

# **Section 1 - Non - Discrimination**

## **Article V, Section 1, A Policy of Non-Discrimination**

### **A. Policy of Non-Discrimination**

ESU 7 does not discriminate on the basis of sex, disability, race (including skin color, hair texture and protective hairstyles), color, religion, military or veteran status, national or ethnic origin, age, marital status, pregnancy, childbirth or related medical condition, gender identity or sexual orientation, or other protected status in its programs and activities and provides equal access to designated youth groups. Reasonable accommodations will be provided to employees with disabilities and to those who are pregnant, have given birth, or have a related medical condition, as required by law. Complaints or concerns involving discrimination should be addressed to:

Students, Employees, and Others: Beth Ericson, Professional Development Director, 2657 44th Avenue, Columbus, NE 68601 (402) 564-5753 (bericson@esu7.org).

Complaints or concerns involving discrimination or needs for accommodation or access should be addressed to the appropriate Coordinator.

For further information about anti-discrimination laws and regulations, or to file a complaint of discrimination with the Office of Civil Rights in the U.S. Department of Education (OCR), please contact the OCR at One Petticoat Lane, 1010 Walnut Street, 3<sup>rd</sup> Floor, Suite 320, Kansas City, Missouri 64106, (816) 268-0550 (voice), Fax (816) 268-0599, (800) 877-8339 (telecommunications device for the deaf), or [ocr.kansascity@ed.gov](mailto:ocr.kansascity@ed.gov).

ESU 7 is committed to offering employment and educational opportunities to its employees and students in a climate free of discrimination. Accordingly, unlawful discrimination, harassment and retaliation of any kind by ESU 7 employees, including co-workers, non-employees (such as volunteers), third parties, and others is strictly prohibited and will not be tolerated.

### **B. Harassment**

Harassment is a form of discrimination and includes verbal, non-verbal, written, graphic, or physical conduct relating to any protected status, that is sufficiently serious to deny, interferes with, or limits a person's ability to participate in or benefit from an educational or work program or activity, including, but not limited to:

1. Conduct that is sufficiently severe or pervasive to create an intimidating, hostile, or abusive educational or work environment, or
2. Requiring an individual to endure the offensive conduct as a condition of continued employment or educational programs or activities, including the receipt of aids, benefits, and services.

Educational programs and activities include all academic, educational, extracurricular, athletic, and other programs of the ESU, whether those programs take place in the ESU facilities, in an ESU vehicle, at a class or training program sponsored by the ESU at another location, or elsewhere.

Discriminatory harassment because of any protected status, may include, but is not limited to:

1. Name-calling,
2. Teasing or taunting,
3. Insults, slurs, or derogatory names or remarks,
4. Demeaning jokes,
5. Inappropriate gestures,
6. Graffiti or inappropriate written or electronic material,
7. Visual displays, such as cartoons, posters, or electronic images,
8. Threats or intimidating or hostile conduct,
9. Physical acts of aggression, assault, or violence, or
10. Criminal offenses

The following examples are additional or more specific examples of conduct that may constitute sexual harassment:

- A. Unwelcome sexual advances or propositions,
- B. Requests or pressure for sexual favors,
- C. Comments about an individual's body, sexual activity, or sexual attractiveness,
- D. Physical contact or touching of a sexual nature, including touching intimate body parts and inappropriate patting, pinching, rubbing, or brushing against another's body,
- E. Physical sexual acts of aggression, assault, or violence, including criminal offenses (such as rape, sexual assault or battery, and sexually motivated stalking), against a person's will or where a person is incapable of giving consent due to the victim's age, intellectual disability, or use of drugs or alcohol,
- F. Requiring sexual favors or contact in exchange for aids, benefits, or services, such as awards, privileges, promotions, etc., or
- G. Gender-based harassment; acts of verbal, nonverbal, written, graphic, or physical conduct based on sex or sex-stereotyping, but not involving conduct of a sexual nature.

If ESU 7 knows or reasonably should know about possible harassment, including violence, ESU 7 will conduct a prompt, adequate, reliable, thorough, and impartial investigation to determine whether unlawful harassment occurred and take appropriate interim measures, if necessary. If ESU 7 determines that unlawful harassment occurred, ESU 7 will take prompt and effective action to eliminate the harassment, prevent its recurrence, and remedy its effects, if appropriate. If harassment or violence that occurs off ESU property creates a hostile environment at ESU, ESU 7 will follow this policy and grievance procedure, within the scope of its authority.

All ESU 7 employees are expected to take prompt and appropriate actions to report and prevent discrimination, harassment, and retaliation by others. Employees who witness or become aware

of possible discrimination, including harassment and retaliation, must immediately report the conduct to his or her supervisor or the compliance coordinator designated to handle complaints of discrimination (designated compliance coordinator).

