

	NCWorks Commission
	NCWorks Commission Policy Statement Number: CPS 10-2021
	Date: August 12, 2021
	Subject: Workforce Innovation and Opportunity Act (WIOA) Nondiscrimination/Equal Opportunity Standards and Complaint Procedures
	From: <hr style="width: 40%; margin: auto;"/> Tom B. Rabon, Jr. Chair, NCWorks Commission

Purpose: To provide Local Area Workforce Development Boards (WDBs) and other subrecipients minimum standards and procedures designed to ensure that all WIOA programs will be conducted in accordance with applicable equal opportunity and nondiscrimination requirements. This policy provides current contact information and rescinds PS 07-2018.

Background: Programs and activities receiving federal financial assistance are prohibited from discriminating on the basis discussed in this policy. The attached procedures are designed pursuant to: Section 3.7 of the Grant Administration Agreement; Section .0412 of Title 04, Chapter 20 North Carolina Administrative Code; the Americans with Disability Act of 1990, as amended; the Workforce Innovation and Opportunity Act of 2014; the Non-traditional Employment for Women Act of 1991; Sections 403(a)(5)(J), 403(a)(5)(I)(iii), and 408(d) of Title IV of the Social Security Act, as amended; Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975, as amended, Title IX of the Education Amendments of 1972, as amended; and with all applicable requirements imposed by or pursuant to regulations implementing those laws, including but not limited to 29 CFR Part 38.

Action: This policy supersedes prior policies regarding nondiscrimination or equal opportunity standards and complaint procedures. Local Area WDBs and other subrecipients are required to establish and maintain policies and guidelines that incorporate these minimum standards.

Effective Date: Immediately

Expiration: Indefinite

Contact: Mose Dorsey, Administrative Officer III; (919) 814-0419; 1-800-735-2962
(TTY), 1-800-735-8200 (Voice)

Attachment: NC Workforce Innovation and Opportunity Act (WIOA) Nondiscrimination/
Equal Opportunity Standards and Complaint Procedures

DRAFT

**NC WORKFORCE INNOVATION AND OPPORTUNITY ACT (WIOA)
NONDISCRIMINATION/EQUAL OPPORTUNITY STANDARDS AND
COMPLAINT PROCEDURES**

I. Nondiscrimination and Equal Employment Opportunity Standards

- A. Subrecipients shall not discriminate against applicants, registrants, eligible applicants/registrants, participants, terminees, applicants for employment, employees, and members of the public because of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, sex stereotyping, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in any WIOA Title I-financially assisted program or activity. This applies to all programs, projects or activities funded in whole or in part with federal employment and training funds received directly or indirectly through the North Carolina Department of Commerce, Division of Workforce Solutions (hereinafter “DWS”).

Subrecipients shall not, directly or through contractual, licensing, or other arrangements, on a prohibited ground: 1) deny an individual any aid, benefits, services, or training provided under a WIOA Title I-funded program or activity; 2) provide to an individual any aid, benefits, services, or training that is different, or is provided in a different manner, from that provided to others under a WIOA Title I-funded program or activity; 3) subject an individual to segregation or separate treatment in any matter related to his or her receipt of any aid, benefits, services, or training under a WIOA Title I-funded program or activity; 4) restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any aid, benefits, services, or training under a WIOA Title I-funded program or activity; 5) treat an individual differently from others in determining whether he or she satisfies any admission, enrollment, eligibility, membership, or other requirement or condition for any aid, benefits, services, or training provided under a WIOA Title I-funded program or activity; 6) deny or limit an individual with respect to any opportunity to participate in a WIOA Title I-funded program or activity, or afford him or her an opportunity to do so that is different from the opportunity afforded others under a WIOA Title I-funded program or activity; 7) deny an individual the opportunity to participate as a member of a planning or advisory body that is an integral part of the WIOA Title I-funded program or activity; 8) aid or perpetuate discrimination by providing significant assistance to an agency, organization, or person that discriminates on a prohibited ground in providing any services, aid, benefit, or training to applicants, registrants or participants in WIOA Title I-funded program or activity; 9) refuse to accommodate a person's religious practices or beliefs, unless to do so would result in undue hardship; or 10) otherwise limit on a prohibited ground an individual in enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any WIOA Title I-funded aid, benefits, services, or training.

