to make the interview process comfortable and friendly.

Interview panels are created and used to reflect the diversity of the agency’s workforce and stakeholder base. Interview panel members can be from outside agencies, from stakeholder and partner groups, and from both represented and management service employee groups regardless of the status of the recruited position. The best-suited candidate will be selected for each position. “Best-suited” is defined as that individual who meets the minimum qualifications of the position and best serves the needs of the agency and the public it serves at the time the selection is made. It may not be the person with the highest score, the most

experience, or the best education. The decision as to who is the best-suited candidate must be made on a position-by-position basis. We have created “Interview Panel Guidelines” that are reviewed with the interview panel prior to interviews. It clarifies our expectations and includes a statement above the signature line stating that, “The Oregon Department of Education is an affirmative action equal opportunity employer and encourages qualified women, persons of color, persons with disabilities and any other classification protected under state or federal law to apply for this opening.”

The outreach efforts and opportunities described above benefit the agency’s recruitment efforts by providing valuable exposure and information about the agency and its mission to a diverse group of potential applicants.

In addition, each year ODE recruits people from all over Oregon to participate in the development of statewide assessment, serve on advisory boards, and provide input on proposed changes to education policy or programs. Community outreach and statewide participation in these activities provides opportunities for greater representation for diverse populations. For example, the Office of Learning’s Instruction, Standards, Assessment and Accountability unit conducts sensitivity panels composed of citizens from diverse groups to review test questions to make sure the questions do not disproportionately affect members of underrepresented groups

Deputy Superintendent Rob Saxton has set specific goals for ODE as part of a strategic plan to move the agency forward. One of those goals is to meaningfully engage parents, stakeholders, and the larger community to help make Oregon’s schools the best in the country. To accomplish this goal, ODE prioritizes building and maintaining partnerships with historically underserved communities, and providing clear and timely information to customers and stakeholders.

ODE staff members frequently attend trade-specific events in the course of their attendance at various local, state and federal education-related conferences and activities. Participation in these events serves as excellent outreach and recruiting opportunities.

Diversity Awareness Programs

A Diversity and Inclusion Steering committee has been established and meets monthly. This group is made up of current Department of Education staff who have been hand selected because of their unique experience within underrepresented groups and representation from all offices in the department. They assist the Department in attracting, recruiting and retaining people in underrepresented groups. The group also focuses on assisting people who need special accommodation, but are qualified or can become qualified to fill vacancies in our agency. The scope of the charter states, “...Creating an organizational culture that respects and values diversity and inclusion is a business imperative that is critical to the continued success of the Department of Education and the customers we serve.” (See Appendix A)

ODE does not have any formally established employee resource groups (ERGs) or affinity groups at the current time. However, several informal groups have formed and we will be exploring transitioning them to more formally established groups.

Current diversity initiatives are designed to encourage multicultural and diversity awareness, acknowledgement, and inclusion. In support of this, ODE continues to review and update policies and procedures to enhance the diversity of the workforce and accommodate diverse needs, and study the work environment to determine what changes are needed to ensure a welcoming environment for current and future employees. We look for training opportunities to expose all employees to diverse cultures. Related efforts include examining recruitment trends from a diversity perspective in order to improve recruitment and retention of a diverse workforce.

ODE is a sponsoring agency for the September 2014 State Diversity Conference and will have approximately 80 staff members in attendance. We are also exploring the possibility of participating in the 21st Annual Northwest Public Employees Diversity Conference on October 14, 2014.

ODE is a sponsoring partner in the Oregon Leadership Network (OLN) at Education Northwest. OLN represents a partnership among state agencies, school districts, national affiliations, and nongovernmental organizations, and is the only statewide educational leadership network in the nation with equity at its core. The mission of the OLN is to expand and transform the knowledge, will, skill, and capacity of educational leadership to focus on issues of educational equity so each student achieves at the highest level.

The agency recognizes the importance of family and community involvement in children's success in school and learning. ODE encourages staff to participate in school and learning activities by providing flexibility in work schedules. Staff are allowed to develop telecommuting schedules with their managers, work flexible schedules, and participate in agency-wide training. The agency is committed to promoting and maintaining a work environment that is respectful, positive, productive, and free of discrimination or work place harassment.

The Office of Learning's Student Services unit devotes its time to ensuring students with disabilities are afforded every educational opportunity they are entitled to under state and federal law. The employees are individuals who have devoted their careers to this mission. This devotion permeates not only the Student Services unit, but the entire agency. Other employees in the agency serve on special interest groups or committees at a local, state, or national level.

Since we operate the School for the Deaf, we are particularly sensitive to employees with special needs. We make sure students and staff get all the learning opportunities possible. Numerous staff have learned basic signs to make communication easier.

Some staff members have attended training on Peer Mentoring and ODE has promoted cross office collaboration and work. These types of actions allow employees to make known their desires for advancement and gain necessary skills to prepare them for upcoming opportunities.

Leadership Development/Training Program

ODE provided leadership development and training activities during the agency's monthly Directors meetings to agency managers and lead workers. These activities included, but were not limited to, information on how to develop position descriptions, how to evaluate employees, how to set goals, and effective performance management methods.

Leadership development and training opportunities will continue to be provided in the 2015-2017 biennium. We anticipate increasing participation with the availability of the Department of Administrative Services' new Management Development Series Foundational Training Program, which will provide skill building in various areas of management and leadership.

ODE has not tracked the EEO data of participants in leadership development and training activities, but will explore the possibility of doing so in the future.

During the previous two years, several employees have promoted or transferred from classified service to management service. These employees, and existing managers, will continue to benefit from ongoing efforts to provide development and training activities specific to leadership and managing people.

E. Update: Executive Order 08-18

Cultural Competency Assessment and Implementation Services

Consistent with the Governor's Executive Order 08-18 relating to affirmative action, which strongly encourages agencies to utilize cultural competency assessment and implementation services, ODE will continue to explore opportunities to access these services during the 2015-17 biennium for purposes of identifying training needs and options for agency managers and employees.

Actions taken during the 2013-2015 biennium include completion of the Coalition of Communities of Color organizational equity assessment by ODE's leadership team, completion of the Unity Works' diversity climate survey by all agency staff, and equity training at the agency's August 2014 all-staff meeting. The intention of these efforts is to help us establish an understanding of our policies, procedures, and staffs' values around equity, and continue to improve upon them in the future.

The Oregon Department of Education remains committed to the goals of enriching the diversity of the organization and increasing the level of cultural competency, both internally and throughout the statewide P-12 education enterprise. Further information is provided above in Section B (Training, Education and Development).

Historically ODE hired staff with the intention of increasing our cultural competency and did not see much improvement. Recently we started to see improvement after trying more innovative approaches such as the Diversity and Inclusion Steering Committee, direct appointments when appropriate to increase our representation in underrepresented groups, targeted recruitment, and more diverse interview panels.

Statewide Exit Interview Survey

The agency uses the exit interview survey developed and maintained by DAS. The agency regularly reviews the survey results to determine what changes are necessary to make the agency more welcoming for all employees. Our survey results have not included any identifiable trends to date, but we will continue to review them on a regular basis to identify developing trends or themes in a timely manner. Additionally, we informally interview departing employees to get their views and comments on their tenure with the agency.

Performance Evaluations of All Management Personnel

ODE ensures Management Team members understand their work performance is evaluated based on affirmative action and diversity efforts in conjunction with other assigned responsibilities. Program activities, practices, and procedures to remove impediments to achieving a diverse workforce are periodically reviewed. It's our practice that managers regularly discuss ODE's affirmative action and reasonable accommodations policies with their staff, and provide and support opportunities for diversity training and education for their staff.

Serilda Summers-McGee, ODE's Diversity, Inclusion and Affirmative Action Representative, is in the Human Resources section of the Office of the Deputy Superintendent. Ms. Summers-McGee will regularly attend the Governor's DI/AA/EEO meetings to stay abreast of trends and gain knowledge of possible diversity opportunities. Our Diversity, Inclusion, and Affirmative Action Representative and ODE's Civil Rights specialist attend training provided by the US Equal Employment Opportunity Commission (EEOC).

F. Status of Contracts to Minority Businesses (ORS 659A.015)

ODE's Procurement Services work unit produces quarterly reports in accordance with Executive Order No. 12-03 for the Director of Economic and Business Equity, who is also known as the Advocate for Minority, Women, and Emerging Small Business (MWESB). The reported information is available upon request from the Governor's Office of Economic and Business Equity. From July 1, 2012 through June 30, 2014, ODE had 397 contracts in place. Of those 397 contracts, 16 were with MWESB certified firms. It is possible that many of the firms ODE contracts with could be certified through the MWESB application process if they chose to apply. ODE provides notice to certified firms for all competitive solicitations through the Oregon Procurement Information Network (ORPIN).

Contract Number	Contractor Name	Description	Begin Date	End Date	OMWESB Certified	Type of Certification
8664	Hernandez, Romel	Production Writer	4/22/2009	6/30/2013	Yes	Minority Owned
8983	Rock, Phyllis dba Rock Education	P A for Charter School Application Reviews	10/7/2010	6/30/2013	Yes	Woman Owned
8987	Dana L Brown Consulting	Facilitation"Nutrition Advisory Councils	10/14/2010	9/30/2012	Yes	Woman Owned
9249	Bellows, Scott - Dispute Solutions LLC	Special Education Mediation Services	8/16/2011	6/30/2015	Yes	Emerging Small Business
9293	Graham, Adrienne	PA / Charter School Application Reviewer	9/10/2011	6/30/2014	Yes	Woman Owned & Emerging Small Business
9308	Rock, Phyllis dba Rock Education	PA / Monitoring Titles I-A, I-D, II-A, VI-B & X	9/28/2011	6/30/2014	Yes	
9329	Rock, Phyllis dba Rock Education	PA / Monitoring Services Title IV Part B	10/17/2011	12/31/2013	Yes	Woman Owned
9331	Rock, Phyllis dba Rock Education	PA / Monitoring Services Charter Schools	10/18/2011	12/31/2013	Yes	Woman Owned
9433	R & R Tree Service	Tree Removal & Tree Limbing Services	7/10/2012	8/15/2012	Yes	Emerging Small Business
9676	Hernandez, Romel	Teacher Recognition Program Support	5/15/2013	12/31/2013	Yes	Minority Owned
9689	Hubbard & Associates	OSD Project Management	6/7/2013	12/31/2013	Yes	Woman Owned
9853	Persi, Crystal	Special Population Quality Improvement Coordinator	6/20/2012	6/30/2015	Yes	Woman Owned
9857	Healthy Business Systems and Associates	Support State Commission and lead partnerships	4/1/2010	9/30/2014	Yes	Emerging Small Business
9859	Healthy Business Systems and Associates	Consultant to advance ELC policies.	1/18/2012	6/30/2015	Yes	Emerging Small Business
9926	Rock, Phyllis dba Rock Education	PA / Charter School Application Reviewer	9/3/2013	6/30/2015	Yes	Woman Owned
10170	Hernandez, Romel	Teacher Recognition Program Support	6/2/2014	8/31/2014	Yes	Minority Owned

III. ROLES FOR IMPLEMENTATION OF AFFIRMATIVE ACTION PLAN

A. Responsibilities and Accountabilities

Administrator

The agency's Administrator is Deputy Superintendent of Public Instruction Rob Saxton who was appointed July 31, 2012. Deputy Superintendent Saxton has committed and directed the Department of Education to take the necessary affirmative action steps to increase equal employment and promotional opportunities toward establishing and maintaining a diverse workforce to carry out the goals of the Oregon Education Investment Board and the State Board of Education. Affirmative action statistics and trends specific to ODE are evaluated and analyzed quarterly, and form the basis of the Deputy Superintendent's direction to the agency. As the executive head of the agency, Deputy Superintendent Saxton is accountable to oversee the implementation of the plan.

As the agency Administrator, Deputy Superintendent Saxton's role is to:

- set the overall direction and goals of ODE's affirmative action efforts;
- promote a positive climate throughout the agency; and
- ensure ODE Management Team members understand their work performance is evaluated based on affirmative action and diversity efforts in conjunction with other assigned responsibilities.

Managers and Supervisors

The role of agency managers and supervisors is to:

- promote and foster a positive, non-discriminatory work environment;
- ensure subordinate managers and supervisors are familiar with ODE's Affirmative Action Plan and their role in supporting the plan;
- ensure subordinate managers and supervisors are evaluated on their effectiveness in implementing the Affirmative Action Plan;
- periodically review program activities, practices, and procedures to remove impediments to achieving a diverse workforce;
- regularly discuss ODE's affirmative action and reasonable accommodations policies with their staff;
- provide and support opportunities for diversity training and education for their staff; and
- be evaluated based on affirmative action and diversity efforts in conjunction with other assigned responsibilities through an annual performance evaluation.

In addition, all ODE managers and supervisors have been formally assigned responsibility for maintaining a respectful workplace that is free from discrimination and harassment, and in which diverse viewpoints and cultures are welcomed. To monitor the success of these efforts, managers and supervisors are evaluated annually in this area. Managers and supervisors are

encouraged to attend training as it becomes available to increase and enhance the successful implementation of the plan.

Deputy Superintendent Saxton has delegated responsibility to the ODE Diversity, Inclusion, and Affirmative Action Representative, Serilda Summers-McGee, who plays a vital role in developing, implementing, and maintaining the agency's Affirmative Action Plan, and provides input at upper-level management meetings on a regular basis. The Diversity, Inclusion, and Affirmative Action Representative ensures that issues such as affirmative action, diversity, and cultural competency are continuing topics of discussion and training at upper-level management meetings.

Affirmative Action Representative

The evaluation of the Diversity, Inclusion, and Affirmative Action Representative's job performance is based on successful performance of the assigned responsibilities, which are:

- coordinating the biennial development, maintenance, and updating of the agency's Affirmative Action Plan, including policy and content recommendations;
- successfully implementing and disseminating the agency's Affirmative Action Plan;
- continuously evaluating the agency's affirmative action and diversity efforts and recommending changes or refinements to the Affirmative Action Plan as necessary;
- developing and monitoring recruitment and retention procedures and practices for compliance with affirmative action policies including outreach, development of hiring criteria, and promotion;
- ensuring compliance with accessibility and accommodation requirements;
- training agency management and staff in the areas of affirmative action, diversity, and cultural competency;
- assisting in and ensuring the provision of accommodations such as alternate formats of documents for applicants, employees, and visitors;
- coordinating the investigation of internal and external discrimination complaints;
- responding to internal and external discrimination complaints and recommending appropriate action;
- keeping agency management informed of progress under the Affirmative Action Plan;
- regularly attending the Statewide DI/AA/EEO meetings facilitated by the Governor's Affirmative Action Office;
- meeting weekly with the agency Management Team;
- developing, coordinating, and participating in activities aimed at creating a welcoming environment for all employees including those from diverse backgrounds to enhance efforts to recruit and retain members of protected groups; and.
- Participating in or overseeing activities aimed at creating a welcoming environment for all workers of all backgrounds, including activities aimed at improving retention of members of the protected classes.