### C. Anti-retaliation

ESU 7 prohibits retaliation, intimidation, threats, coercion, or discrimination against any person for opposing discrimination, including harassment, or for participating in the ESU 7's discrimination complaint process or making a complaint, testifying, assisting, or participating in any manner, in an investigation, proceeding, or hearing. Retaliation is a form of discrimination.

ESU 7 will take immediate steps to stop retaliation and prevent its recurrence against the alleged victim and any person associated with the alleged victim. These steps will include, but are not limited to, notifying students, employees, and others, that they are protected from retaliation, ensuring that they know how to report future complaints, and initiating follow-up contact with the complainant to determine if any additional acts of discrimination, harassment, or retaliation have occurred. If retaliation occurs, ESU 7 will take prompt and strong responsive action, including possible discipline, including expulsion or termination, if applicable.

### D. Grievance (or Complaint) Procedures

Employees or students should initially report all instances of discrimination, harassment or retaliation to their immediate supervisor or teacher or to the Compliance Coordinator designated to handle complaints of discrimination. If the employee or student is uncomfortable in presenting the problem to the supervisor or teacher, or if the supervisor or teacher is the problem, the employee or student may report the alleged discrimination, harassment or retaliation ("discrimination") to the Compliance Coordinator.

If the Compliance Coordinator is the person alleged to have committed the discriminatory act, then the complaint should be submitted to the Administrator for assignment. A discrimination complaint form is attached to this grievance procedure and is available in the office of each ESU 7 building, on the ESU 7 website, and from the Compliance Coordinator.

Under no circumstances will a person filing a complaint or grievance involving discrimination be retaliated against for filing the complaint or grievance.

#### 1. *Level 1 (Investigation and Findings)*

The Compliance Coordinator will review and evaluate each grievance, complaint, or report to determine if such grievance, complaint or report is covered under Title IX. If such a grievance, complaint or report is covered under Title IX, then the Compliance Coordinator will follow the Title IX Grievance Procedures (outlined below). For all other grievances, complaints or reports, the Compliance Coordinator will follow these General Grievance Procedures. Once ESU 7 receives a grievance, complaint or report alleging discrimination, harassment, or retaliation, or becomes aware of possible discriminatory conduct, ESU 7 will conduct a prompt, adequate, reliable, thorough, and impartial

investigation to determine whether unlawful harassment occurred. If necessary, ESU 7 will take immediate, interim action or measures to protect the alleged victim and prevent further potential discrimination, harassment, or retaliation during the pending investigation. The alleged victim will be notified of his or her options to avoid contact with the alleged harasser, such as changing a class or prohibiting the alleged harasser from having any contact with the alleged victim pending the result of ESU 7's investigation. ESU 7 will minimize any burden on the alleged victim when taking interim measures to protect the alleged victim.

ESU 7 will promptly investigate all complaints of discrimination, even if an outside entity or law enforcement agency is investigating a complaint involving the same facts and allegations. ESU 7 will not wait for the conclusion or outcome of a criminal investigation or proceeding to begin an investigation required by this grievance procedure. If the allegation(s) involve possible criminal conduct, ESU 7 will notify the complainant of his or her right to file a criminal complaint, and ESU 7 employees will not dissuade the complainant from filing a criminal complaint either during or after ESU 7's investigation.

ESU 7 will aim to complete its investigation within ten (10) working days after receiving a complaint or report, unless extenuating circumstances exist as determined by the investigator. Extenuating circumstances may include the unavailability of witnesses due to illness or incapacitation, or additional time needed because of the complexity of the investigation, the need for outside experts to evaluate the evidence (such as forensic evidence), or multiple complainants or victims. If extenuating circumstances exist, the extended timeframe to complete the investigation will be determined by the investigator and in compliance with any legal requirements. Periodic status updates will be given to the parties, when appropriate.

ESU 7's investigation will include, but is not limited to:

- a. Providing the parties with the opportunity to present witnesses and provide evidence.
- b. An evaluation of all relevant information and documentation relating to the alleged discriminatory conduct.
- c. For allegations involving harassment, some of the factors ESU 7 will consider include:
  - 1) the nature of the conduct and whether the conduct was unwelcome, 2) the surrounding circumstances, expectations, and relationships, 3) the degree to which the conduct affected one or more students' education, 4) the type, frequency, and duration of the conduct, 5) the identity of and relationship between the alleged harasser and the suspect or suspects of the harassment, 6) the number of individuals involved, 7) the age (and sex, if applicable) of the alleged harasser and the alleged victim(s) of the harassment, 8) the location of the incidents and the context in which they occurred, 9) the totality of the circumstances, and 10) other relevant evidence.
- d. A review of the evidence using a "preponderance of the evidence" standard (based on the evidence, is it more likely than not that discrimination, harassment, or retaliation occurred?)

The Compliance Coordinator (or designated investigator) will complete an investigative report, which will include:

- a. A summary of the facts,
- b. Findings regarding whether discrimination, harassment or other inappropriate conduct occurred, and
- c. If a finding is made that discrimination, harassment or other inappropriate conduct occurred, the recommended remedy or remedies necessary to eliminate discrimination, harassment or other inappropriate conduct.