In providing any aid, benefits, services or training under a WIOA Title I-financially assisted program or activity, a subrecipient shall not, directly or through contractual, licensing, or other arrangements, on the grounds of disability: 1) deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, service or training; 2) afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, service or training that is not equal to that afforded others; 3) provide a qualified individual with a disability with an aid, benefit, service or training that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others; 4) provide different, segregated, or separate aid, benefits, services, or training to individuals with disabilities or to any class of individuals with disabilities unless such action is necessary to provide qualified individuals with disabilities with aid, benefits, services or training that are as effective as those provided to others; 5) aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefits, services or training to registrants, applicants, or participants; 6) deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards; 7) otherwise limit a qualified individual with a disability in enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, service or training.

Subrecipients will comply with applicable provisions of federal law and regulations regarding equal opportunity, will make such reports as may be required by the United States Department of Labor or the state, and shall make periodic assurances of compliance in applications, plans, and on request of the state.

- B. Each subrecipient is responsible for designating an equal opportunity officer who shall be responsible for assuring that discrimination does not occur in its programs or projects. All staff and participants shall be notified of this designation. The equal opportunity officer for a subrecipient is also responsible for the development of a complaint procedure. The equal opportunity officer is responsible for disseminating information to employees and participants concerning the subrecipient's nondiscrimination policy and the complaint procedure.

Subrecipients shall provide the DWS with the name, position, title, telephone number, supervisor, and job duties of their equal opportunity officer(s). Subrecipients shall describe the means by which the equal opportunity officer(s), name, position title, and telephone number are made public. Subrecipients shall also describe any staff and resources available to the equal opportunity officer(s). The DWS shall provide group and individual training to subrecipient equal opportunity officer(s) and staff.

C. Subrecipients shall provide initial and continuing notice that it does not discriminate on any prohibited ground to applicants, registrants, eligible applicants/registrants, participants, applicants for employment, employees, and members of the public including those with impaired vision or hearing, unions, or professional organizations holding collective bargaining or professional agreements with the subrecipient and contractor that receive WIOA Title I funds from the subrecipients. The subrecipient shall describe the methods and frequency of dissemination of the notice including initial dissemination. Subrecipients shall describe means by which notice is made available to individuals with hearing or visual impairments, as well as for persons of limited or non-English speaking ability. This communication with individuals with disabilities shall be as effective as communications with others. Subrecipients and their service providers shall, in regards to the notice, 1) post prominently, in reasonable numbers and places; 2) disseminate in internal memoranda and other written or electronic communications; 3) include in handbooks or manuals; and 4) make available to each participant and make a part of the participant's file or where files are maintained electronically. In regards to participants, the participant and the individual providing the notice shall sign the notice. Publications including recruitment brochures, broadcasts, and other materials routinely made available to the public shall include the statement "equal opportunity employer/program," and "auxiliary aids and services are available upon request to individuals with disabilities," and, where a telephone number is included on these materials, they shall indicate a TDD/TTY number or provide for an equally effective means of communication. North Carolina's current relay numbers are 1-800-735-2962 (TTY) and 1-800-735-8200 (Voice). Orientation to participants and new employees shall include equal opportunity rights under WIOA Title I-funded programs or activities. Information in language other than English shall be developed in areas where that language represents a five percent (5%) or more share of the spoken language.

D. Subrecipients shall make efforts to provide employment and training opportunities and services on an equitable basis throughout all WIOA Title I-funded programs or activities. Such efforts shall include but not be limited to outreach efforts to broaden the composition of the pool of those considered for participation or employment, to include members of both sexes, the various race/ethnicity and age groups, and individuals with disabilities. Subrecipients must maintain sufficient records to document that programs, operators, and participants are selected equitably. All programs, to the maximum extent possible, shall contribute to the elimination of sex stereotyping, architectural barriers, and artificial barriers to employment and training. All Job Training Plans and applications will be evaluated for compliance with these requirements and for any adverse effects on equal opportunity.