Consistent with Deputy Superintendent Saxton's commitment to affirmative action and diversity, the Diversity, Inclusion, and Affirmative Action Representative has the necessary

resources and support from upper management to ensure the successful and effective implementation of ODE's Affirmative Action Plan.

The agency's human resource analysts, and all agency directors, are responsible for providing equal opportunity for applicants and employees. ODE job announcements and employment ads initiated by ODE include an EEO/AA statement. The Oregon School for the Deaf actively recruits workers with disabilities, and gives preference to all applicants who are skilled in sign language. An effort is made to include diverse representation on employment interview panels. Agency human resource analysts work closely with ODE managers to ensure that decisions made regarding hiring, promotion, demotion, transfer, termination, layoff, training, compensation, benefits, and performance evaluations are arrived at in a non-discriminatory manner.

All contracts initiated by ODE include a "Standard Contract Provisions" statement requiring compliance with federal and state civil rights and rehabilitation statutes, rules, and regulations.

All employees are notified that the agency's affirmative action plan is permanently posted at each work site as well as on the agency internet and intranet sites, with additional copies available upon request. Alternative formats such as large print or audio tape are also made available upon request. The agency's affirmative action plan and policy is presented to the agency's management team on a biennial basis. The plan and policy is also an annual agenda item for the agency's Service Employees International Union Labor-Management Committee to solicit the union's cooperation and involvement in meeting the goals.

IV. JULY 1, 2012 to JUNE 30, 2014

A. Accomplishments

During the period from July 1, 2012 through June 30, 2014, ODE sustained representation above parity for women, and increased representation of people of color and people with disabilities. The agency will continue to focus on increasing the representation of people of color in all groups, especially in the teacher/educator category of the professionals job group, which consists of approximately half of our workforce and carries the greatest responsibility for direct services to students and other educators throughout Oregon. In addition, the agency will continue to work to increase the number of women in the computer analyst and trades/maintenance categories. The overall representation of people with disabilities in the agency is 9%, which is 3 percentage points over parity.

One recruitment factor the agency struggles with is the minimum qualifications for the professionals job group, particularly the teacher/educator category. These positions generally require a bachelor's degree and classroom experience at the lower ranges, and a master's degree or doctorate with additional classroom experience and two years of program coordination or leadership experience in the higher salary ranges. The agency's career ladder historically provided very little opportunity for internal promotion between administrative support and professional classifications, resulting in professional positions typically being filled through external recruitment. The strongest competitors for qualified external applicants were Oregon's public and private schools and education agencies, and the agency was finding it increasingly difficult to offer a compensation package that was competitive in the education job market.

During previous biennia, the agency worked with the Department of Administrative Services to establish more competitive salary packages and an improved career ladder within ODE to more successfully attract and retain employees in these underrepresented areas. These actions, and the incorporation of information and strategies from various sources, including the Statewide DI/AA/EEO workgroup, were contributing factors to enabling the agency to maintain progress from previous biennia. In addition, ODE's workforce is currently composed of members of four generations. This factor will increasingly play a key role in the recruitment and retention of employees in underrepresented areas as the Traditionalist and Baby Boomer generations leave the workforce.

The DI/AA/EEO workgroup has been attended by the Diversity, Inclusion, and Affirmative Action Representative and other human resources staff. It has helped our agency by an exchange of ideas and best practices.

In an effort to continue to capture accurate data, ODE's revised new employee orientation program incorporated an instrument to gather more comprehensive self-reported affirmative action data.

ODE reorganized in August 2013 and established the Equity Unit within the Office of Learning. The Equity Unit's work includes monitoring and addressing civil rights issues, efforts to close the achievement gap, and addressing the culturally related and academic needs of English Language Learners (ELLs), and students of color. The Equity Unit distributed strategic investment funding to school districts and other organizations in the form of grants to support collaborative efforts to design, implement, improve, and expand culturally responsive pedagogy and practices to increase student academic achievement, high school completion and successful engagement in post-secondary educational opportunities. In addition, grants were made to improve and expand dual language programs, and support for African American students.

The State Advisory Council for Special Education (SACSE) is a continuing advisory group for ODE and represents a diverse group. This group reviews aspects of statewide programs in special education, advises the Deputy Superintendent and the State Board of Education on unmet needs in the area of special education, and assists the State in developing and reporting data and evaluation concerning special education. Members of this group include individuals with disabilities, parents or guardians of children or youth with disabilities, educators of children and youth with disabilities, state and local education officials, administrators of programs for children and youth with disabilities, and other persons associated with or interested in special education.

Under Goal 4 of the ODE Strategic Plan, we strive to meaningfully engage parents, stakeholders, and the larger community to help make Oregon's schools the best in the country. The Community Advisory Group was established to advise, connect, support, impact, and provide consistency and recommendations to the ODE Strategic Plan as it pertains to equity for every student. Members of this group include a diverse group of parents, college students, community-based organization representatives, and state and local education officials. The group's objectives are:

1. Nurture a common understanding of equity and connect/align the work of ODE, OEIB, the School Districts, and other agencies.
2. Create the impact needed for the sustainability of our new system of education.
3. Identify best practice in our education system for consistency and access.
4. Support the creation of a State of Oregon Equity Policy.
5. Support initiatives in the legislature.

The Oregon Department of Education has convened the interagency Oregon School Discipline Advisory Committee (OSDAC) to promote inclusive, culturally responsive school discipline approaches that foster successful outcomes for each and every student. OSDAC consists of researchers, practitioners, and advocates from a variety of government and nonprofit agencies, and is particularly focused on reducing the disproportionate suspension, expulsion, and exclusion of youth who have been historically disenfranchised or underserved in our educational system. OSDAC's activities are aligned with the OEIB Equity Lens framework, the ODE strategic plan, and the objectives of the Governor's Summit on Disproportionate Minority Contact (DMC).

B. Progress Made or Lost Since Previous Biennium

The affirmative action goals for the Oregon Department of Education are based on an analysis of employment patterns and practices, with particular attention given to the representation/under-representation of women, people of color, and people with disabilities as it relates to parity. Parity is a condition that is achieved in an organization when the protected class composition of its workforce is equal to that in the relevant available work force. The parity figures used in this analysis were established by the Governor's Affirmative Action Office by EEO-4 job categories. An analysis of summary data provided by the Department of Administrative Services for the period July 1, 2012, through June 30, 2014, which weights the job group parity percentages based on the number of employees within each job group, reveals the following:

- The agency's ***gender representation*** consists of 66.9% women and 33.1% men, which is unchanged from the July 1, 2012, baseline. The agency continues to exceed parity in its gender representation of women in upper management salary ranges 31 and above, and also meets or exceeds parity in the gender representation of women in most middle and lower salary ranges. A possible area of opportunity to increase gender representation for women may be in the skilled craft workers job group, which does not have any female incumbents. Positions in the skilled craft workers job group within ODE include Facility Operations Specialists, Facility Energy Technicians, and Electricians.
- The agency's representation of ***people of color*** is 15.5%, an increase of 7.5 percentage points from the July 1, 2012, baseline of 8.0%. With this increase in representation of people of color, ODE now exceeds parity in many key job groups, such as middle management, teacher/education, inspector/compliance/investigation, and program coordinator/analyst. However, increased representation in the professionals job group continues to be an area where improvement would be beneficial to achieving the agency's mission and goals. The agency would also benefit from a continued focus on recruitment efforts within underrepresented groups in the paraprofessional and technical job groups.
- Representation of ***people with disabilities*** is 9.0%, an increase of 2.9 percentage points from the July 1, 2012, baseline of 6.1%. ODE continues to exceed parity and increase representation of people with disabilities. However, representation in the professionals job group, specifically in the program coordination, compliance, and computer analyst categories, is an area where improvement may be possible.

Of the 14 employees promoted during the period of July 1, 2012 through June 30, 2013, 7.1% were people with disabilities and 71.4% were women. Of the 25 employees promoted during the period of July 1, 2013 through June 30, 2014, 12% were people of color, 12% were people with disabilities, and 56% were women. Although people of color, people with disabilities and women were promoted within the agency during the period of July 2012 through June 2014, the agency will continue to monitor recruitment statistics to seek ways to increase the promotion rate of people in underrepresented groups.

The charts below summarize a comparison of the makeup of the ODE workforce from June 30, 2012 to June 30, 2014.

Workforce Representation Report Oregon Department of Education Affirmative Action Analysis as of June 30, 2012													
EEO Categories		WOMEN (W)				PEOPLE OF COLOR (P)				Protected Class Hires (Last Three Months)			
		Total Emp	Actual Count*	Parity	Goal	Actual Count*	Parity	Goal	Total	W	P	D	
A01) Middle Management	0	0	0.00%	43.00%	0.0	0	0.00%	13.60%	0.0	0			
A02) Upper Management	38	22	57.89%	36.60%	13.9	2	5.26%	12.20%	4.6	0			
B02) Communication/Editor	0	0	0.00%	41.70%	0.0	0	0.00%	9.00%	0.0	0			
B03) Teacher/Education	95	60	63.16%	59.40%	56.4	8	8.42%	9.60%	9.1	1	100%		
B04) Nurse/Health	1	1	100.00%	70.40%	0.7	0	0.00%	11.30%	0.1	0			
B06) Food Service Manager	15	12	80.00%	52.90%	7.9	0	0.00%	6.10%	0.9	3	66%		
B07) Purchasing Agent/Analyst	5	5	100.00%	43.20%	2.2	0	0.00%	5.30%	0.3	0			
B09) Social Science/Planner/Reschr	13	10	76.92%	43.70%	5.7	1	7.69%	10.00%	1.3	3	33%		
B10) Personnel/Employment	4	4	100.00%	57.60%	2.3	0	0.00%	11.60%	0.5	0			
B11) Inspector/Compliance/Investgr	1	0	0.00%	48.10%	0.5	0	0.00%	10.70%	0.1	0			
B12) Computer Analyst	35	10	28.57%	32.40%	11.3	5	14.29%	13.00%	4.6	2	50%		
B15) Accounting/Finance/Revenue	14	12	85.71%	53.00%	7.4	2	14.29%	13.00%	1.8	2	0%	50%	
B16) Program Coordinator/Analyst	19	15	78.95%	41.10%	7.8	0	0.00%	9.50%	1.8	0			
C01) Health	2	1	50.00%	75.50%	1.5	0	0.00%	13.80%	0.3	0			
C04) Computer	0	0	0.00%	36.00%	0.0	0	0.00%	12.70%	0.0	0			
C05) Audio-visual	1	1	100.00%	40.60%	0.4	0	0.00%	9.20%	0.1	0			
E01) Non-Supervisory	38	26	68.42%	58.10%	22.1	5	13.16%	9.80%	3.7	2	50%	50%	
E02) Supervisory/Coordinator	0	0	0.00%	58.00%	0.0	0	0.00%	7.50%	0.0	0			
F00) Administrative Support	62	57	91.94%	70.30%	43.6	5	8.06%	9.70%	6.0	2	100%		
G03) Trades/Maintenance/Repair	1	0	0.00%	13.40%	0.1	0	0.00%	9.10%	0.1	0			
G05) Mechanic/Boiler Operator	4	0	0.00%	12.50%	0.5	0	0.00%	7.50%	0.3	0			
G06) Trades	1	0	0.00%	11.50%	0.1	0	0.00%	7.10%	0.1	0			
H00) Service Maintenance Worker	13	6	46.15%	37.80%	4.9	1	7.69%	11.60%	1.5	2	50%	50%	
TOTALS	362	242	66.9%			29	8.0%			17	52.9%	11.8%	5.9%
Affirmative Action Statistics are voluntary and may not accurately reflect the actual diversity of the agency. * May be duplication in counts of individuals within the W, P and D categories													
People with Disabilities													
Total Agency	Parity	Total Group	Group %										
362	6%	22	6.1%										
Updated 7/12/2012													

Workforce Representation Report Oregon Department of Education Affirmative Action Analysis as of June 30, 2014													
EEO Categories		WOMEN (W)				PEOPLE OF COLOR (P)				Protected Class Hires (Last Three Months)			
	Total Emp	Actual Count*	Parity	Goal		Actual Count*	Parity	Goal		Total	W	P	D
A01) Middle Management	5	3	60.00%	43.00%	2.2	1	20.00%	13.60%	0.7				
A02) Upper Management	46	28	60.87%	36.60%	16.8	4	8.70%	12.20%	5.6	2	50.0%		
B02) Communication/Editor	1	1	100.00%	41.70%	0.4	0	0.00%	9.00%	0.1				
B03) Teacher/Education	100	60	60.00%	59.40%	59.4	12	12.00%	9.60%	9.6				
B04) Nurse/Health	1	1	100.00%	70.40%	0.7	0	0.00%	11.30%	0.1				
B06) Food Service Manager	18	13	72.22%	52.90%	9.5	1	5.56%	6.10%	1.1	2	50%		
B07) Purchasing Agent/Analyst	7	7	100.00%	43.20%	3.0	0	0.00%	5.30%	0.4				
B09) Social Science/Planner/Reschr	17	9	52.94%	43.70%	7.4	1	5.88%	10.00%	1.7	3	66.6%		
B10) Personnel/Employment	6	5	83.33%	57.60%	3.5	1	16.67%	11.60%	0.7				
B11) Inspector/Compliance/Investgtr	47	38	80.85%	48.10%	22.6	15	31.91%	10.70%	5.0	1	100%		
B12) Computer Analyst	49	16	32.65%	32.40%	15.9	5	10.20%	13.00%	6.4	8	50%	25%	
B15) Accounting/Finance/Revenue	16	14	87.50%	53.00%	8.5	3	18.75%	13.00%	2.1				
B16) Program Coordinator/Analyst	36	26	72.22%	41.10%	14.8	8	22.22%	9.50%	3.4	5	100%	40%	20%
C01) Health	3	2	66.67%	75.50%	2.3	0	0.00%	13.80%	0.4				
C04) Computer	0	0	0.00%	36.00%	0.0	0	0.00%	12.70%	0.0				
C05) Audio-visual	1	1	100.00%	40.60%	0.4	0	0.00%	9.20%	0.1				
E01) Non-Supervisory	33	23	69.70%	58.10%	19.2	7	21.21%	9.80%	3.2	1	100%		
E02) Supervisory/Coordinator	2	1	50.00%	58.00%	1.2	0	0.00%	7.50%	0.2				
F00) Administrative Support	84	77	91.67%	70.30%	59.1	13	15.48%	9.70%	8.1	4	100%	25%	
G03) Trades/Maintenance/Repair	1	0	0.00%	13.40%	0.1	0	0.00%	9.10%	0.1				
G05) Mechanic/Boiler Operator	4	0	0.00%	12.50%	0.5	2	50.00%	7.50%	0.3				
G06) Trades	1	0	0.00%	11.50%	0.1	0	0.00%	7.10%	0.1				
H00) Service Maintenance Worker	20	8	40.00%	37.80%	7.6	4	20.00%	11.60%	2.3	1			100%
TOTALS	498	333	66.87%			77	15.46%			27	70.37%	18.52%	7.4%
Affirmative Action Statistics are voluntary and may not accurately reflect the actual diversity of the agency. * May be duplication in counts of individuals within the W, P and D categories													
People with Disabilities (D)													
Total Agency	Parity	Total Group	Group %										
498	6%	45	9.0%										
Updated 7/2/2014													

V. JULY 1, 2014 – JUNE 30, 2017

A. Affirmative Action Plan Goals

ODE's affirmative action plan goal is to increase the diversity of the agency so that it mirrors the diversity in Oregon's classrooms. This goal is an integral component of our strategic plan, which is summarized below. More specifically, increasing the diversity of our workforce is a defined objective within Goal 5 of ODE's strategic plan. Attaining our affirmative action goal will be a crucial factor in the successful implementation of the agency's overall strategic plan.

