

EQUITY and LEGAL COMPLIANCE

Section 2 Section 504 Compliance

A. Purpose (34 CFR 104.3)

The purpose of this policy is to effectuate Section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance. Compliance with this policy will also effectuate compliance with the Americans with Disabilities Act (ADA).

B. Definitions (34 CFR 104.3)

“Handicapped persons” means any person who (1) has a physical or mental impairment which substantially limits one or more major life activities, (2) has a record of such an impairment, or (3) is regarded as having such an impairment.

“Major life activities” means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

Qualified handicapped person means:

With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question.

With respect to educational services, a handicapped person (a) of an age during which non-handicapped persons are provided such services, (b) of any age during which it is mandatory under state law to provide such services to handicapped persons, or (c) to whom a free appropriate public education is required to be provided.

With respect to other services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

C. Discrimination Prohibited (34 CFR 104.4)

No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity of ESU #13.

D. Voluntary Action and Self-Evaluation (34 CFR 104.6)

Voluntary action. ESU #13 may take steps, in addition to any action that is required by this policy, to overcome the effects of conditions that result in limited participation in ESU #13's program or activity by qualified handicapped persons.

Self-evaluation. ESU #13 shall: (a) evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices and the effects thereof that do not or may not meet the requirements of this policy; (b) modify, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, any policies and practices that do not meet the requirements of this policy; and (c) take, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices.

ESU #13 shall, for at least three years following completion of the evaluation, maintain on file, make available for public inspection, and provide to the Assistant Secretary of Education upon request: (i) a list of the interested persons consulted, (ii) a description of areas examined and any problems identified, and (iii) a description of any modifications made and of any remedial steps taken.

E. ADA/504 Coordinator (34 CFR 104.7)

ESU #13 has designated the Human Resources Manager as the ADA/504 Coordinator. As required by law, this person shall coordinate ESU #13's efforts to comply with Federal Law.

F. 504 and ADA Complaint Procedures (34 CFR 104.7)

The following grievance procedure shall be used to provide for the prompt and equitable resolution of complaints alleging any action prohibited by this policy and for the resolution of complaints of alleged violations of Section 504 or the ADA:

1. Complaints shall be filed with the ESU #13 ADA/504 Coordinator (Human Resources). Complaints shall be made in writing, unless the Complainant's disability prevents such, in which event the Complaint can be made verbally. However, if the complaint is made verbally, the person accepting the complaint must document the complaint in writing on their behalf per their request.
2. Complaints shall set forth: (a) the name of the Complainant, (b) the address and telephone number or other such information sufficient to enable the Coordinator to contact the Complainant, (c) a brief description of the alleged violation, and (d) the relief requested by the Complainant.
3. Complaints shall be investigated by the ADA/504 Coordinator or the Coordinator's designee. Investigations shall be thorough, but informal, and the Complainant shall be given a full opportunity to submit evidence relevant to the complaint.
4. The Coordinator shall make a decision on the Complaint within thirty (30) days of the filing of the Complaint, unless such time period is extended by agreement of the Complainant. The decision shall be made in writing, shall set forth the Coordinator's proposed resolution of the Complaint, and shall be forwarded to the Complainant.
5. The Complainant shall have ten (10) days from the date the Coordinator's decision is sent to the Complainant to accept or reject the Coordinator's proposed resolution,

and shall be deemed to have accepted the proposed resolution unless the Complainant rejects the proposed resolution within such time period.

In the event the Complainant rejects the proposed resolution, the Complainant shall be given the opportunity to file a request for reconsideration within ten (10) days from the date the Coordinator's decision is sent to the Complainant. The request for reconsideration shall be filed with the Coordinator. The Coordinator shall consider any additional information provided in the request for reconsideration and make a decision on the request for reconsideration within 10 (ten) days after the request for reconsideration was filed.

G. Notice (34 CFR 104.8)

ESU #13 shall take appropriate steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, that it does not discriminate on the basis of handicap in violation of State or Federal law, including Section 504. The notification shall state, where appropriate, that ESU #13 does not discriminate in admission or access to, or treatment or employment in, its programs and activities.