Outreach efforts may include, but are not limited to: 1) advertising the programs and/or activities in media, such as newspapers or radio programs that specifically target various populations; 2) sending notices about openings in programs and/or activities to schools or community service groups that

serve various populations; and 3) consulting with appropriate community service groups about ways to improve outreach and service to various populations.

- E. Subrecipients must ensure that every application, contract document, agreement, or arrangement to carry out the WIOA Title I-funded program or activity include specific language related to compliance with the nondiscrimination requirements of WIOA in the following form:

As a condition to the award of financial assistance from the U. S. Department of Labor under Title I of WIOA, the grant applicant assures that it will comply fully with the nondiscrimination and equal opportunity provisions of the following laws:

Section 188 of the Workforce Innovation and Opportunity Act of 2014 (WIOA), which prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, sex stereotyping, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, political affiliation or belief, and against beneficiaries on the basis of either citizenship/status as a lawfully admitted immigrant authorized to work in the United States or participation in any WIOA Title I-financially assisted program or activity;

Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color, and national origin;

Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against qualified individuals with disabilities;

The Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age; and

Title IX of the Education Amendments Act of 1972, as amended, which prohibits discrimination on the basis of sex in educational programs.

The grant applicant also assures that it will comply with 29 CFR Part 38 and all other regulations implementing the laws listed above. This assurance applies to the grant applicant's operation of the WIOA Title I-financially assisted program or activity, and to all agreements the grant applicant makes to carry out the WIOA Title I-financially assisted program or activity. The grant applicant understands that the United States has the right to seek judicial enforcement of this assurance.

- F. The Equal Opportunity Officer will collect and maintain records on applicants, registrants, eligible applicants/registrants, participants, terminees, employees, and applicants for employment. The race/ethnicity, sex, age, and where known, the disability status of each applicant, registrant, eligible applicant/registrant, participant, terminee, employee, and applicant for employment will be recorded. Records shall be maintained for a period of not less than three years from the close of the applicable program year.

Subrecipients must establish procedures for a regular review of WIOA programs to ensure that they promote equal opportunity and nondiscrimination. Such reviews should include a review of funding applications to assess their equal opportunity implications and their regulatory compliance; conducting on-site reviews to ensure that programs have been implemented in compliance with the regulations, to see that complaint procedures are in place, and to determine that services are being provided equitably to all eligible clients; and requiring corrective action, providing technical assistance and conducting follow-up where necessary. All monitoring activities, findings, and responses must be documented.

The Equal Opportunity Officer, on an annual basis, shall coordinate the monitoring of every subrecipient for compliance with administrative obligations under WIOA Section 188 and 29 CFR Part 38. Monitoring shall involve, at a minimum: 1) analysis of the data and records collected regarding the race/ethnicity, sex, age, and where known, disability status of every applicant, registrant, eligible applicant/registrant, participant, terminee, applicant for employment, and employee and 2) where significant differences are found, follow-up investigations to determine, through records review, interviews, and other appropriate investigative techniques, whether the differences are due to discrimination.

The monitoring review shall: 1) evaluate the extent to which subrecipients are complying with the assurances requirement of 29 CFR 38.25 through 38.27; 2) ensure that equal opportunity officers are complying with 29 CFR 38.31 through 38.33; 3) ensure that initial and continuing notice that discrimination on any prohibited ground will not be tolerated; 4) take appropriate steps to ensure that universal access is available to all WIOA Title I-financially assisted programs and activities; 5) ensure that complaint processing procedures are followed; and 6) ensure that all aspects of the state's methods of administration are being followed. Written reports of each monitoring review shall be prepared and made available to the subrecipient.