ODE STRATEGIC PLAN SUMMARY

At the Oregon Department of Education, we are guided by the following mission and values:

Mission

The Oregon Department of Education fosters excellence for every learner through innovation, collaboration, leadership, and service to our education partners.

Values

- Equity for Every Student
- High Quality Education
- Results Focused
- Service
- Leadership
- Teamwork
- People Are Our Greatest Asset

The goals and objectives which will help us achieve our mission were developed through an equity lens and encompass not only our agency values, but our commitment to achieving a diverse and inclusive environment throughout Oregon's education enterprise so that every student reaches their full potential.

This commitment is evidenced by the following goals:

Goal 1 – Learners

Every student graduates from high school and is ready for college, career, and civic life.

Goal 2 – Educators

Every P-12 organization is led by an effective administrator, and every student is taught by an effective teacher.

Goal 3 – Schools & Districts

Increase performance for all schools and districts in order to create systems of excellence across the state.

Goal 4 – Communities

ODE meaningfully engages parents, stakeholders, and the larger community to help make Oregon's schools the best in the country.

Goal 5 – ODE

Make ODE the best place to work.

B. Strategies and Timelines for Achieving Goals

To successfully achieve ODE's goals, we will continue to work toward achieving the following objectives during the 2015-2017 biennium:

Goal 1 Objectives

1. Integrate early learning programs across the relevant state agencies so **every student enters kindergarten ready to learn.**
2. Implement statewide literacy programs so **all students read by third grade.**
3. Design and implement an integrated and comprehensive system to ensure **every student graduates ready for college, career, and civic life.**
4. Help districts implement effective practices in order to **close achievement gaps.**
5. Improve quality of special education services to **close achievement gaps.**

Goal 2 Objectives

1. Help districts implement the new **educator evaluation system**, and start to connect evaluation results to meaningful professional development.
2. Launch Quality Teaching and Learning Network focused on **developing exceptional educators** and implementing effective practices.
3. **Close the educator equity gap** to ensure equitable distribution of the most effective educators and have educator diversity reflect the student population.
4. Work with the Oregon Education Investment Board (OEIB) and the Teacher Standards and Practices Commission (TSPC) to **improve the preparation, licensure, retention, and effectiveness** of new educators.

Goal 3 Objectives

1. Systematically help districts **implement Common Core**, Next Generation Standards, and **new statewide assessments.**
2. **Identify and improve** Oregon's chronically underperforming schools.
3. Measure, analyze, and report out Oregon's **progress to 40/40/20.**
4. Ensure districts provide **healthy and safe** learning environments for students.
5. Conduct all federal compliance and on-site monitoring visits in a **positive and respectful** way that leads to **improved outcomes** for students.

Goal 4 Objectives

1. Prioritize building and maintaining **partnerships** with historically underserved communities.
2. Provide **clear and timely** information to customers and stakeholders.
3. Proactively **inform and engage** the legislature and implement 2013 and 2014 legislation.
4. Proactively and **strategically work with relevant state agencies** to deliver services to students' and families' overall well-being, so schools can attend to students' educational needs.

Goal 5 Objectives

1. Attract, retain, and develop **top talent** to ODE.
2. Increase **diversity** of ODE's workforce.
3. Reorganize ODE to ensure **integration and collaboration** across all offices.
4. Deliver **excellent internal customer service** and improve communication and efficiency within ODE.

VI. APPENDIX A

A. Agency's Policy Documentation

Oregon Department of Education Cultural Diversity Steering Committee Charter

Connecting Different Minds in Different Ways to Achieve Common Goals

Project Name	Diversity and Inclusion Steering Committee
Sponsor	Serilda Summers-McGee, Director of Human Resources
Team Members	<p>Martha Buenrostro, Victor Cato, Marilyn Freeman, Bill Hansell, Sam Ko, Mike Mendez, Lorene Nakamura, Claudette Rushing, Sharla Jones</p> <p>Efforts were made to identify individuals from each office of the Department of Education. All members contribute equally and do not have rank over other team members. Members were selected because they have special interests in underrepresented populations.</p>
Scope	Employee satisfaction and commitment are two necessary ingredients in developing high-performing organizations and attracting and retaining top talent. Creating an organizational culture that respects and values diversity and inclusion is a business imperative that is critical to the continued success of the Department of Education and the customers we serve.
Project Goal	<p>Advise and guide the agency's Diversity & Inclusion Representative.</p> <ol style="list-style-type: none">1. The Steering Committee will help the agency meet its goals in providing a workplace environment that is polite, courteous and respectful. Help increase employee satisfaction and commitment.2. Committee members will inform the agency on how to recruit and retain a diverse population.3. Committee members will help empower other employees who are from underrepresented groups that are in need of assistance.4. Committee members will help identify and locate training needs for department staff, to increase awareness around diversity and inclusion, cross-cultural and cross-generational issues.

	<p>5. Help the Diversity and Inclusion Representative complete the Affirmative Action Plan.</p> <p>Members will do this by:</p> <ul style="list-style-type: none"> ❖ proactively discussing ideas generated within each office ❖ discussion with community members ❖ bringing new innovative ideas to the committee's attention ❖ making recommendation to the Diversity and Inclusion Representative, management and human resources
Project Success Metrics	<ul style="list-style-type: none"> ❖ Agency staff will reflect the faces of Oregon ❖ Agency staff will reflect the faces of customers in Oregon ❖ Each recruitment includes a diverse, geographic region, academic sources and professional discipline outreach ❖ A list serve of underrepresented groups for recruitment purpose will be used for all recruitments ❖ Reduction in employee complaints and grievances ❖ 100 % of management position descriptions includes a diversity and inclusion duty ❖ Measure percentage of workforce (counting management separately) completing diversity and inclusion related training (both mandatory and elective)
Risks/Strategies	<p>Risk:</p> <ul style="list-style-type: none"> ❖ Recommendations may not be accepted nor implemented by management or current staff ❖ Necessary resources may not be allocated for the implementation of recommendations made by this Steering Committee ❖ Training may not be readily available ❖ Union contract may not agree with recommendations proposed <p>Risk-Reduction Strategies:</p> <ul style="list-style-type: none"> ❖ Identify practical and reasonable implementation strategies that consider limited resources ❖ Encourage Steering committee members to personally communicate to Department staff about the Steering Committee goals and activities to develop awareness and support

SUBJECT: ADA and Reasonable Accommodation in Employment	NUMBER: 50.020.10
DIVISION: Human Resource Services Division	EFFECTIVE DATE: 6/7/10
APPROVED: Signature on file with Human Resource Services Division	

**POLICY
STATEMENT:**

Oregon state government follows the clear mandate in state law and the Americans with Disabilities Act (ADA) of 1990, as amended by the ADA Amendments Act of 2008, to remove barriers that prevent qualified people with disabilities from enjoying the same employment opportunities that are available to people without disabilities.

Oregon state government provides equal access and equal opportunity in employment. Its agencies do not discriminate based on disability. Oregon state government uses only job-related standards, criteria, and methods of administration that are consistent with business necessity. These standards, criteria and methods do not discriminate or perpetuate discrimination based on disability.

According to OAR 105-040-0001 Equal Employment Opportunity and Affirmative Action, Oregon state government takes positive steps to recruit, hire, train, and provide reasonable accommodation to applicants and employees with disabilities.

AUTHORITY:

ORS 240.145; 240.240; 240.250; ORS 659A.103 -145; 243.305; 243.315; The Americans with Disabilities Act (ADA) of 1990 as amended by the Americans with Disabilities Act Amendments Act (ADAAA) of 2008; Civil Rights Act of 1991; and 42 U.S.C. §12101 *et seq.*

APPLICABILITY:

This policy applies to all state employees, including state temporary employees, according to provisions of federal and state law.

ATTACHMENTS:

ADA Accommodation Tool Kit

DEFINITIONS:

See State HR Policy 10.000.01 Definitions and OAR 105-010-0000

The following definitions apply to terms referenced in this policy and its attachments:

Americans with Disabilities Act (ADA) –The ADA is a federal civil rights statute that removes barriers that prevent qualified people with disabilities from enjoying the same employment opportunities available to people without disabilities. References to ADA also refer to amendments to that Act.

Essential Functions – These include, but are not limited to, duties that are necessary because:

- The primary reason the position exists is to perform these duties.
- A limited number of employees are available who can perform these duties.
- The incumbent is hired or retained to perform highly specialized duties.

Individual with a Disability – This term means a person to whom one or more of the following apply:

- A person with a physical or mental impairment that substantially limits one or more of the major life activities of such a person without regard to medications or other assistive measures a person might use to eliminate or reduce the effect of impairment.
- A person with a record of such an impairment
- A person regarded as having such impairment.

Major Life Activities – This term means the basic activities the average person in the general population can perform with little or no difficulty. These including breathing; walking; hearing; thinking; concentrating; seeing; communicating; speaking; reading; learning; eating; self-care; performing manual tasks such as reaching, bending, standing and lifting; sleeping; or working (working in general, not the ability to perform a specific job). The term also includes but not limited to “major bodily functions,” such as functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

Physical or Mental Impairment – This term refers to any of the following:

- Physiological disorder, condition, cosmetic disfigurement, or anatomical loss that affects one or more bodily systems, including neurological, musculoskeletal, special sense organs, respiratory, cardiovascular or reproductive
- Mental or psychological disorder including but not limited to mental retardation, organic brain syndrome, emotional or mental illness or specific learning disability
- Disease or condition including orthopedic, visual, speech and hearing impairment, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, HIV disease or alcoholism
- Any other physical or mental impairment listed under the ADA.

Qualified Person – This term means a person who has the personal and professional attributes, including skill, experience, education, physical and mental ability, medical, safety and other requirements to hold the position.

“Qualified person” does not include people who currently engage in illegal use of drugs. A person may qualify, however, if he or she is currently enrolled in or has completed a rehabilitation program, and continues to abstain from illegal use of drugs.

Reasonable Accommodation – This term means change or adjustment to a job or work environment that enables a qualified employee with a disability to perform the essential functions of a job, or enjoy the benefits and privileges of employment equal to those enjoyed by employees who have no disabilities. “Reasonable accommodation” does not include modifications or adjustments that cause an undue hardship to the agency.

“Reasonable accommodation” does not mean providing personal auxiliary aids or services, such as service dogs or hearing aids that person uses both on and off the job.

A reasonable accommodation does not include lowering production standards, promoting or assigning an employee to a higher-paying job, creating a position or reassigning essential functions to another worker.

Undue Hardship – This term means significant difficulty or expense. Whether a particular accommodation imposes undue hardship is determined on a case-by-case basis, with consideration of such factors as the following:

- The nature and cost of the accommodation needed
- The agency's size, employee's official worksite, and financial resources
- The agency's operation, structure, functions, and geographic separateness
- The agency's administrative or fiscal relationship to its facility responding to the accommodation request and to the other state agencies
- The impact of the accommodation on the operation of the agency or its facility.

POLICY

- (1) Each state agency director or authorized designee (agency) administers State HR Policy 50.020.10 as the agency's policy. Compliance with the ADA is mandatory.
 - (a) Each agency identifies an ADA Coordinator for the agency to coordinate ADA accommodation requests and function as an agency resource on ADA matters.
 - (b) Each agency develops and follows its own procedures for receiving, processing and documenting accommodation requests under this policy. The attached tool kit will assist in this process.
- (2) An employee may request an accommodation under this policy by following agency procedures.
- (3) The agency must review and respond in a timely manner to each request for accommodation. The agency must engage in an interactive dialogue with the employee to determine whether the accommodation is necessary and will be effective.
- (4) Each accommodation is unique to the person, the disability and the nature of the job. No specific form of accommodation can guarantee success for all people in any particular job. The agency must give primary consideration to the specific accommodation requested by the employee. Through the interactive process the agency may identify and provide an alternative accommodation.
- (5) The duty to provide reasonable accommodation is ongoing. The agency and the employee must engage in the interactive process again if an accommodation proves ineffective.
- (6) The agency may deny an accommodation if it is not effective, if it will cause undue hardship to the agency, or if the agency identifies imminent physical harm or risk. The undue hardship exception is available only after careful consideration. The agency must consider alternative accommodations, should a requested accommodation pose undue hardship.
- (7) Federal and state law prohibit retaliation against an employee with respect to hiring or any other term or condition of employment because the employee asked about, requested, or was previously accommodated under the ADA.

SUBJECT:	Discrimination and Harassment Free Workplace	NUMBER:	50.010.01
DIVISION:	Human Resource Services Division	EFFECTIVE DATE:	01/25/08
APPROVED: Signature on file with Human Resource Services Division			

POLICY STATEMENT: The State of Oregon is committed to a discrimination and harassment free work environment. This policy outlines types of prohibited conduct and procedures for reporting and investigating prohibited conduct.

AUTHORITY: ORS 174.100, 240.086(1); 240.145(3); 240.250; 240.316(4); 240.321; 240.555; 240.560; 659A.029; 659A.030; Title VII; Civil Rights Act of 1964; Executive Order EO-93-05; Rehabilitation Act of 1973; Employment Act of 1967; Americans with Disabilities Act of 1990; and 29 CFR §37.

APPLICABILITY: All employees, state temporary employees and volunteers.

ATTACHMENTS: None

DEFINITIONS: See also HRSD State Policy 10.000.01, Definitions; and OAR 105-010-0000

Collective Bargaining Agreement (CBA): A written agreement between the State of Oregon, (Department of Administrative Services) and a labor union. References to CBAs contained in this policy are applicable only to employees covered by a CBA.

Complainant: A person or persons allegedly subjected to discrimination, workplace harassment or sexual harassment.

Contractor: For the purpose of this policy, a contractor is an individual or business with whom the State of Oregon has entered into an agreement or contract to provide goods or services. Qualified rehabilitation facilities who by contract provide temporary workers to state agencies are considered contractors. Contractors are not subject to ORS 240 but must comply with all federal and state laws.

Discrimination: Making employment decisions related to hiring, firing, transferring, promoting, demoting, benefits, compensation, and other terms and conditions of employment, based on or because of an employee's protected class status.

