

CHAPTER 12

Non-Discrimination and Equal Opportunity

Overview

Introduction

Chapter 12 of the Youth Provider handbook explains the policies and procedures established by San Bernardino County Local Workforce Development Area (LWDA) to ensure compliance with the non-discrimination and equal opportunity provisions of the Workforce Innovation and Opportunity Act (WIOA) Public Law 113-128 Section 188, as implemented by Part 38 of Title 29 of the Code of Federal Regulations (29 CFR Part 38) and Title VI of the Civil Rights Act of 1964.

References

This handbook chapter contains information regarding WIOA regulations, signed into law in 2014 and State directives received from the U.S. Department of Labor (DOL) and/or Employment Development Department (EDD):

- Training and Employment Guidance Letter [\(TEGL\) 05-23](#)
- [DOL Fact Sheet](#) – Protecting individuals from discrimination based on actual or perceived religion, shared ancestry, or ethnic characteristics
- [Title VI, Civil Rights Act of 1964](#)
- Workforce Services Directive [\(WSD\) 17-03](#) and [WSD 21-04](#)

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Non-Discrimination and Equal Opportunity Policy

Introduction

The Workforce Innovation and Opportunity Act (WIOA) Section 188, Title 29 CFR part 38 contains the equal opportunity and nondiscrimination provisions, which prohibit discrimination based on:

- Race/Color,
 - Religion,
 - Sex,
 - Age/Disability,
 - National origin (including harassment),
 - Shared ancestry or ethnic characteristics (i.e., skin color, physical feature, style of dress or a person's accent or foreign name, etc.)
 - Political affiliation or belief,
 - The basis of a beneficiary's citizenship/status as a lawfully admitted immigrant authorized to work in the United States, or
 - His/her participation in a WIOA Title-I financially assisted program or activity.
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LWDA policy

It is the policy of San Bernardino County Local Workforce Development Area (LWDA) to ensure equal opportunity and nondiscrimination in the operation of WIOA programs and activities. Programs shall be open to all qualified individuals.

The LWDA must accommodate an individual's religious practices or beliefs unless doing so would result in "undue hardship" to the recipient. Religious accommodation requests can involve:

- Schedule changes or leave for religious observances,
- Exemptions from or modifications to uniform, dress, or grooming requirements that conflict with religious practices, or
- Providing a quiet area for prayer during break time

No one shall be excluded from participation, denied benefits, or subjected to discrimination because of race, color, national origin, age, disability, sex, religion, political affiliation or belief, or citizenship/status as a lawfully admitted immigrant authorized to work in the United States.

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Non-Discrimination and Equal Opportunity Policy, Continued

Protected individuals

San Bernardino County Local Workforce Development Area (LWDA) does not discriminate in any of the following areas:

- Deciding who will be admitted, or have access, to any WIOA Title I-financially assisted program or activity,
- Providing opportunities in, or treating any person with regard to, such a program or activity, or
- Making employment decisions in the administration of, or in connection with, such a program or activity.

Title VI and WIOA Section 188 protect individuals of all religions from discrimination based on race, color, or national origin, including, but not limited to:

- Jewish,
- Christian,
- Muslim,
- Sikh,
- Hindu, and
- Buddhist.

Additionally, protection from religious discrimination under WIOA Section 188 extends not only to people who belong to traditional, organized religions, but also to others who have sincerely held religious, ethical or moral beliefs.

Examples

The following are two (2) examples of incidents that could, depending on the circumstance, raise Title VI and/or WIOA Section 188 concerns:

- A Catholic employee requests a schedule change from his On-the-Job Training employer so that he can attend a church service on Good Friday. The employer refuses, even though there is another qualified employee available to cover the shift.
- A Sikh young adult participating in a covered career transition program is questioned at length by a staff member who does not recognize him and perceives him as a security threat due to his religiously mandated beard and turban. The staff member demands to know where the young man is from and what his religious background is, refusing to allow him to begin the program until his supervisor intervenes.

Note: Refer to the [DOL Fact Sheet](#) for additional examples.

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Non-Discrimination and Equal Opportunity Policy, Continued

Right to file a discrimination complaint

Any person who believes he/she or any specific class of individuals has been or is being subjected to discrimination prohibited by the nondiscrimination and equal opportunity provisions of WIOA has the right to:

- File a complaint,
 - Have an investigation conducted,
 - Have witnesses participate in the investigation, and
 - Obtain a determination as to whether or not discrimination occurred.
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Retaliation is not allowed

Youth Providers may not discharge, intimidate, threaten, coerce, discriminate, or otherwise retaliate against a person who has:

- Filed a discrimination complaint,
 - Opposed a practice prohibited by the nondiscrimination and equal opportunity provisions of WIOA,
 - Furnished information to, or assisted or participated in any manner in an investigation, hearing, review or other activity related to the nondiscrimination and equal opportunity provisions of WIOA, and/or
 - Otherwise exercised any rights and privileges guaranteed under the nondiscrimination and equal opportunity provisions of WIOA.
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Right to file a retaliation complaint

Any person who believes he/she has been retaliated against may file a complaint with the Workforce Development Department Equal Opportunity Officer, the Department of Labor Civil Rights Center (CRC) or with the Employment Development Department (EDD).