- G. In accordance with regulations implementing Section 504 of the Rehabilitation Act of 1973, as amended, all subrecipients must operate each program activity so that the program or activity, when viewed in its entirety, is readily accessible to qualified persons with disabilities. This does not mean that each existing facility (or every part of an existing facility) must be accessible to and usable by persons with disabilities. It does mean that when all aspects of a program or activity are analyzed, equal opportunities for participation must exist for persons with disabilities.

All subrecipients shall periodically analyze, with the assistance of persons with disabilities or other representatives, their current programs, policies, and practices to determine the level of accessibility and compliance with Section 504 of the Rehabilitation Act of 1973, as amended. Evidence of such analysis should be available for review.

The Americans with Disabilities Act (ADA) mandates state and local governments give civil rights protection to individuals with disabilities that are like those provided to individuals on the basis of race, sex, national origin, and religion. The law also guarantees equal opportunity for individuals with disabilities in employment, public accommodation, transportation, state and local government services, and telecommunications.

As outlined in ADA, the subrecipient will adhere to the following provisions:

Make reasonable accommodations for qualified applicants or employees;

Protect qualified persons with disabilities who can perform the essential functions of the job with or without reasonable accommodation;

Protect individuals with a history of disabilities and those assumed to have a disability; and

Prohibit discrimination against people with disabilities in all employment practices including recruitment, hiring, training, job assignment, pay, layoffs, firing, promotions, leave, benefits, and all other employment-related activities.

The subrecipient shall ensure that all its buildings, programs and activities are physically and programmatically accessible to individuals with disabilities in the most integrated setting possible. The subrecipient shall further ensure that: 1) pre-employment/employment medical inquiries are limited to those permitted by and in accordance with laws and regulations; 2) the confidentiality of medical information provided by registrants, applicants, eligible applicants or registrants, participants, employees, and applicants for employment; 3) communications with persons with disabilities are as effective as with others; and 4) that reasonable modification of policies, practices, and procedures will be provided.

- H. All subrecipients will be subject to periodic review for compliance with these standards and procedures. The DWS will complete the review. DWS staff may recommend corrective measures to assure nondiscrimination, and, in the event of failure to correct deficiencies, the DWS may impose such sanctions as are available under the contract or grant administration agreement for failure to comply with a term of the contract or grant administration agreement.

II. Equal Opportunity/Nondiscrimination Complaint Procedure

Any person who believes that either he or she or any specific class of individuals has been or is being 1) excluded from participation in; 2) denied the benefits of, 3) subjected to discrimination under; or 4) denied employment in the administration of or in connection with any WIOA Title I-funded program or activity, on the ground of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, sex stereotyping, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in the Workforce Innovation and Opportunity Act (WIOA) may file a written complaint. The person or a representative may file the complaint. The complaint may be filed either with the subrecipient or with the Director of the Civil Rights Center (CRC), U.S. Department of Labor (USDOL). Complaints filed with the Director should be sent to the address listed below. Any person who elects to file his or her complaint with the subrecipient must allow the subrecipient 40 days to process the complaint and allow 50 days for the DWS to receive and review the complaint, if applicable. A complaint filed based on the above grounds must be filed within 180 days of the alleged discrimination, unless extended by the Director of CRC for good cause shown. Each complainant and respondent has the right to be represented by an attorney or other individual of his or her own choice.

1. All complaints must be filed in writing, signed by the complainant or authorized representative, and include the following information:
 - a. The full name, address, and telephone/TTY number of the complainant (or specify another means of contacting him or her);
 - b. The full name and address of the person or agency against which the complaint is made;
 - c. A clear, concise statement of the act or acts considered to be a violation;
 - d. In regards to disability, a statement or supporting evidence that the complainant is disabled; and
 - e. Other information that will help explain and resolve the complaint.
2. Hearings on any complaint filed must be conducted within 30 days of filing.
3. Complaint hearing procedures should include the following provisions:
 - a. Reasonable notice to all parties by registered or certified mail;
 - b. A statement of the date, time, and place of hearing;
 - c. A statement of the authority and jurisdiction under which the hearing is to be held;