Employee: Any person employed by the state in one of the following capacities: management service, unclassified executive service, unclassified or classified unrepresented service, unclassified or classified represented service, or represented or unrepresented temporary service. For the purpose of this policy, this definition includes board and commission members, and individuals who volunteer their services on behalf of state government.

Higher Standard: Applies to managers and supervisors. Proactively taking an affirmative

posture to create and maintain a discrimination and harassment free workplace.

Manager/Supervisor: Those who supervise or have authority or influence to effect employment decisions.

Protected Class Under Federal Law: Race; color; national origin; sex (includes pregnancy-related conditions); religion; age (40 and older); disability; a person who uses leave covered by the Federal Family and Medical Leave Act; a person who uses Military Leave; a person who associates with a protected class; a person who opposes unlawful employment practices, files a complaint or testifies about violations or possible violations; and any other protected class as defined by federal law.

Protected Class Under Oregon State Law: All Federally protected classes, plus: age (18 and older); physical or mental disability; injured worker; a person who uses leave covered by the Oregon Family Leave Act; marital status; family relationship; sexual orientation; whistleblower; expunged juvenile record; and any other protected class as defined by state law.

Sexual Harassment: Sexual harassment is unwelcome, unwanted, or offensive sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

1) Submission to such conduct is made either explicitly or implicitly a term or condition of the individual's employment, or is used as a basis for any employment decision (granting leave requests, promotion, favorable performance appraisal, etc.); or

2) Such conduct is unwelcome, unwanted or offensive and has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

Examples of sexual harassment include but are not limited to: unwelcome, unwanted, or offensive touching or physical contact of a sexual nature, such as, closeness, impeding or blocking movement, assaulting or pinching; gestures; innuendoes; teasing, jokes, and other sexual talk; intimate inquiries; persistent unwanted courting; sexist put-downs or insults; epithets; slurs; or derogatory comments.

Sexual Orientation under Oregon State Law: An individual's actual or perceived heterosexuality, homosexuality, bisexuality or gender identity, regardless of whether the individual's gender identity, appearance, expression or behavior differs from that traditionally associated with the individual's sex at birth.

Workplace Harassment: Unwelcome, unwanted or offensive conduct based on or because of an employee's protected class status.

Harassment may occur between a manager/supervisor and a subordinate, between employees, and among non-employees who have business contact with employees. A complainant does not have to be the person harassed, but could be a person affected by the offensive conduct.

Examples of harassing behavior include, but are not limited to, derogatory remarks, slurs and jokes about a person's protected class status.

POLICY

(1) **The State of Oregon is committed to a discrimination and harassment free work environment. This policy outlines types of prohibited conduct and procedures for reporting and investigating prohibited conduct.**

(a) **Discrimination, Workplace Harassment and Sexual Harassment.** The State of Oregon provides a work environment free from unlawful discrimination or workplace harassment based on or because of an employee's protected class status. Additionally, the state of Oregon provides a work environment free from sexual harassment. Employees at every level of the organization, including state temporary employees and volunteers, must conduct themselves in a business-like and professional manner at all times and not engage in any form of discrimination, workplace harassment or sexual harassment.

(b) **Higher Standard.** Managers/supervisors are held to a higher standard and are expected to take a proactive stance to ensure the integrity of the work environment. Managers/supervisors must exercise reasonable care to prevent and promptly correct any discrimination, workplace harassment or sexual harassment they know about or should know about.

(c) **Reporting.** Anyone who is subject to or aware of what he or she believes to be discrimination, workplace harassment, or sexual harassment should report that behavior to the employee's immediate supervisor, another manager, or the agency, board, or commission Human Resource section, Executive Director, or chair, as applicable. A report of discrimination, workplace harassment or sexual harassment is considered a complaint. A supervisor or manager receiving a complaint should promptly notify the Human Resource section, Executive Director, or chair, as applicable.

(A) A complaint may be made orally or in writing.

(B) A complaint must be filed within one year of the occurrence.

(C) An oral or written complaint should contain the following:

(i) the name of the person filing the report;

(ii) the name of the complainant;

(iii) the names of all parties involved, including witnesses;

(iv) a specific and detailed description of the conduct or action that the employee believes is discriminatory or harassing;

(v) the date or time period in which the alleged conduct occurred; and

(vi) a description of the remedy the employee desires.

(d) **Other Reporting Options.** Nothing in this policy prevents any person from filing a formal grievance in accordance with a CBA, or a formal complaint with the Bureau of Labor and Industries (BOLI) or the Equal Employment Opportunity Commission (EEOC) **or if applicable, the United States Department of Labor (USDOL) Civil Rights Center.** However, some CBAs require an employee to choose between the complaint procedure outlined in the CBA and filing a BOLI or EEOC complaint.

(e) **Filing a Report with the USDOL Civil Rights Center.** An employee whose position is funded by the Oregon Workforce Investment Act (WIA), such as employees of the Oregon Workforce One-stop System, may file a complaint under the WIA, Methods of Administration (MOA) with the State of Oregon WIA, MOA Equal Opportunity Officer or directly through the USDOL, Civil Rights Center. The

complaint must be written, signed and filed within 180 days of when the alleged discrimination or harassment occurred.

- (f) **Investigation.** The agency, board, or commission Human Resource section, Executive Director, or chair, as applicable, will coordinate and conduct or delegate responsibility for coordinating and conducting an investigation.
- (A) All complaints will be taken seriously and an investigation will be initiated as quickly as possible.
 - (B) The agency, board or commission may need to take steps to ensure employees are protected from further potential discrimination or harassment.
 - (C) Complaints will be dealt with in a discreet and confidential manner, to the extent possible.
 - (D) All parties are expected to cooperate with the investigation and keep information regarding the investigation confidential.
 - (E) The agency, board or commission will notify the accused and all witnesses that retaliating against a person for making a report of discrimination, workplace harassment or sexual harassment will not be tolerated.
 - (F) The agency, board or commission will notify the complainant and the accused when the investigation is concluded.
 - (G) Immediate and appropriate action will be taken if a complaint is substantiated.
 - (H) The agency, board or commission will inform the complainant if any part of a complaint is substantiated and that action has been taken. The complainant will not be given the specifics of the action.
 - (I) The complainant and the accused will be notified by the agency, board or commission if a complaint is not substantiated.
- (g) **Penalties.** Conduct in violation of this policy will not be tolerated.
- (A) Employees engaging in conduct in violation of this policy may be subject to disciplinary action up to and including dismissal.
 - (B) State temporary employees and volunteers who engage in conduct in violation of this policy may be subject to termination of their working or volunteer relationship with the agency, board or commission.
 - (C) An agency, board or commission may be liable for discrimination, workplace harassment or sexual harassment if it knows of or should know of conduct in violation of this policy and fails to take prompt, appropriate action.
 - (D) Managers and supervisors who know or should know of conduct in violation of this policy and who fail to report such behavior or fail to take prompt, appropriate action may be subject to disciplinary action up to and including dismissal.
 - (E) An employee who engages in harassment of other employees while away from the workplace and outside of working hours may be subject to the provisions of this policy if that conduct has a negative impact on the work environment and/or working relationships.
 - (F) If a complaint involves the conduct of a contracted employee or a contractor, the agency, board, or commission Human Resource section, Executive Director, chair, or designee must inform the contractor

of the problem behavior and require prompt, appropriate action.

(G) If a complaint involves the conduct of a client, customer, or visitor, the agency, board or commission should follow its own internal procedures and take prompt, appropriate action.

(h) Retaliation. This policy prohibits retaliation against employees who file a complaint, participate in an investigation, or report observing discrimination, workplace harassment or sexual harassment.

(A) Employees who believe they have been retaliated against because they filed a complaint, participated in an investigation, or reported observing discrimination, workplace harassment or sexual harassment, should report this behavior to the employee's supervisor, another manager, the Human Resource section, the Executive Director, or the chair, as applicable. Complaints of retaliation will be investigated promptly.

(B) Employees who violate this policy by retaliating against others may be subject to disciplinary action, up to and including dismissal.

(C) State temporary employees and volunteers who retaliate against others may be subject to termination of their working or volunteer relationship with the agency, board or commission.

(i) Policy Notification. All employees including state temporary employees and volunteers shall:

(A) be given a copy or the location of Statewide Policy 50.010.01, Discrimination and Harassment Free Workplace;

(B) be given directions to read the policy;

(C) be provided an opportunity to ask questions and have their questions answered; and

(D) sign an acknowledgement indicating the employee read the policy and had the opportunity to ask questions.

(i) Signed acknowledgements are kept on file at the agency, board or commission.

(1) Performance Measure:	Percent of employees informed of Policy 50.010.01, prohibited behavior and reporting procedures.
Performance Standard:	100%
(2) Performance Measure:	Percent of complaints where prompt, appropriate action is taken following investigation of a substantiated complaint.
Performance Standard:	100%

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AGENCY POLICY 581-210

Effective Date: 07-25-2006

APPROVED: Signature on File at ODE

RE: Promotion and Maintenance of a Respectful Workplace

PURPOSE: The Department is committed to promoting and maintaining a work environment that is respectful of all persons, which is a work site that is (1) positive, respectful, productive and (2) is free of discrimination or workplace harassment – behavior, action, or language that creates a hostile, intimidating, offensive, or abusive environment.

POLICY:

BASIS OF COMPLAINTS

Discrimination: It is the policy of the Department to provide a work environment free from unlawful discrimination on the basis of race, color, religion, sex, marital status, national origin, mental or physical disability, age, family relationship, association with anyone of a particular race, color, sex, national origin, marital status, age or religion, application for workers' compensation benefits, request to take or taking protected family leave when making employment decisions. Prohibited discrimination includes discrimination on the basis of sexual orientation. This applies to issues relating to hiring, firing, transfer, promotion, benefits, compensation, and other terms and conditions of employment.

Workplace Harassment: It is the philosophy of the Department all employees, customers, clients, contractors and visitors to the work site enjoy a work environment that is free from harassing behavior, regardless of whether it rises to the level of illegal harassment. Employees at all levels of the organization are expected to conduct themselves in a business-like and professional manner and refrain from conduct that to a reasonable person would be offensive, intimidating, hostile, or abusive.

Employees are prohibited from retaliating against any employee who brings charges of conduct in violation of this policy or who assists in investigating charges, or who reports harassing behavior directed at persons other than the employee. Any employee found to have engaged in retaliatory action or behavior shall be subject to discipline, up to and including dismissal.

TYPES OF COMPLAINTS

There are two types of discrimination or harassment complaints: internal and external. Internal complaints are those complaints reported to parties within the Department and investigated by responsible officials within the Department. External complaints are those filed with an outside enforcement agency (i.e., Oregon Bureau of Labor and Industries).

Internal Complaints: Department policy encourages resolution of employee complaints internally whenever possible.

External Complaints: External complaints can be filed with the following:

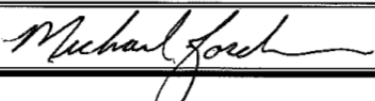
- Governor's Affirmative Action Office
- Civil Rights Division of the Bureau of Labor & Industries (most frequently used for external complaints)
- Equal Employment Opportunity Commission (EEOC)

INTERNAL COMPLAINT PROCEDURE

Anyone who is subject to or is aware of harassing behavior should report that information immediately to Department management. If at all possible, the report should be made before the behavior becomes severe. The complaint may be reported to the employee's immediate supervisor, another manager/supervisor, or a Human Resources staff member. Employees are encouraged to work through their supervisor, however it is recognized that an employee is not compelled to follow any particular chain of command. Classified represented employees may have a union steward accompany them during this process during regular work hours.

REFERENCE

SEIU-Represented Employees	Collective Bargaining Agreement Article 22
Classified Unrepresented Employees	Department of Administrative Services HRSD state policy 70.005.05
Management Service Employees	Department of Administrative Services HRSD state policy 70.000.10
All Employees	Department of Administrative Services HRSD state policy 50.010.01
Bureau of Labor and Industries	www.boli.state.or.us

SUBJECT: Maintaining a Professional Workplace	NUMBER: 50.010.03
DIVISION: Chief Human Resource Office	EFFECTIVE DATE: 11/01/13
APPROVED: 	

POLICY STATEMENT: It is the policy of Oregon state government that mutual respect between and among managers, employees, temporary employees and volunteers is integral to the efficient conduct of business. All individuals work together to create and maintain a work environment that is respectful, professional and free from inappropriate workplace behavior.

AUTHORITY: ORS 240.145 and ORS 240.250

APPLICABILITY: All employees, including temporary employees and volunteers, and others working in the agency

DEFINITIONS: **Professional Workplace Behavior:** Supporting the values and mission of Oregon state government and the agency, building positive relationships with others, communicating in a respectful manner, holding oneself accountable and pursuing change within the system.

Inappropriate Workplace Behavior: Unwelcome or unwanted conduct or behavior that causes a negative impact or disruption to the workplace or the business of the state, or results in the erosion of employee morale and is not associated with an employee's protected class status.¹ (See State HR Policy 50.010.01 Discrimination and Harassment Free Workplace for guidance on issues involving protected class status.)

Examples of inappropriate workplace behavior include but are not limited to, comments, actions or behaviors of an individual or group that **embarrass, humiliate, intimidate**, disparage, demean, or show disrespect for another employee, a manager, a subordinate, a **volunteer**, a customer, a contractor or a visitor in the workplace.

¹ Protected Class Under Federal Law: Race; color; national origin; sex (includes pregnancy-related conditions); religion; age (40 and older); disability; a person who uses leave covered by the Federal Family and Medical Leave Act; a person who uses Military Leave; a person who associates with a protected class; a person who opposes unlawful employment practices, files a complaint or testifies about violations or possible violations; and any other protected class as defined by federal law.

Protected Class Under Oregon State Law: All federally protected classes, plus: age (18 and older); physical or mental disability; injured worker; a person who uses leave covered by the Oregon Family Leave Act; marital status; family relationship; sexual orientation; whistleblower; expunged juvenile record; and any other protected class as defined by state law.

Inappropriate workplace behavior does not include actions of performance management such as supervisor instructions, expectations or feedback, administering of disciplinary actions, or investigatory meetings.

Inappropriate workplace behavior does not include assigned, requested or unsolicited constructive peer feedback on projects or work.