Equal Opportunity Officer

Introduction This section provides information on the Workforce Development Department (WDD) Equal Opportunity Officer (EOO).

EOO for LWDA The EOO for San Bernardino County Local Workforce Development Area (LWDA) is:

Fred Burks
Workforce Development Department Administration
290 North D Street – Suite 600,
San Bernardino, CA 92415-0046

Phone: (909) 387-9845
TTY: Use the California Relay Service (711)
Fburks@wdd.sbcounty.gov

Equal Opportunity Notice and Communication Requirements

Introduction	This section provides information about the Equal Opportunity Requirements for the Youth Providers.
Posting requirements	The Youth Providers must display the <i>Equal Opportunity is the Law</i> poster in prominent locations, including lobbies, resource rooms and break rooms, to advise customers and staff of the Local Workforce Development Area (LWDA) nondiscrimination policies and of his/her right to file a discrimination complaint.
Orientation workshops	Orientation workshops must include a discussion of customers' rights, including the right to nondiscrimination and equal opportunity, the right to file a discrimination complaint, and the right to request a reasonable accommodation and interpreter services. The <i>Equal Opportunity is the Law</i> form (WIOA 188) is included in the Application Disclosure Documents.
Accessible formats	<p>Provide the <i>Equal Opportunity is the Law</i> form (WIOA 188) and <i>Discrimination Complaint Procedures</i> form (WIOA 188.1) in accessible formats (e.g., large print, Braille, computer disk, and audiocassette tapes) for customers with visual, learning, or other disabilities.</p> <p>Document the provision of the WIOA 188 or 188.1 in an alternative format (e.g., Braille, large print, audiocassette tape, or computer disk) in the customer's case file.</p>

Written Communications

Introduction	This section outlines the written communication requirements for the Nondiscrimination and Equal Opportunity for the Youth Providers.
Formats and languages	<p>Youth Providers must ensure, to the maximum extent possible, information and written materials are accessible to customers in the languages and formats he/she prefer (e.g., large print, Braille, computer disk, audiocassette tape).</p> <p>The Workforce Development Department (WDD) Equal Opportunity Officer (EOO) can assist staff with obtaining forms and other written materials in alternate formats and languages.</p>
California relay service number	Any time a phone number is included on written materials distributed to the public (e.g., letterhead, business cards, posters, fliers, and brochures); the California Relay Service number (711) must also be included.
Required taglines for marketing materials	<p>Program information published or broadcast in the news media and publications and other communications distributed to the public promoting Workforce Innovation and Opportunity Act (WIOA) programs and activities, including notices of special events such as job fairs and workshops, must include the following taglines:</p> <p><i>This WIOA Title-I financially assisted program or activity is an Equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. For Federal Funding Disclosure information, visit workforce.sbcounty.gov/about/ffd/</i></p>
Positive images on marketing materials	Recruitment and other marketing materials should include pictures, graphics, and/or illustrations depicting positive images of people with disabilities receiving services alongside people without disabilities.
Branding/ templates	The Workforce Development Department (WDD) provides branding and marketing templates for Youth Providers to use when developing flyers and brochures. Any format which is outside of the approved branding/templates, the Youth Providers are required to submit draft of the material to WDD Youth Staff Analyst for approval and prior to printing.

Data and Information Collection and Maintenance

Introduction In compliance with Section 188 of the Workforce Innovation and Opportunity Act (WIOA), as implemented by Part 38 of Title 29 of the Code of Federal Regulations, San Bernardino County Local Workforce Development Area (LWDA) collects data on race/ethnicity, sex, age, and disability status, using the WIOA Application/Questionnaire form.

Confidentiality Demographic data collected regarding WIOA customers is confidential and may only be used:

- For record keeping and reporting purposes,
- To determine eligibility, where appropriate, for WIOA Title I-financially assisted programs or activities, and
- By state and federal civil rights agencies for statistical purposes, and
- To verify compliance with nondiscrimination laws.

Medical records A customer who requests a reasonable accommodation and his/her disability is not obvious; the Workforce Development Specialist (WDS) may ask the customer to provide medical verification of the person's functional limitations requiring an accommodation.

Examples of acceptable documentation retained in the customer's case folder include:

- Ruth cannot take written notes.
- Joe cannot read printed materials.
- Mark cannot sit for longer than 60 minutes at a time.
- Sue cannot walk farther than 100 feet without resting.

Youth Providers staff may not request documentation of a customer's medical diagnosis. A customer who voluntarily provides medical records that include a medical diagnosis, immediately return the records to the customer or destroy the records. Under no circumstances should documentation of a customer's medical diagnosis be retained in the customer's case folder.

Case notes Case notes must be limited to relevant facts and be free of personal biases and opinions. Case notes:

- **May** include the functional limitations resulting from a person's disability,
- **Must** include a customer's request for an accommodation, and the type of accommodation provided or the reason the accommodation is denied, and
- **Must not** include information about a customer's medical diagnosis (e.g., Human immunodeficiency virus (HIV)/acquired immunodeficiency syndrome (AIDS)).