If someone other than the Compliance Coordinator conducted the investigation, the Compliance Coordinator will review, approve, and sign the investigative report. ESU 7 will ensure that prompt, appropriate, and effective remedies are provided if a finding of discrimination, harassment, or retaliation is made. ESU 7 will maintain relevant documentation obtained during the investigation and documentation supportive of the findings and any subsequent determinations, including the investigative report, witness statements, interview summaries, and any transcripts or audio recordings, pertaining to the investigative and appeal proceedings.

ESU 7 **may, when appropriate or when legally required**, send concurrently to the parties written notification of the decision (findings and any remedy) regarding the complaint within one (1) week after the investigation is completed. The Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 11232g; 34 C.F.R. Part 99, permits ESU 7 to disclose relevant information to a student who was discriminated against or harassed.

### *2. Level 2 (Appeal to the Administrator)*

If a party is not satisfied with the findings or remedies (or both) set forth in the decision, he or she may file an appeal in writing with the Administrator within five (5) working days after receiving the decision. The Administrator will review the appeal and the investigative documentation and decision, conduct additional investigation, if necessary, and issue a written determination about the appeal within ten (10) working days after receiving the appeal. The party who filed the appeal will be sent the Administrator's determination at the time it is issued, and a copy will be sent to the Compliance Coordinator. [If the Administrator is the subject of the complaint, the party will file the appeal directly with the Board.]

### *3. Level 3 (Appeal to the Board)*

If the party is not satisfied with the Administrator's determination, he or she may file an appeal in writing with the Board within five (5) working days after receiving the Administrator's determination. The Board will review the appeal, the Administrator's determination, the investigative documentation and decision, and allow the party to address the Board or a committee of the Board to present his or her appeal. The Board or Committee of the Board may, in its discretion, issue a written determination about the appeal. The Board or Committee of the Board may, in the alternative, vote on the appeal and send the party the outcome of the vote. The party who filed the appeal will be sent the Board's determination. The Board's determination, and any actions taken, will be final on behalf of ESU 7.

#### E. Confidentiality

The identity of the complainant will be kept confidential to the extent permitted by state and federal law. ESU 7 will notify the complainant of the anti-retaliation provisions of applicable laws and that ESU 7 will take steps to prevent retaliation and will take prompt and strong responsive actions if retaliation occurs.

If a complainant requests confidentiality or asks that the complaint not be pursued, ESU 7 will take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation, as long as doing so does not prevent ESU 7 from responding effectively to the harassment and preventing harassment of others. If a complainant insists that his or her name or other identifiable information not be disclosed to the alleged perpetrator, ESU 7 will inform the complainant that its ability to respond may be limited. Even if ESU 7 cannot take disciplinary action against the alleged harasser, ESU 7 will pursue other steps to limit the effects of the alleged harassment and prevent its recurrence, if warranted.

#### F. Title IX - Discrimination

ESU 7, in response to federal and state regulations for Title IX of the Education Amendments of 1972 - Prohibiting Sex Discrimination in Education, hereby adopts and re-affirms the following policy:

1. The Board of Education affirms its intent to comply with provisions of Title IX - Prohibiting Sex Discrimination in Education.
2. The publication of this statement re-affirms the District's efforts to comply with Title IX to inform citizens of non-discriminatory practices in the dissemination process.
3. The Board of Education hereby authorizes and directs the ESU Administrator, in conjunction with relevant personnel as determined by the ESU Administrator, to adopt and publish grievance procedures providing for prompt and equitable resolution of complaints of sex discrimination in the ESU. Such grievance procedures shall be developed and made publicly available, and such forms as needed shall be developed and made available to the public.
4. The grievance procedures adopted and implemented by the ESU Administrator shall be followed by all individuals with concerns about discriminatory practices in the ESU, including suspected sex discrimination.

Legal Reference:	<p>Title VI, 42 U.S.C. § 2000d, Title VII, 42 U.S.C. § 2000e, Title IX; 20 U.S.C. § 1681, and the Nebraska Fair Employment Practices Act, Neb. Rev. Stat. §48-1101 et seq.</p> <p>Age Discrimination in Employment Act (ADEA), the Older Workers Benefit Protection Act (OWBPA), 29 U.S.C. §621 et seq., and the Nebraska Age Discrimination in Employment Act, Neb. Rev. Stat. §48-1001 et seq.;</p> <p>Americans with Disabilities Act (ADA), 42 U.S.C. § 12101 et seq.</p> <p>Section 504 of the Rehabilitation Act of 1973 (Section 504)</p> <p>Pregnancy Discrimination Act, 42 U.S.C. § 2000e(k)</p> <p>Uniform Service Employment and Reemployment Rights Act (USERRA), 38 U.S.C. § 4301 et seq.</p> <p>Neb. Rev. Stat. § 79-2,115, et seq</p>
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