- d. A reference to the particular section of the Act, regulations, grant, or other agreements under the Act involved;
 - e. Notice to the parties of the specific charges involved;
 - f. The right of both parties to be represented by legal counsel or other individuals of his or her own choice;
 - g. The right of each party to present evidence, both written and through witnesses;
 - h. The right of each party to cross examination;
 - i. The right of an impartial decision maker who has not been directly involved in the events from which the complaint arose; and
 - j. A written decision made strictly on the recorded evidence must be rendered within the prescribed time frame.
4. Complete records and documentation should be kept in each contested case, including minutes of testimony, data submitted, findings, appeals, and final decisions.
 5. Decisions must be made not later than 40 days of filing the complaint. If a complainant does not receive a decision at the local level within 40 days of the filing of the complaint or receives an unsatisfactory decision, the complainant has a right to request a review of the complaint by the DWS. Requests for such review should be submitted to:

Assistant Secretary
NC Department of Commerce
Division of Workforce Solutions
313 Chapanoke Road, Suite 120
4316 Mail Service Center
Raleigh, North Carolina 27699-4316
ATTENTION: DWS WIOA EEO Officer

Such requests must be filed within 10 days of receipt of the adverse decision or 10 days from the date on which the complainant should have received a decision, whichever is earlier. The DWS will conduct a review of the complaint and issue a decision within 40 days from the date of receiving the review request. The Assistant Secretary for the DWS may extend the 10 days if: 1) the subrecipient does not notify the complainant of his or her right to request a review by the DWS, or 2) for other good cause shown. Under no circumstances shall the time limit be extended for more than 30 days. However, if an extension is not granted, the complainant may follow the procedures listed in number 6 below. The complainant has the burden of proving to the DWS that the time limit should be extended.

6. Should the DWS provide a decision unsatisfactory to the complainant or fails to provide one, the complainant may file a complaint with the Director of the Civil Rights Center of the U.S. Department of Labor. Such requests

must be submitted within 30 days of the DWS's decision or 120 days from the date the complaint was initially filed at the local level, whichever is earlier.

7. Complaints filed with the Director of the Civil Rights Center shall be mailed to:

Director of the Civil Rights Center (CRC)
U.S. Department of Labor
200 Constitution Avenue, N.W., Room N-4123
Washington, DC 20210

Each subrecipient shall maintain a log of complaints filed. The log shall include: 1) the name and address of the complainant; 2) the grounds of the complaint; 3) a description of the complaint; 4) the date the complaint was filed; 5) the disposition and date of disposition of the complaint; and 6) other pertinent information. Information that could lead to identification of a particular individual as having filed a complaint shall be kept confidential. Records regarding complaints and actions taken thereunder shall be maintained for a period of not less than three years from the date of resolution of the complaint and made available to the Director of the Civil Rights Center (CRC) or the state upon request. Information concerning all complaints shall be kept confidential.

8. The complaint processing procedures shall provide for alternative dispute resolution (ADR). The complainant shall have the choice of pursuing the customary investigation process or using the alternative dispute resolution process. If the parties do not reach an agreement under alternative dispute resolution at the subrecipient or state level, the complainant may file a complaint with the Director of the Center for Civil Rights (CRC) at the address listed in number 7 above. The DWS has selected the mediation process as its alternative dispute resolution. See North Carolina Department of Commerce, Division of Workforce Solutions Alternative Dispute Resolution Mediation Guidelines for additional information.
9. Corrective and remedial actions must be designed to completely correct each violation. For each corrective action, a time frame must be established and a minimum of time must be allowed for compliance. The procedures must provide, where appropriate, for retroactive relief (including, but not limited to, back pay) and prospective relief (e.g., training, policy development, and communication) to ensure that the discrimination does not recur. The subrecipient shall develop procedures for follow-up monitoring to ensure that commitments to take corrective action and remedial action are fulfilled. The subrecipient shall describe reports required from the violating agency regarding actions to correct the violation(s). Sanction procedures to be followed where voluntary compliance cannot be achieved shall be developed.