State HR Policy 10.000.01 Definitions and OAR 105-010-0000

POLICY

- (1) **Conduct** Employees of all service types, temporary employees and volunteers, at every level of the agency (includes boards and commissions) must foster an environment that encourages professionalism and discourages disrespectful behavior. All employees, temporary employees and volunteers must behave respectfully and professionally and refrain from engaging in inappropriate workplace behavior.
- (2) **Addressing Inappropriate Workplace Behavior**
 - (a) Supervisors must address inappropriate behavior they observe or experience and should do so as close to the time of the occurrence as possible and appropriate.
 - (b) If an employee, **temporary employee or volunteer** observes or experiences inappropriate workplace behavior and feels comfortable in doing so, he or she should **do one or both of the following**:
 - (A) Redirect inappropriate conversations or behavior to workplace business
 - (B) Tell an offending employee, **temporary employee or volunteer** his or her behavior is offensive and ask him or her to stop.
- (3) **Reporting Inappropriate Workplace Behavior**
 - (a) An employee, **temporary employee or volunteer** should report inappropriate workplace behavior he or she experiences or observes to his or her immediate supervisor as soon as practical. If the employee, **temporary employee or volunteer's** immediate supervisor is the one engaging in the inappropriate behavior, **he or she** should report the behavior to upper management, the agency head or agency Human Resource section, as soon as practical. The report may be **verbal** or **written**.
 - (b) If past practice exists in the agency, an employee represented by a labor union may have a union representative present during regular work hours, when reporting inappropriate workplace behavior and through the process set forth in this policy.
- (4) **Responding to a Report of Inappropriate Workplace Behavior** Inappropriate workplace behavior must be addressed and corrected before it becomes pervasive, causes further workplace disruption or lowers morale. Unless the agency decides otherwise, the supervisor of the **individual** allegedly engaging in inappropriate workplace behavior must **address²** the report as soon as possible.

² The agency determines the best method of addressing the report, depending upon the behavior reported or observed, including determining method of follow up if necessary.

(5) Consequences

- (a) Any employee found to have engaged in inappropriate workplace behavior, will be counseled, or, depending on the severity of the behavior, may be subject to discipline, up to and including dismissal.
 - (b) An employee in trial service found to have engaged in inappropriate workplace behavior may be removed from trial service.
 - (c) A temporary employee or volunteer found to have engaged in inappropriate workplace behavior will be counseled or, depending on the severity of the behavior, may have his or her service terminated.
 - (d) A supervisor who fails to address inappropriate behavior, will be counseled, or, depending on the severity of the behavior, may be subject to disciplinary action, up to and including dismissal.
- (6) Retaliation** Retaliating against someone for reporting or addressing inappropriate workplace behavior is prohibited. An employee who believes he or she is experiencing retaliation as a result of reporting inappropriate behavior should report this to his or her immediate supervisor as soon as practical³. The agency will investigate reports of retaliation. Any employee found to have engaged in retaliation may be subject to discipline, up to and including dismissal. An employee in trial service found to have engaged in retaliation may be removed from trial service. A temporary employee or volunteer found to have engaged in retaliation may have his or her service terminated.
- (7) Policy Notification.** All employees including temporary employees and volunteers will:
- (a) Be given a copy or told the location of State HR Policy 50.010.03 Maintaining a Professional Workplace by the agency
 - (b) Be given directions to read the policy
 - (c) Be provided an opportunity to ask questions and have their questions answered
 - (d) Acknowledge he or she read the policy and had the opportunity to ask questions
 - (A) The agency decides the form of the acknowledgement, such as electronic, signed, or other documented acknowledgment
 - (B) The agency may create and offer training as it deems necessary.

³ If the employee believes his or her immediate supervisor is engaging in retaliation, he or she should report the behavior to the agency human resource office, upper management or the agency head as soon as practical.

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AGENCY POLICY 581-208

Effective Date: 05-09-2006

APPROVED: Signature on File at ODE

RE: Support of Employee Involvement in Schools and Learning

PURPOSE: The Oregon Department of Education (ODE) recognizes the importance of family and community involvement in children's success in school and learning. ODE encourages employees to participate in school and learning activities by providing flexibility in work schedules.

POLICY:

Management may allow an employee time away from regular duties to attend school and learning-related functions for children. Examples of such activities include but are not limited to school-based activities, field trips, volunteering for reading or mentoring programs, and, etc. The employee must present the request in writing and allow sufficient time for management to review the request and respond.

Management must consider such things as office needs and whether services can be adequately maintained when reviewing requests for time off. Management may also consider the frequency of requests and disruption to the office when considering leave requests.

The manager and employee can mutually agree to flex schedules, time off using vacation, comp time or leave without pay as appropriate in accordance with relevant collective bargaining agreements and ODE Policy 581-204, Alternate Work Schedules.

Management and executive service employees will follow the same basic principles as represented staff in requesting school and learning involvement leave.

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AGENCY POLICY

581-501

Effective Date: 06-27-2006

APPROVED: Signature on File at ODE

RE: Payment of Tuition for Accredited Higher Education

PURPOSE: The purpose of the program is to provide a structured and equitable system for Permanent Classified, Management and Executive Service staff to obtain needed education, advance employee skills and to recognize that benefits of education are portable and therefore shared by ODE and the individual.

POLICY:

This Policy is specific to Agency payment for tuition expenses for ODE employees attending courses at credit granting institutes of higher education accredited by an agency approved by the U.S. Secretary of Education. This Policy does not apply to conference, workshop or trade-specific trainings that do not grant higher education credit to individual students. This policy does not change written agreements entered into prior to the effective date of this policy. This policy does not supersede any collective bargaining agreement and is intended to be implemented within available resources.

1. When Management Directs Attendance in a Course or Program

In a case where the specific education is a unique and specialized job requirement not normally found in job applicants, or became a requirement of a current position after an employee was hired, the Agency may direct an employee to attend the course and make payment directly to a provider best suited for Agency needs.

2. Considerations When Employee Requests Tuition Payment for Attendance in a Course or Program

- a. Permanent employees may request tuition payment using a form prescribed by the Unit Coordinators. The form provides space for all required justifications and agreements. The employee shall include a description of the program and how it will be of benefit to the State. The employee's Assistant Superintendent, or written delegate, must approve each course or program of study in advance.

- b. Assistant Superintendents, or written delegates, must consider the requesting employee's impact and potential benefit to the Agency in making any decision grant tuition payment under this policy. The Course or program must be relevant to current career field and of benefit to the agency.
- c. The employee must present proof of grade and proof of payment for reimbursement. Reimbursement can only be made upon completion of the course with a course grade of at least a C (2.0), a "Pass" in the case of a Pass/Fail course, or meet the minimum requirements of the program.

3. Considerations for Selection of Education Program and Location

- a. Every effort should be taken to maximize the use of public community colleges or state university courses or programs.
- b. Private institutions should only be used when the course or program of instruction is deemed necessary and there is no equivalent program available within 35 miles of the employee's place of business.
- c. Distance Learning is an acceptable delivery method in this policy.
- d. The Assistant Superintendent, or written delegate, shall provide a justification of the education program selected and describe the balance of the benefit to the state and the employee. Assistant Superintendent, or written delegate, may consider any relevant factors in this justification such as quality of the program, timing, availability, and impact on employee's schedule.

4. Limitations

- a. It is not the intent of this policy to give unlimited access to ever increasing levels of education, such as gaining advanced degrees, without due consideration to the benefit to the Agency. Requests should not be approved for courses in programs significantly above or unrelated to the employee's current position.
- b. Each request must be reviewed by the employee's Assistant Superintendent. After completion of education, the employee must agree to continue in state service for a period of six months or twice the period of training, whichever is greater. The employee shall also agree to reimburse to the state an amount of tuition proportionate to the unfulfilled portion of the commitment in the event he/she does not fulfill this commitment. Under extenuating circumstances, such commitments may be modified or waived by the agency appointing authority.
- c. Reimbursement for tuition at private institutions will be limited to the comparable tuition costs for comparable program or level of education at the nearest State University. This

policy may be used to reimburse Tuition and course fees only. This policy may not be used to reimburse parking, student activity fees, elective fees or books.

- d. Employees enrolled in Distance Learning programs may not use ODE computers during work hours to complete coursework.
- e. This policy shall not be used for Educational Leave with Pay. This Policy is limited to specific courses or programs of study that support employees to continue in performance of their duties.

5. Benefits

- a. The Assistant Superintendent, or written delegate, may approve individuals to take classes during normal work hours in a paid status, and/or;
- b. Reimbursement of up to 100% of tuition cost, based on their assessment of the balance of benefit to the employee and the Agency.
- c. Agency will not pay for overtime, compensatory time, employee travel or travel related expenses except when course is required as in paragraph 1.

Reference/Authority

DAS/SEIU 2007-2009 Collective Bargaining Agreement, Article 121.5, Section 2

DAS STATEWIDE ADMINISTRATIVE RULE 105-040-0015

Veteran's Preference in Employment

Applicability: Recruitment and selection processes for all State of Oregon positions in agencies subject to ORS 240, State Personnel Relations Law, including but not limited to promotional opportunities.

(1) Definitions: (See also HRSD Rule 105-010-0000 Definitions Applicable Generally to Personnel Rules and Policies.)

(a) Initial Application Screening: An agency's process of determining whether an applicant meets the minimum and special qualifications for a position. An Initial Application Screening may also include an evaluation of skills or grading of supplemental test questions if required on the recruiting announcement.

(b) Application Examination: The selection process utilized by an agency after Initial Application Screening. This selection process includes, but is not limited to, formal testing or other assessments resulting in a score as well as un-scored examinations such as interviews and reference checks.

(c) Veteran and Disabled Veteran: As defined by ORS 408.225 and 408.235.

(2) Application of preference points upon Initial Application Screening: Qualifying Veterans and Disabled Veterans receive preference points as follows;

(a) Five Veteran's Preference points are added upon Initial Application Screening when an applicant submits as verification of eligibility a copy of the Certificate of Release or Discharge from Active Duty (DD Form 214 or 215), or a letter from the US Department of Veteran's Affairs indicating the applicant receives a non-service connected pension with the State of Oregon Application; or

(b) Ten Disabled Veteran's points are added upon Initial Application Screening when an applicant submits as verification of eligibility a copy of the Certificate of Release or Discharge from Active Duty (DD Form 214 or 215) with the State of Oregon Application. Disabled Veterans must also submit a copy of their Veteran's disability preference letter from the US Department of Veteran Affairs, unless the information is included in the DD Form 214 or 215.

(c) Veteran's and Disabled Veteran's preference points are not added when a Veteran or Disabled Veteran fails to meet the minimum or the special qualifications for a position.

(3) Following an Initial Application Screening the agency generates a list of qualified applicants to consider for Appointment. An Appointing Authority or designee may then:

(a) Determine whether or not to interview all applicants who meet the minimum and special qualifications of the position (including all Veterans and Disabled Veterans); or

(b) Select a group of Veteran and Disabled Veteran applicants who most closely match the agency's purposes in filling the position. This group of applicants may be considered along

with non-veteran applicants who closely match the purposes of the agency in filling the position as determined by:

(A) Scored Application Examinations (including scored interviews): If an agency utilizes, after an Initial Application Screening, a scored Application Examination to determine whom to consider further for Appointment, the agency will add (based on a 100-point scale) five points to a Veteran's score or 10 points to a Disabled Veteran's score or;

(B) Un-scored Application Examinations: Un-scored Application Examinations done by sorting into levels (such as "unsatisfactory," "satisfactory," "excellent") based on desired attributes or other criteria for further consideration will be accomplished by:

(i) Advancing the application of a Veteran one level;

(ii) Advancing an application of a Disabled Veteran two levels.

(4) Preference in un-scored interviews: A Veteran or Disabled Veteran who, in the judgment of the Appointing Authority or designee, meets all or substantially all of the agency's purposes in filling the position will continue to be considered for Appointment.

(5) If a Veteran or Disabled Veteran has been determined to be equal to the top applicant or applicants for a position by the Appointing Authority or designee then the Veteran or Disabled Veteran is ranked more highly than non-veteran applicants and, a Disabled Veteran is ranked more highly than non-veteran and Veteran applicants.

(6) Preference described in Sections 2 through 5 of this rule is not a requirement to appoint a Veteran or Disabled Veteran to a position. An agency may base a decision not to appoint the Veteran or Disabled Veteran solely on the Veteran's or Disabled Veteran's merits or qualifications.

(7) A Veteran or a Disabled Veteran applicant not appointed to a position may request an explanation from the agency. The request must be in writing and be sent within 30 calendar days of the date the Veteran or Disabled Veteran was notified that they were not selected. The agency will respond in writing with the reasons for not appointing the Veteran or Disabled Veteran.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth: ORS 240.145(3) & 240.250

Stats. Implemented: ORS 408.225, 408.230 & 408.235

Hist.: HRSD 3-2007(Temp), f. & cert ef. 9-5-07 thru 3-3-08; HRSD 1-2008, f. 2-27-08, cert. ef. 3-1-08; HRSD 3-2009, f. 12-30-09, cert. ef. 1-1-10

VII. APPENDIX B

Age Discrimination in Employment Act of 1967 (ADEA)

The Age Discrimination in Employment Act of 1967 (ADEA) protects individuals who are 40 years of age or older from employment discrimination based on age. The ADEA's protections apply to both employees and job applicants. Under the ADEA, it is unlawful to discriminate against a person because of his/her age with respect to any term, condition, or privilege of employment, including hiring, firing, promotion, layoff, compensation, benefits, job assignments, and training. The ADEA permits employers to favor older workers based on age even when doing so adversely affects a younger worker who is 40 or older.

It is also unlawful to retaliate against an individual for opposing employment practices that discriminate based on age or for filing an age discrimination charge, testifying, or participating in any way in an investigation, proceeding, or litigation under the ADEA.

The ADEA applies to employers with 20 or more employees, including state and local governments. It also applies to employment agencies and labor organizations, as well as to the federal government. ADEA protections include:

- **Apprenticeship Programs**

It is generally unlawful for apprenticeship programs, including joint labor-management apprenticeship programs, to discriminate on the basis of an individual's age. Age limitations in apprenticeship programs are valid only if they fall within certain specific exceptions under the ADEA or if the EEOC grants a specific exemption.

- **Job Notices and Advertisements**

The ADEA generally makes it unlawful to include age preferences, limitations, or specifications in job notices or advertisements. A job notice or advertisement may specify an age limit only in the rare circumstances where age is shown to be a "bona fide occupational qualification" (BFOQ) reasonably necessary to the normal operation of the business.

- **Pre-Employment Inquiries**

The ADEA does not specifically prohibit an employer from asking an applicant's age or date of birth. However, because such inquiries may deter older workers from applying for employment or may otherwise indicate possible intent to discriminate based on age, requests for age information will be closely scrutinized to make sure that the inquiry was made for a lawful purpose, rather than for a purpose prohibited by the ADEA. If the information is needed for a lawful purpose, it can be obtained after the employee is hired.

- **Benefits**

The Older Workers Benefit Protection Act of 1990 (OWBPA) amended the ADEA to specifically prohibit employers from denying benefits to older employees. Congress recognized that the cost of providing certain benefits to older workers is greater than the

cost of providing those same benefits to younger workers, and that those greater costs might create a disincentive to hire older workers. Therefore, in limited circumstances, an employer may be permitted to reduce benefits based on age, as long as the cost of providing the reduced benefits to older workers is no less than the cost of providing benefits to younger workers.

Employers are permitted to coordinate retiree health benefit plans with eligibility for Medicare or a comparable state-sponsored health benefit.