Youth Providers are required to request WDD Staff Analyst or support staff to mark the case note as "medical" to maintain confidentiality.

Affirmative Outreach for Limited English Proficient Customers

Introduction Executive Order 13166, *Improving Access to Services for Persons with Limited English Proficiency*, mandates individuals with limited English proficiency (LEP) have equal access to federally funded programs and activities.

Limited English Proficient Limited English Proficient (LEP) is the term used for individuals whose primary language for communication is not English and who has a limited ability to read, speak, write, and/or understand English. An LEP individual may be competent in English for certain types of communication (e.g., speaking or understanding), but still be LEP for other purposes (e.g., reading or writing).

National origin discrimination National origin discrimination includes LEP under 29 CFR Section 38.9. Regulations specifically states in providing any aid, benefit, service, or training under a WIOA Title I-financially assisted program or activity, a recipient must not, directly or through contractual, licensing, or other arrangements, discriminate on the basis of national origin, including LEP.

Title 29 CFR Section 38.41 added “LEP and preferred language” to the list of categories of information each recipient must record about each applicant, registrant, eligible applicant/registant, participant, and terminee.

Effective communication Effective communication is the key to ensuring meaningful access for LEP customers. Meaningful access is language assistance resulting in accurate, timely, and effective communication at no cost to the LEP individual. For LEP individuals, meaningful access denotes access not significantly restricted, delayed, or inferior as compared to programs or activities provided to English proficient individuals. Effective communication can be achieved by:

- Conducting an assessment of an LEP individual to determine his/her language assistance needs,
- Advising customers of his/her right to free language assistance,
- Providing interpreter assistance and document translation in a timely manner, and
- Recording LEP status in the customer’s file to ensure consistent communication in the appropriate language.

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Affirmative Outreach for Limited English Proficient Customers, Continued

Signage	Directional and instructional posters and signage at the Youth Providers location must be displayed in both English and Spanish.
Using friends and family members as interpreters	Youth Provider staff may not require, suggest, or encourage an LEP customer to use friends, family members, or minor children as interpreters, as this could compromise the effectiveness of service and/or result in a breach of confidentiality.
Interpreter Services exceptions	<p>There are exceptions when the Youth Providers may use a minor child, adult family or friend to interpret or facilitate communication for interpreter services. The circumstances are as follows:</p> <ul style="list-style-type: none">• Emergency situations while waiting for a qualified interpreter.• The information conveyed is of minimal importance to the services provided.• The LEP individual specifically requests an accompanying adult provide language assistance and he/she agrees to assist the individual. Youth Provider staff:<ul style="list-style-type: none">– Is required to case note he/she permitted an accompanying adult to serve as an interpreter for the LEP individual.– Can still provide an independent interpreter for complete and accurate interpretations/translations of information and/or testimony critical for adjudicatory or legal reasons or competency of the interpreter requested by the LEP.
Customer choice	A customer who declines an offer of free interpreter services and chooses to use a family member or friend as an interpreter, staff is required to document the offer and declination of language assistance and case note and/or have the LEP complete the <i>Request for Language Services/Accommodations</i> form (WIOA 188.2).
Babel Notice	A Babel Notice informs the reader the communication contains vital information, and explains how to access language services to have the contents of the communication provided in other languages (Title 29 CFR Section 38.4[i]). The Youth Providers must include a Babel Notice indicating language assistance is available when sending documents/decisions via mail or electronic format to the LEP.

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Affirmative Outreach for Limited English Proficient Customers, Continued

Written materials

Written materials routinely provided to customers must be available in languages other than English, such as Spanish. These materials include:

- Applications to participate in a WIOA program or activity
 - Consent forms
 - Participation requirements
 - Notices that require a response from the customer
 - Notices regarding the availability of free language assistance
 - Information about the right to file complaints of discrimination
 - Notices pertaining to the reduction, denial, or termination of services
 - Information about services for individuals with disabilities
 - Outreach brochures and materials
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Translations

Many department forms are available in English and Spanish. Assistance with translating forms, brochures, letters and other written documents into additional languages is available from the Workforce Development Department Equal Opportunity Officer.

Internet resources

Several resources are available on the Internet, including:

- EDD's Labor Market (<https://labormarketinfo.edd.ca.gov/customers/job-seekers.html>) provides information about:
 - Job Search tools: provides a comprehensive range of employment and training services and tools in order to assist job seekers in finding and securing employment in his/her chosen field.
 - Occupation in Demand: provides descriptions of many entry-level jobs in the clerical, construction and repair, education, food service and lodging, health care, manufacturing, protective services, sales, service, and transportation and outdoor occupational groups.
 - How to Find a Job: provides job-search resources, such as EDD services, One-Stop Centers, libraries, job fairs, government jobs, and Internet resources.
 - Tips for Success: includes job application, resume, and interview tips.
 - EDD's California Occupational Guides provide statewide information about job duties, working conditions, employment outlook, wages, benefits, entrance requirements and training for individual occupations or groups of related occupations (www.labormarketinfo.edd.ca.gov/occguides).
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