- **Waivers of ADEA Rights**

An employer may ask an employee to waive his/her rights or claims under the ADEA. Such waivers are common in settling ADEA discrimination claims or in connection with exit incentive or other employment termination programs. However, the ADEA, as amended by OWBPA, sets out specific minimum standards that must be met in order for a waiver to be considered knowing and voluntary and, therefore, valid. Among other requirements, a valid ADEA waiver must:

- be in writing and be understandable;
- specifically refer to ADEA rights or claims;
- not waive rights or claims that may arise in the future;
- be in exchange for valuable consideration in addition to anything of value to which the individual already is entitled;
- advise the individual in writing to consult an attorney before signing the waiver; and
- provide the individual at least 21 days to consider the agreement and at least seven days to revoke the agreement after signing it.

If an employer requests an ADEA waiver in connection with an exit incentive or other employment termination program, the minimum requirements for a valid waiver are more extensive. *See Understanding Waivers of Discrimination Claims in Employee Severance Agreements* at http://www.eeoc.gov/policy/docs/qanda_severance-agreements.html

Title I of the Americans with Disabilities Act of 1990 (ADA)

Title I of the Americans with Disabilities Act of 1990 prohibits private employers, state and local governments, employment agencies and labor unions from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions, and privileges of employment. The ADA covers employers with 15 or more employees, including state and local governments. It also applies to employment agencies and to labor organizations. The ADA's nondiscrimination standards also apply to federal sector employees under section 501 of the Rehabilitation Act, as amended, and its implementing rules.

An individual with a disability is a person who:

- Has a physical or mental impairment that substantially limits one or more major life activities;
- Has a record of such an impairment; or
- Is regarded as having such an impairment.
- A qualified employee or applicant with a disability is an individual who, with or without reasonable accommodation, can perform the essential functions of the job in question. Reasonable accommodation may include, but is not limited to:
 - Making existing facilities used by employees readily accessible to and usable by persons with disabilities.
 - Job restructuring, modifying work schedules, reassignment to a vacant position;
 - Acquiring or modifying equipment or devices, adjusting or modifying examinations, training materials, or policies, and providing qualified readers or interpreters.

An employer is required to make a reasonable accommodation to the known disability of a qualified applicant or employee if it would not impose an "undue hardship" on the operation of the employer's business. Reasonable accommodations are adjustments or modifications provided by an employer to enable people with disabilities to enjoy equal employment opportunities. Accommodations vary depending upon the needs of the individual applicant or employee. Not all people with disabilities (or even all people with the same disability) will require the same accommodation. For example:

- A deaf applicant may need a sign language interpreter during the job interview.
- An employee with diabetes may need regularly scheduled breaks during the workday to eat properly and monitor blood sugar and insulin levels.
- A blind employee may need someone to read information posted on a bulletin board.
- An employee with cancer may need leave to have radiation or chemotherapy treatments.

An employer does not have to provide a reasonable accommodation if it imposes an "undue hardship." Undue hardship is defined as an action requiring significant difficulty or expense when considered in light of factors such as an employer's size, financial resources, and the nature and structure of its operation.

An employer is not required to lower quality or production standards to make an accommodation; nor is an employer obligated to provide personal use items such as glasses or hearing aids.

An employer generally does not have to provide a reasonable accommodation unless an individual with a disability has asked for one. If an employer believes that a medical condition is causing a performance or conduct problem, it may ask the employee how to solve the problem and if the employee needs a reasonable accommodation. Once a reasonable accommodation is requested, the employer and the individual should discuss the individual's needs and identify the appropriate reasonable accommodation. Where more than one accommodation would work, the employer may choose the one that is less costly or that is easier to provide.

Title I of the ADA also covers:

- **Medical Examinations and Inquiries**

Employers may not ask job applicants about the existence, nature, or severity of a disability. Applicants may be asked about their ability to perform specific job functions. A job offer may be conditioned on the results of a medical examination, but only if the examination is required for all entering employees in similar jobs. Medical examinations of employees must be job related and consistent with the employer's business needs.

Medical records are confidential. The basic rule is that with limited exceptions, employers must keep confidential any medical information they learn about an applicant or employee. Information can be confidential even if it contains no medical diagnosis or treatment course and even if it is not generated by a health care professional. For example, an employee's request for a reasonable accommodation would be considered medical information subject to the ADA's confidentiality requirements.

- **Drug and Alcohol Abuse**

Employees and applicants currently engaging in the illegal use of drugs are not covered by the ADA when an employer acts on the basis of such use. Tests for illegal drugs are not subject to the ADA's restrictions on medical examinations. Employers may hold illegal drug users and alcoholics to the same performance standards as other employees.

It is also unlawful to retaliate against an individual for opposing employment practices that discriminate based on disability or for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or litigation under the ADA.

Federal Tax Incentives to Encourage the Employment of People with Disabilities and to Promote the Accessibility of Public Accommodations

The Internal Revenue Code includes several provisions aimed at making businesses more accessible to people with disabilities. The following provides general – non-legal – information about three of the most significant tax incentives. (Employers should check with their accountants or tax advisors to determine eligibility for these incentives or visit the Internal Revenue Service's website, www.irs.gov, for more information. Similar state and local tax incentives may be available.)

- **Small Business Tax Credit (Internal Revenue Code Section 44: Disabled Access Credit)**
Small businesses with either \$1,000,000 or less in revenue or 30 or fewer full-time employees may take a tax credit of up to \$5,000 annually for the cost of providing reasonable accommodations such as sign language interpreters, readers, materials in alternative format such as Braille or large print), the purchase of adaptive equipment, the modification of existing equipment, or the removal of architectural barriers.
- **Work Opportunity Tax Credit (Internal Revenue Code Section 51)**
Employers who hire certain targeted low-income groups, including individuals referred from vocational rehabilitation agencies and individuals receiving Supplemental Security Income (SSI) may be eligible for an annual tax credit of up to \$2,400 for each qualifying employee who works at least 400 hours during the tax year. Additionally, a maximum credit of \$1,200 may be available for each qualifying summer youth employee.
- **Architectural/Transportation Tax Deduction (Internal Revenue Code Section 190 Barrier Removal):**
This annual deduction of up to \$15,000 is available to businesses of any size for the costs of removing barriers for people with disabilities, including the following: providing accessible parking spaces, ramps, and curb cuts; providing wheelchair-accessible telephones, water fountains, and restrooms; making walkways at least 48 inches wide; and making entrances accessible.

Disability Discrimination

Disability discrimination occurs when an employer or other entity covered by the Americans with Disabilities Act, as amended, or the Rehabilitation Act, as amended, treats a qualified individual with a disability who is an employee or applicant unfavorably because she has a disability.

Disability discrimination also occurs when a [covered employer or other entity](#) treats an applicant or employee less favorably because she has a history of a disability (such as cancer that is controlled or in remission) or because she is believed to have a physical or mental impairment that is not transitory (lasting or expected to last six months or less) and minor (even if she does not have such an impairment).

The law requires an employer to provide reasonable accommodation to an employee or job applicant with a disability, unless doing so would cause significant difficulty or expense for the employer ("undue hardship").

The law also protects people from discrimination based on their relationship with a person with a disability (even if they do not themselves have a disability). For example, it is illegal to discriminate against an employee because her husband has a disability.

Note: Federal employees and applicants are covered by the Rehabilitation Act of 1973, instead of the Americans with Disabilities Act. The protections are mostly the same.

Disability Discrimination & Work Situations

The law forbids discrimination when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment.

Disability Discrimination & Harassment

It is illegal to harass an applicant or employee because he has a disability, had a disability in the past, or is believed to have a physical or mental impairment that is not transitory (lasting or expected to last six months or less) and minor (even if he does not have such an impairment).

Harassment can include, for example, offensive remarks about a person's disability.

Although the law doesn't prohibit simple teasing, offhand comments, or isolated incidents that aren't very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted).

The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer.

Disability Discrimination & Reasonable Accommodation

The law requires an employer to provide reasonable accommodation to an employee or job applicant with a disability, unless doing so would cause significant difficulty or expense for the employer.

A reasonable accommodation is any change in the work environment (or in the way things are usually done) to help a person with a disability apply for a job, perform the duties of a job, or enjoy the benefits and privileges of employment.

Reasonable accommodation might include, for example, making the workplace accessible for wheelchair users or providing a reader or interpreter for someone who is blind or hearing impaired.

While the federal anti-discrimination laws don't require an employer to accommodate an employee who must care for a disabled family member, the Family and Medical Leave Act (FMLA) may require an employer to take such steps. The Department of Labor enforces the FMLA. For more information, call: 1-866-487-9243.

Disability Discrimination & Reasonable Accommodation & Undue Hardship

An employer doesn't have to provide an accommodation if doing so would cause undue hardship to the employer.

Undue hardship means that the accommodation would be too difficult or too expensive to provide, in light of the employer's size, financial resources, and the needs of the business. An employer may not refuse to provide an accommodation just because it involves some cost. An employer does not have to provide the exact accommodation the employee or job applicant wants. If more than one accommodation works, the employer may choose which one to provide.

Definition Of Disability

Not everyone with a medical condition is protected by the law. In order to be protected, a person must be qualified for the job and have a disability as defined by the law.

A person can show that he or she has a disability in one of three ways:

- A person may be disabled if he or she has a physical or mental condition that substantially limits a major life activity (such as walking, talking, seeing, hearing, or learning).
- A person may be disabled if he or she has a history of a disability (such as cancer that is in remission).
- A person may be disabled if he is believed to have a physical or mental impairment that is not transitory (lasting or expected to last six months or less) and minor (even if he does not have such an impairment).

Disability & Medical Exams During Employment Application & Interview Stage

The law places strict limits on employers when it comes to asking job applicants to answer medical questions, take a medical exam, or identify a disability.

For example, an employer may not ask a job applicant to answer medical questions or take a medical exam before extending a job offer. An employer also may not ask job applicants if they have a disability (or about the nature of an obvious disability). An employer may ask job applicants whether they can perform the job and how they would perform the job, with or without a reasonable accommodation.

Disability & Medical Exams After A Job Offer For Employment

After a job is offered to an applicant, the law allows an employer to condition the job offer on the applicant answering certain medical questions or successfully passing a medical exam, but only if all new employees in the same type of job have to answer the questions or take the exam.

Disability & Medical Exams For Persons Who Have Started Working As Employees

Once a person is hired and has started work, an employer generally can only ask medical questions or require a medical exam if the employer needs medical documentation to support an employee's request for an accommodation or if the employer believes that an

employee is not able to perform a job successfully or safely because of a medical condition.

The law also requires that employers keep all medical records and information confidential and in separate medical files.

Available Resources

In addition to a variety of [formal guidance documents](#), EEOC has developed a wide range of fact sheets, question & answer documents, and other publications to help employees and employers understand the complex issues surrounding disability discrimination.

- [Your Employment Rights as an Individual With a Disability](#)
- [Job Applicants and the ADA](#)
- [Understanding Your Employment Rights Under the ADA: A Guide for Veterans](#)
- [Questions and Answers: Promoting Employment of Individuals with Disabilities in the Federal Workforce](#)
- [The Family and Medical Leave Act, the ADA, and Title VII of the Civil Rights Act of 1964](#)
- [The ADA: A Primer for Small Business](#)
- [Your Responsibilities as an Employer](#)
- [Small Employers and Reasonable Accommodation](#)
- [Work At Home/Telework as a Reasonable Accommodation](#)
- [Applying Performance And Conduct Standards To Employees With Disabilities](#)
- [Obtaining and Using Employee Medical Information as Part of Emergency Evacuation Procedures](#)
- [Veterans and the ADA: A Guide for Employers](#)
- [Pandemic Preparedness in the Workplace and the Americans with Disabilities Act](#)
- [Employer Best Practices for Workers with Caregiving Responsibilities](#)
- [Reasonable Accommodations for Attorneys with Disabilities](#)
- [How to Comply with the Americans with Disabilities Act: A Guide for Restaurants and Other Food Service Employers](#)
- [Final Report on Best Practices For the Employment of People with Disabilities In State Government](#)
- [ABCs of Schedule A Documents](#)

The ADA Amendments Act

- [Final Regulations Implementing the ADAAA](#)
- [Questions and Answers on the Final Rule Implementing the ADA Amendments Act of 2008](#)
- [Questions and Answers for Small Businesses: The Final Rule Implementing the ADA Amendments Act of 2008](#)
- [Fact Sheet on the EEOC's Final Regulations Implementing the ADAAA](#)

The Questions and Answers Series

- [Health Care Workers and the Americans with Disabilities Act](#)
- [Deafness and Hearing Impairments in the Workplace and the Americans with Disabilities Act](#)
- [Blindness and Vision Impairments in the Workplace and the ADA](#)
- [The Americans with Disabilities Act's Association Provision](#)
- [Diabetes in the Workplace and the ADA](#)
- [Epilepsy in the Workplace and the ADA](#)
- [Persons with Intellectual Disabilities in the Workplace and the ADA](#)
- [Cancer in the Workplace and the ADA](#)

Mediation and the ADA

- [Questions and Answers for Mediation Providers: Mediation and the Americans with Disabilities Act \(ADA\)](#)
- [Questions and Answers for Parties to Mediation: Mediation and the Americans with Disabilities Act \(ADA\)](#)

Equal Pay and Compensation Discrimination Equal Pay Act of 1963, and Title VII of the Civil Rights Act of 1964

The right of employees to be free from discrimination in their compensation is protected under several federal laws, including the following enforced by the U.S. Equal Employment Opportunity Commission: the [Equal Pay Act of 1963](#), [Title VII of the Civil Rights Act of 1964](#), the [Age Discrimination in Employment Act of 1967](#), and [Title I of the Americans with Disabilities Act of 1990](#).

The law against compensation discrimination includes all payments made to or on behalf employees as remuneration for employment. All forms of compensation are covered, including salary, overtime pay, bonuses, stock options, profit sharing and bonus plans, life insurance, vacation and holiday pay, cleaning or gasoline allowances, hotel accommodations, reimbursement for travel expenses, and benefits.

Equal Pay Act

The Equal Pay Act requires that men and women be given equal pay for equal work in the same establishment. The jobs need not be identical, but they must be substantially equal. It is job content, not job titles, that determines whether jobs are substantially equal. Specifically, the EPA provides that employers may not pay unequal wages to men and women who perform jobs that require substantially equal skill, effort and responsibility, and that are performed under similar working conditions within the same establishment. Each of these factors is summarized below:

Skill

- Measured by factors such as the experience, ability, education, and training required to perform the job. The issue is what skills are required for the job, not what skills the individual employees may have. For example, two bookkeeping jobs could be considered equal under the EPA even if one of the job holders has a master's degree in physics, since that degree would not be required for the job.

Effort

- The amount of physical or mental exertion needed to perform the job. For example, suppose that men and women work side by side on a line assembling machine parts. The person at the end of the line must also lift the assembled product as he or she completes the work and place it on a board. That job requires more effort than the other assembly line jobs if the extra effort of lifting the assembled product off the line is substantial and is a regular part of the job. As a result, it would not be a violation to pay that person more, regardless of whether the job is held by a man or a woman.

Responsibility

- The degree of accountability required in performing the job. For example, a salesperson who is delegated the duty of determining whether to accept customers' personal checks has more responsibility than other salespeople. On the other hand, a minor difference in

responsibility, such as turning out the lights at the end of the day, would not justify a pay differential.

Working Conditions

- This encompasses two factors: (1) physical surroundings like temperature, fumes, and ventilation; and (2) hazards.

Establishment

- The prohibition against compensation discrimination under the EPA applies only to jobs within an establishment. An establishment is a distinct physical place of business rather than an entire business or enterprise consisting of several places of business. In some circumstances, physically separate places of business may be treated as one establishment. For example, if a central administrative unit hires employees, sets their compensation, and assigns them to separate work locations, the separate work sites can be considered part of one establishment.

Pay differentials are permitted when they are based on seniority, merit, quantity or quality of production, or a factor other than sex. These are known as “affirmative defenses” and it is the employer’s burden to prove that they apply.

In correcting a pay differential, no employee’s pay may be reduced. Instead, the pay of the lower paid employee(s) must be increased.

Title VII, ADEA, and ADA

Title VII, the ADEA, and the ADA prohibit compensation discrimination on the basis of race, color, religion, sex, national origin, age, or disability. Unlike the EPA, there is no requirement that the claimant’s job be substantially equal to that of a higher paid person outside the claimant’s protected class, nor do these statutes require the claimant to work in the same establishment as a comparator.

Compensation discrimination under Title VII, the ADEA, or the ADA can occur in a variety of forms. For example:

- An employer pays an employee with a disability less than similarly situated employees without disabilities and the employer’s explanation (if any) does not satisfactorily account for the differential.
- An employer sets the compensation for jobs predominately held by, for example, women or African-Americans below that suggested by the employer’s job evaluation study, while the pay for jobs predominately held by men or whites is consistent with the level suggested by the job evaluation study.
- An employer maintains a neutral compensation policy or practice that has an adverse impact on employees in a protected class and cannot be justified as job-related and consistent with business necessity. For example, if an employer provides extra compensation to employees who are the “head of household,” i.e., married with dependents

and the primary financial contributor to the household, the practice may have an unlawful disparate impact on women.

It is also unlawful to retaliate against an individual for opposing employment practices that discriminate based on compensation or for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or litigation under Title VII, ADEA, ADA or the Equal Pay Act.

Source: U.S. Equal Employment Opportunity Commission (EEOC)
<http://www.eeoc.gov/eeoc/publications/fs-epa.cfm>

Title II of the Genetic Information Nondiscrimination Act of 2008 **(GINA)**

Title II of the [Genetic Information Nondiscrimination Act of 2008 \(GINA\)](#), which prohibits genetic information discrimination in employment, took effect on November 21, 2009.

Under Title II of GINA, it is illegal to discriminate against employees or applicants because of genetic information. Title II of GINA prohibits the use of genetic information in making employment decisions, restricts employers and other entities covered by Title II (employment agencies, labor organizations and joint labor-management training and apprenticeship programs - referred to as "covered entities") from requesting, requiring or purchasing genetic information, and strictly limits the disclosure of genetic information.

The EEOC enforces Title II of GINA (dealing with genetic discrimination in employment). The Departments of Labor, Health and Human Services and the Treasury have responsibility for issuing regulations for Title I of GINA, which addresses the use of genetic information in health insurance.

Definition of “Genetic Information”

Genetic information includes information about an individual’s genetic tests and the genetic tests of an individual’s family members, as well as information about the manifestation of a disease or disorder in an individual’s family members (i.e. family medical history). Family medical history is included in the definition of genetic information because it is often used to determine whether someone has an increased risk of getting a disease, disorder, or condition in the future. Genetic information also includes an individual's request for, or receipt of, genetic services, or the participation in clinical research that includes genetic services by the individual or a family member of the individual, and the genetic information of a fetus carried by an individual or by a pregnant woman who is a family member of the individual and the genetic information of any embryo legally held by the individual or family member using an assisted reproductive technology.

Discrimination Because of Genetic Information

The law forbids discrimination on the basis of genetic information when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoffs, training, fringe benefits, or any other term or condition of employment. *An employer may never use genetic information to make an employment decision because genetic information is not relevant to an individual's current ability to work.*

Harassment Because of Genetic Information

Under GINA, it is also illegal to harass a person because of his or her genetic information. Harassment can include, for example, making offensive or derogatory remarks about an applicant or employee’s genetic information, or about the genetic information of a relative of the applicant or employee. Although the law doesn't prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, harassment is illegal when it is so

severe or pervasive that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted). The harasser can be the victim's supervisor, a supervisor in another area of the workplace, a co-worker, or someone who is not an employee, such as a client or customer.

Retaliation

Under GINA, it is illegal to fire, demote, harass, or otherwise “retaliate” against an applicant or employee for filing a charge of discrimination, participating in a discrimination proceeding (such as a discrimination investigation or lawsuit), or otherwise opposing discrimination.

Rules Against Acquiring Genetic Information

- It will usually be unlawful for a covered entity to get genetic information. There are six narrow exceptions to this prohibition:
- Inadvertent acquisitions of genetic information do not violate GINA, such as in situations where a manager or supervisor overhears someone talking about a family member's illness.
- Genetic information (such as family medical history) may be obtained as part of health or genetic services, including wellness programs, offered by the employer on a voluntary basis, if certain specific requirements are met.
- Family medical history may be acquired as part of the certification process for FMLA leave (or leave under similar state or local laws or pursuant to an employer policy), where an employee is asking for leave to care for a family member with a serious health condition.
- Genetic information may be acquired through commercially and publicly available documents like newspapers, as long as the employer is not searching those sources with the intent of finding genetic information or accessing sources from which they are likely to acquire genetic information (such as websites and on-line discussion groups that focus on issues such as genetic testing of individuals and genetic discrimination).
- Genetic information may be acquired through a genetic monitoring program that monitors the biological effects of toxic substances in the workplace where the monitoring is required by law or, under carefully defined conditions, where the program is voluntary.
- Acquisition of genetic information of employees by employers who engage in DNA testing for law enforcement purposes as a forensic lab or for purposes of human remains identification is permitted, but the genetic information may only be used for analysis of DNA markers for quality control to detect sample contamination.

Confidentiality of Genetic Information

It is also unlawful for a covered entity to disclose genetic information about applicants, employees or members. Covered entities must keep genetic information confidential and in a separate medical file. (Genetic information may be kept in the same file as other medical information in compliance with the Americans with Disabilities Act.) There are limited exceptions to this non-disclosure rule, such as exceptions that provide for the disclosure of relevant genetic information to government officials investigating compliance with Title II of GINA and for disclosures made pursuant to a court order.

Source: U.S. Equal Employment Opportunity Commission (EEOC)
<http://www.eeoc.gov/laws/types/genetic.cfm>

National Origin Discrimination

National origin discrimination involves treating people (applicants or employees) unfavorably because they are from a particular country or part of the world, because of ethnicity or accent, or because they appear to be of a certain ethnic background (even if they are not).

National origin discrimination also can involve treating people unfavorably because they are married to (or associated with) a person of a certain national origin or because of their connection with an ethnic organization or group.

Discrimination can occur when the victim and the person who inflicted the discrimination are the same national origin.

National Origin Discrimination & Work Situations

The law forbids discrimination when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment.

National Origin & Harassment

It is unlawful to harass a person because of his or her national origin. Harassment can include, for example, offensive or derogatory remarks about a person's national origin, accent or ethnicity. Although the law doesn't prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted).

The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer.

National Origin & Employment Policies/Practices

The law makes it illegal for an [employer or other covered entity](#) to use an employment policy or practice that applies to everyone, regardless of national origin, if it has a negative impact on people of a certain national origin and is not job-related or necessary to the operation of the business.

An employer can only require an employee to speak fluent English if fluency in English is necessary to perform the job effectively. An "English-only rule", which requires employees to speak only English on the job, is only allowed if it is needed to ensure the safe or efficient operation of the employer's business and is put in place for nondiscriminatory reasons.

An employer may not base an employment decision on an employee's foreign accent, unless the accent seriously interferes with the employee's job performance.

Citizenship Discrimination & Workplace Laws

The Immigration Reform and Control Act of 1986 (IRCA) makes it illegal for an employer to discriminate with respect to hiring, firing, or recruitment or referral for a fee, based upon an individual's citizenship or immigration status. The law prohibits employers from hiring only

U.S. citizens or lawful permanent residents unless required to do so by law, regulation or government contract. Employers may not refuse to accept lawful documentation that establishes the employment eligibility of an employee, or demand additional documentation beyond what is legally required, when verifying employment eligibility (i.e., completing the Department of Homeland Security (DHS) Form I-9), based on the employee's national origin or citizenship status. It is the employee's choice which of the acceptable Form I-9 documents to show to verify employment eligibility.

IRCA also prohibits retaliation against individuals for asserting their rights under the Act, or for filing a charge or assisting in an investigation or proceeding under IRCA.

IRCA's nondiscrimination requirements are enforced by the Department of Justice's Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC), Civil Rights Division. OSC may be reached at:

1-800-255-7688 (voice for employees/applicants),
1-800-237-2515 (TTY for employees/applicants),
1-800-255-8155 (voice for employers), or
1-800-362-2735 (TTY for employers), or
<http://www.usdoj.gov/crt/osc>.

Pregnancy Discrimination

Pregnancy Discrimination

Pregnancy discrimination involves treating a woman (an applicant or employee) unfavorably because of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth.

Pregnancy Discrimination & Work Situations

The Pregnancy Discrimination Act (PDA) forbids discrimination based on pregnancy when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, such as leave and health insurance, and any other term or condition of employment.

Pregnancy Discrimination & Temporary Disability

If a woman is temporarily unable to perform her job due to a medical condition related to pregnancy or childbirth, the employer or other covered entity must treat her in the same way as it treats any other temporarily disabled employee. For example, the employer may have to provide light duty, alternative assignments, disability leave, or unpaid leave to pregnant employees if it does so for other temporarily disabled employees.

Additionally, impairments resulting from pregnancy (for example, gestational diabetes or preeclampsia, a condition characterized by pregnancy-induced hypertension and protein in the urine) may be disabilities under the Americans with Disabilities Act (ADA). An employer may have to provide a reasonable accommodation (such as leave or modifications that enable an employee to perform her job) for a disability related to pregnancy, absent undue hardship (significant difficulty or expense). The ADA Amendments Act of 2008 makes it much easier to show that a medical condition is a covered disability.

For more information about the ADA, see <http://www.eeoc.gov/laws/types/disability.cfm>.

For information about the ADA Amendments Act, see http://www.eeoc.gov/laws/types/disability_regulations.cfm.

Pregnancy Discrimination & Harassment

It is unlawful to harass a woman because of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth. Harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted). The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer.

Pregnancy, Maternity & Parental Leave

Under the PDA, an employer that allows temporarily disabled employees to take disability leave or leave without pay, must allow an employee who is temporarily disabled due to pregnancy to do the same.

An employer may not single out pregnancy-related conditions for special procedures to determine an employee's ability to work. However, if an employer requires its employees to submit a doctor's statement concerning their ability to work before granting leave or paying sick benefits, the employer may require employees affected by pregnancy-related conditions to submit such statements.

Further, under the Family and Medical Leave Act (FMLA) of 1993, a new parent (including foster and adoptive parents) may be eligible for 12 weeks of leave (unpaid or paid if the employee has earned or accrued it) that may be used for care of the new child. To be eligible, the employee must have worked for the employer for 12 months prior to taking the leave and the employer must have a specified number of employees. See

<http://www.dol.gov/whd/regs/compliance/whdfs28.htm>.

Pregnancy & Workplace Laws

Pregnant employees may have additional rights under the Family and Medical Leave Act (FMLA), which is enforced by the U.S. Department of Labor. Nursing mothers may also have the right to express milk in the workplace under a provision of the Fair Labor Standards Act enforced by the U.S. Department of Labor's Wage and Hour Division.

See <http://www.dol.gov/whd/regs/compliance/whdfs73.htm>.

For more information about the Family Medical Leave Act or break time for nursing mothers, go to <http://www.dol.gov/whd>, or call 202-693-0051 or 1-866-487-9243 (voice), 202-693-7755 (TTY).

Race/Color Discrimination

Race discrimination involves treating someone (an applicant or employee) unfavorably because he/she is of a certain race or because of personal characteristics associated with race (such as hair texture, skin color, or certain facial features). Color discrimination involves treating someone unfavorably because of skin color complexion.

Race/color discrimination also can involve treating someone unfavorably because the person is married to (or associated with) a person of a certain race or color or because of a person's connection with a race-based organization or group, or an organization or group that is generally associated with people of a certain color.

Discrimination can occur when the victim and the person who inflicted the discrimination are the same race or color.

Race/Color Discrimination & Work Situations

The law forbids discrimination when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment.

Race/Color Discrimination & Harassment

It is unlawful to harass a person because of that person's race or color.

Harassment can include, for example, racial slurs, offensive or derogatory remarks about a person's race or color, or the display of racially-offensive symbols. Although the law doesn't prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted).

The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer.

Race/Color Discrimination & Employment Policies/Practices

An employment policy or practice that applies to everyone, regardless of race or color, can be illegal if it has a negative impact on the employment of people of a particular race or color and is not job-related and necessary to the operation of the business. For example, a "no-beard" employment policy that applies to all workers without regard to race may still be unlawful if it is not job-related and has a negative impact on the employment of African-American men (who have a predisposition to a skin condition that causes severe shaving bumps).

Facts About Race/Color Discrimination

Title VII of the Civil Rights Act of 1964 protects individuals against employment discrimination on the basis of race and color as well as national origin, sex, or religion.

It is unlawful to discriminate against any employee or applicant for employment because of race or color in regard to hiring, termination, promotion, compensation, job training, or any other term, condition, or privilege of employment. Title VII also prohibits employment decisions based on stereotypes and assumptions about abilities, traits, or the performance of individuals of certain racial groups.

Title VII prohibits both intentional discrimination and neutral job policies that disproportionately exclude minorities and that are not job related.

Equal employment opportunity cannot be denied because of marriage to or association with an individual of a different race; membership in or association with ethnic based organizations or groups; attendance or participation in schools or places of worship generally associated with certain minority groups; or other cultural practices or characteristics often linked to race or ethnicity, such as cultural dress or manner of speech, as long as the cultural practice or characteristic does not materially interfere with the ability to perform job duties.

Race-Related Characteristics and Conditions

Discrimination on the basis of an immutable characteristic associated with race, such as skin color, hair texture, or certain facial features violates Title VII, even though not all members of the race share the same characteristic.

Title VII also prohibits discrimination on the basis of a condition which predominantly affects one race unless the practice is job related and consistent with business necessity. For example, since sickle cell anemia predominantly occurs in African-Americans, a policy which excludes individuals with sickle cell anemia is discriminatory unless the policy is job related and consistent with business necessity. Similarly, a “no-beard” employment policy may discriminate against African-American men who have a predisposition to pseudofolliculitis barbae (severe shaving bumps) unless the policy is job-related and consistent with business necessity.

Color Discrimination

Even though race and color clearly overlap, they are not synonymous. Thus, color discrimination can occur between persons of different races or ethnicities, or between persons of the same race or ethnicity. Although Title VII does not define “color,” the courts and the Commission read “color” to have its commonly understood meaning – pigmentation, complexion, or skin shade or tone. Thus, color discrimination occurs when a person is discriminated against based on the lightness, darkness, or other color characteristic of the person. Title VII prohibits race/color discrimination against all persons, including Caucasians.

Although a plaintiff may prove a claim of discrimination through direct or circumstantial evidence, some courts take the position that if a white person relies on circumstantial evidence to establish a reverse discrimination claim, he or she must meet a heightened standard of proof. The Commission, in contrast, applies the same standard of proof to all race discrimination claims, regardless of the victim's race or the type of evidence used. In either case, the ultimate burden of persuasion remains always on the plaintiff.

Employers should adopt "best practices" to reduce the likelihood of discrimination and to address impediments to equal employment opportunity.

Title VII's protections include:

- **Recruiting, Hiring, and Advancement**

Job requirements must be uniformly and consistently applied to persons of all races and colors. Even if a job requirement is applied consistently, if it is not important for job performance or business needs, the requirement may be found unlawful if it excludes persons of a certain racial group or color significantly more than others. Examples of potentially unlawful practices include: (1) soliciting applications only from sources in which all or most potential workers are of the same race or color; (2) requiring applicants to have a certain educational background that is not important for job performance or business needs; (3) testing applicants for knowledge, skills or abilities that are not important for job performance or business needs.

Employers may legitimately need information about their employees or applicants race for affirmative action purposes and/or to track applicant flow. One way to obtain racial information and simultaneously guard against discriminatory selection is for employers to use separate forms or otherwise keep the information about an applicant's race separate from the application. In that way, the employer can capture the information it needs but ensure that it is not used in the selection decision.

Unless the information is for such a legitimate purpose, pre-employment questions about race can suggest that race will be used as a basis for making selection decisions. If the information is used in the selection decision and members of particular racial groups are excluded from employment, the inquiries can constitute evidence of discrimination.

- **Compensation and Other Employment Terms, Conditions, and Privileges**

Title VII prohibits discrimination in compensation and other terms, conditions, and privileges of employment. Thus, race or color discrimination may not be the basis for differences in pay or benefits, work assignments, performance evaluations, training, discipline or discharge, or any other area of employment.

- **Harassment**

Harassment on the basis of race and/or color violates Title VII. Ethnic slurs, racial "jokes," offensive or derogatory comments, or other verbal or physical conduct based on an individual's race/color constitutes unlawful harassment if the conduct creates an intimidating, hostile, or offensive working environment, or interferes with the individual's work performance.

- **Retaliation**

Employees have a right to be free from retaliation for their opposition to discrimination or their participation in an EEOC proceeding by filing a charge, testifying, assisting, or otherwise participating in an agency proceeding.

- **Segregation and Classification of Employees**

Title VII is violated where minority employees are segregated by physically isolating them from other employees or from customer contact. Title VII also prohibits assigning primarily minorities to predominantly minority establishments or geographic areas. It is also illegal to exclude minorities from certain positions or to group or categorize employees or jobs so that certain jobs are generally held by minorities. Title VII also does not permit racially motivated decisions driven by business concerns – for example, concerns about the effect on employee relations, or the negative reaction of clients or customers. Nor may race or color ever be a bona fide occupational qualification under Title VII.

Coding applications/resumes to designate an applicant's race, by either an employer or employment agency, constitutes evidence of discrimination where minorities are excluded from employment or from certain positions. Such discriminatory coding includes the use of facially benign code terms that implicate race, for example, by area codes where many racial minorities may or are presumed to live.

- **Pre-Employment Inquiries and Requirements**

Requesting pre-employment information which discloses or tends to disclose an applicant's race suggests that race will be unlawfully used as a basis for hiring. Solicitation of such pre-employment information is presumed to be used as a basis for making selection decisions. Therefore, if members of minority groups are excluded from employment, the request for such pre-employment information would likely constitute evidence of discrimination.

However, employers may legitimately need information about their employees' or applicants' race for affirmative action purposes and/or to track applicant flow. One way to obtain racial information and simultaneously guard against discriminatory selection is for employers to use "tear-off sheets" for the identification of an applicant's race. After the applicant completes the application and the tear-off portion, the employer separates the tear-off sheet from the application and does not use it in the selection process.

Other pre-employment information requests which disclose or tend to disclose an applicant's race are personal background checks, such as criminal history checks. Title VII does not categorically prohibit employers' use of criminal records as a basis for making employment decisions. Using criminal records as an employment screen may be lawful, legitimate, and even mandated in certain circumstances. However, employers that use criminal records to screen for employment must comply with Title VII's nondiscrimination requirements.

Source: U.S. Equal Employment Opportunity Commission (EEOC)
http://www.eeoc.gov/laws/types/race_color.cfm ; <http://www.eeoc.gov/eeoc/publications/fs-race.cfm>

Religious Discrimination

Religious discrimination involves treating a person (an applicant or employee) unfavorably because of his or her religious beliefs. The law protects not only people who belong to traditional, organized religions, such as Buddhism, Christianity, Hinduism, Islam, and Judaism, but also others who have sincerely held religious, ethical or moral beliefs.

Religious discrimination can also involve treating someone differently because that person is married to (or associated with) an individual of a particular religion or because of his or her connection with a religious organization or group.

Religious Discrimination & Work Situations

The law forbids discrimination when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment.

Religious Discrimination & Harassment

It is illegal to harass a person because of his or her religion.

Harassment can include, for example, offensive remarks about a person's religious beliefs or practices. Although the law doesn't prohibit simple teasing, offhand comments, or isolated incidents that aren't very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted).

The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer.

Religious Discrimination and Segregation

Title VII also prohibits workplace or job segregation based on religion (including religious garb and grooming practices), such as assigning an employee to a non-customer contact position because of actual or feared customer preference.

Religious Discrimination & Reasonable Accommodation

The law requires an [employer or other covered entity](#) to reasonably accommodate an employee's religious beliefs or practices, unless doing so would cause more than a minimal burden on the operations of the employer's business. This means an employer may be required to make reasonable adjustments to the work environment that will allow an employee to practice his or her religion.

Examples of some common religious accommodations include flexible scheduling, voluntary shift substitutions or swaps, job reassignments, and modifications to workplace policies or practices.

Religious Accommodation/Dress & Grooming Policies

Unless it would be an undue hardship on the employer's operation of its business, an employer must reasonably accommodate an employee's religious beliefs or practices. This applies not only to schedule changes or leave for religious observances, but also to such things as dress or grooming practices that an employee has for religious reasons. These might include, for example, wearing particular head coverings or other religious dress (such as a Jewish yarmulke or a Muslim headscarf), or wearing certain hairstyles or facial hair (such as Rastafarian dreadlocks or Sikh uncut hair and beard). It also includes an employee's observance of a religious prohibition against wearing certain garments (such as pants or miniskirts).

When an employee or applicant needs a dress or grooming accommodation for religious reasons, he should notify the employer that he needs such an accommodation for religious reasons. If the employer reasonably needs more information, the employer and the employee should engage in an interactive process to discuss the request. If it would not pose an undue hardship, the employer must grant the accommodation.

Religious Discrimination & Reasonable Accommodation & Undue Hardship

An employer does not have to accommodate an employee's religious beliefs or practices if doing so would cause undue hardship to the employer. An accommodation may cause undue hardship if it is costly, compromises workplace safety, decreases workplace efficiency, infringes on the rights of other employees, or requires other employees to do more than their share of potentially hazardous or burdensome work.

Religious Discrimination And Employment Policies/Practices

An employee cannot be forced to participate (or not participate) in a religious activity as a condition of employment.

Source: U.S. Equal Employment Opportunity Commission (EEOC)
<http://www.eeoc.gov/laws/types/religion.cfm>

Retaliation

All of the laws we enforce make it illegal to fire, demote, harass, or otherwise “retaliate” against people (applicants or employees) because they filed a charge of discrimination, because they complained to their [employer or other covered entity](#) about discrimination on the job, or because they participated in an employment discrimination proceeding (such as an investigation or lawsuit).

For example, it is illegal for an employer to refuse to promote an employee because she filed a charge of discrimination with the EEOC, even if EEOC later determined no discrimination occurred.

Retaliation & Work Situations

The law forbids retaliation when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment.

Facts About Retaliation

An employer may not fire, demote, harass or otherwise "retaliate" against an individual for filing a charge of discrimination, participating in a discrimination proceeding, or otherwise opposing discrimination. The same laws that prohibit discrimination based on race, color, sex, religion, national origin, age, and disability, as well as wage differences between men and women performing substantially equal work, also prohibit retaliation against individuals who oppose unlawful discrimination or participate in an employment discrimination proceeding.

In addition to the protections against retaliation that are included in all of the laws enforced by EEOC, the Americans with Disabilities Act (ADA) also protects individuals from coercion, intimidation, threat, harassment, or interference in their exercise of their own rights or their encouragement of someone else's exercise of rights granted by the ADA.

There are three main terms that are used to describe retaliation. Retaliation occurs when an employer, employment agency, or labor organization takes an **adverse action** against a **covered individual** because he or she engaged in a **protected activity**. These three terms are described below.

Adverse Action

An adverse action is an action taken to try to keep someone from opposing a discriminatory practice, or from participating in an employment discrimination proceeding. Examples of adverse actions include:

- employment actions such as termination, refusal to hire, and denial of promotion,
- other actions affecting employment such as threats, unjustified negative evaluations, unjustified negative references, or increased surveillance, and

- any other action such as an assault or unfounded civil or criminal charges that are likely to deter reasonable people from pursuing their rights.

Adverse actions do not include petty slights and annoyances, such as stray negative comments in an otherwise positive or neutral evaluation, "snubbing" a colleague, or negative comments that are justified by an employee's poor work performance or history.

Even if the prior protected activity alleged wrongdoing by a different employer, retaliatory adverse actions are unlawful. For example, it is unlawful for a worker's current employer to retaliate against him for pursuing an EEO charge against a former employer.

Of course, employees are not excused from continuing to perform their jobs or follow their company's legitimate workplace rules just because they have filed a complaint with the EEOC or opposed discrimination. For more information about adverse actions, see [EEOC's Compliance Manual Section 8, Chapter II, Part D](#).

Covered Individuals

Covered individuals are people who have opposed unlawful practices, participated in proceedings, or requested accommodations related to employment discrimination based on race, color, sex, religion, national origin, age, or disability. Individuals who have a close association with someone who has engaged in such protected activity also are covered individuals. For example, it is illegal to terminate an employee because his spouse participated in employment discrimination litigation.

Individuals who have brought attention to violations of law other than employment discrimination are NOT covered individuals for purposes of anti-discrimination retaliation laws. For example, "whistleblowers" who raise ethical, financial, or other concerns unrelated to employment discrimination are not protected by the EEOC enforced laws.

Protected Activity

Protected activity includes:

Opposition to a practice believed to be unlawful discrimination

Opposition is informing an employer that you believe that he/she is engaging in prohibited discrimination. Opposition is protected from retaliation as long as it is based on a reasonable, good-faith belief that the complained of practice violates anti-discrimination law; and the manner of the opposition is reasonable.

Examples of protected opposition include:

- Complaining to anyone about alleged discrimination against oneself or others;
- Threatening to file a charge of discrimination;
- Picketing in opposition to discrimination; or
- Refusing to obey an order reasonably believed to be discriminatory.

Examples of activities that are NOT protected opposition include:

- Actions that interfere with job performance so as to render the employee ineffective; or
- Unlawful activities such as acts or threats of violence.

Participation in an employment discrimination proceeding.

Participation means taking part in an employment discrimination proceeding.

Participation is protected activity even if the proceeding involved claims that ultimately were found to be invalid.

Examples of participation include:

- Filing a charge of employment discrimination;
- Cooperating with an internal investigation of alleged discriminatory practices; or
- Serving as a witness in an EEO investigation or litigation.

A protected activity can also include requesting a reasonable accommodation based on religion or disability.

For more information about Protected Activities, see EEOC's Compliance Manual, Section 8, [Chapter II, Part B - Opposition](#) and [Part C - Participation](#).

Sex-Based Discrimination

Sex discrimination involves treating someone (an applicant or employee) unfavorably because of that person's sex.

Sex discrimination also can involve treating someone less favorably because of his or her connection with an organization or group that is generally associated with people of a certain sex.

Sex Discrimination & Work Situations

The law forbids discrimination when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment.

Sex Discrimination Harassment

It is unlawful to harass a person because of that person's sex. Harassment can include "sexual harassment" or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature. Harassment does not have to be of a sexual nature, however, and can include offensive remarks about a person's sex. For example, it is illegal to harass a woman by making offensive comments about women in general.

Both victim and the harasser can be either a woman or a man, and the victim and harasser can be the same sex.

Although the law doesn't prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted).

The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer.

Sex Discrimination & Employment Policies/Practices

An employment policy or practice that applies to everyone, regardless of sex, can be illegal if it has a negative impact on the employment of people of a certain sex and is not job-related or necessary to the operation of the business.

Sexual Harassment

It is unlawful to harass a person (an applicant or employee) because of that person's sex. Harassment can include "sexual harassment" or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature.

Harassment does not have to be of a sexual nature, however, and can include offensive remarks about a person's sex. For example, it is illegal to harass a woman by making offensive comments about women in general.

Both victim and the harasser can be either a woman or a man, and the victim and harasser can be the same sex.

Although the law doesn't prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted).

The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer.

Facts About Sexual Harassment

Sexual harassment is a form of sex discrimination that violates [Title VII of the Civil Rights Act of 1964](#). Title VII applies to employers with 15 or more employees, including state and local governments. It also applies to employment agencies and to labor organizations, as well as to the federal government.

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment.

Sexual harassment can occur in a variety of circumstances, including but not limited to the following:

- The victim as well as the harasser may be a woman or a man. The victim does not have to be of the opposite sex.
- The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee.
- The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.
- Unlawful sexual harassment may occur without economic injury to or discharge of the victim.
- The harasser's conduct must be unwelcome.

It is helpful for the victim to inform the harasser directly that the conduct is unwelcome and must stop. The victim should use any employer complaint mechanism or grievance system available.

When investigating allegations of sexual harassment, EEOC looks at the whole record: the circumstances, such as the nature of the sexual advances, and the context in which the alleged incidents occurred. A determination on the allegations is made from the facts on a case-by-case basis.

Prevention is the best tool to eliminate sexual harassment in the workplace. Employers are encouraged to take steps necessary to prevent sexual harassment from occurring. They should clearly communicate to employees that sexual harassment will not be tolerated. They can do so by providing sexual harassment training to their employees and by establishing an effective complaint or grievance process and taking immediate and appropriate action when an employee complains.

It is also unlawful to retaliate against an individual for opposing employment practices that discriminate based on sex or for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or litigation under Title VII.