The notification shall also include an identification of the responsible employee designated above. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in ESU #13's publication, and distribution of memoranda or other written communications.

If ESU #13 publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement that ESU #13 does not discriminate on the basis of handicap in violation of State or Federal law, including Section 504.

H. Employment Practices Discrimination Practices Prohibited (34 CFR 104.8)

1. General

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity to which this policy applies.

ESU #13 shall take positive steps to employ and advance in employment qualified handicapped persons in programs that receive assistance under the special education laws.

ESU #13 shall make all decisions concerning employment under any program or activity to which this policy applies in a manner which ensures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

ESU #13 will not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this policy.

2. Specific Activities

The provisions of this policy apply to: (1) recruitment, advertising, and the processing of applications for employment; (2) hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring; (3) rates of pay or any other form of compensation and changes in compensation; (4) job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists; (5) leaves of absence, sick leave, or any other leave; (6) fringe benefits available by virtue of employment, whether or not administered by ESU #13; (7) selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training; (8) employer sponsored activities, including social or recreational programs; and (9) any other term, condition, or privilege of employment.

3. Collective Bargaining Agreement Superseded

ESU #13's obligation to comply with this policy is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

4. Reasonable Accommodation (34 CFR 104.12)

ESU #13 shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless ESU #13 can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

Reasonable accommodation may include: (a) making facilities used by employees readily accessible to and usable by handicapped persons, and (b) job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

In determining whether an accommodation would impose an undue hardship on the operation of ESU #13's program, factors to be considered include: (a) the overall size of ESU #13's program with respect to number of employees, number and type of facilities, and size of budget; (b) the type of ESU #13's operation, including the composition and structure of ESU #13's workforce; and (c) the nature and cost of the accommodation needed. ESU #13 may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

5. Employment Criteria (34 CFR 104.#13)

ESU #13 will not make use of any employment test or other selection criterion that screens out or tends to screen out handicapped persons or any class of handicapped persons unless: (a) the test score or other selection criterion, as used by ESU #13, is shown to be job-related for the position in question, and (b) alternative job-related tests or criteria that do not screen out or tend to screen out as many handicapped persons are not available.

ESU #13 shall select and administer tests concerning employment so as best to ensure that, when administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure, rather than reflecting the applicant's or employee's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

6. Pre-employment Inquiries (34 CFR 104.14)

Except as provided below, ESU #13 will not conduct a pre-employment medical examination or make pre-employment inquiries of an applicant as to whether the applicant is a handicapped person or as to the nature or severity of a handicap. ESU #13 may, however, make pre-employment inquiry into an applicant's ability to perform job-related functions.

When ESU #13 is taking remedial action to correct the effects of past discrimination or voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity, or when ESU #13 is taking affirmative action, ESU #13 may invite applicants for employment to indicate whether and to what extent they are handicapped. To take such action, ESU #13 must: (a) state clearly on any written questionnaire used for this purpose, or make clear orally if no written questionnaire is used, that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts; and (b) state clearly that the information is being requested on a voluntary basis, that it will be kept confidential, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this policy.

Nothing in this section shall prohibit ESU #13 from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty, provided that: (a) all entering employees are subjected to such an examination regardless of handicap, and (b) the results of such an examination are used only in accordance with the requirements of this policy.

Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that: (a) supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodations; (b) first aid and safety personnel may be informed, where

appropriate, if the condition might require emergency treatment; and (c) government officials investigating compliance with the Act shall be provided relevant information upon request.

I. Program Accessibility

1. Discrimination Prohibited (34 CFR 104.21)

No qualified handicapped person shall, because ESU #13's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this policy applies.

2. Existing Facilities (34 CFR 104.22)

Program accessibility. ESU #13 shall operate each program or activity to which this policy applies so that the program or activity, when viewed in its entirety, is readily accessible to handicapped persons. ESU #13 is not required to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

Methods. ESU #13 is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with program accessibility. In choosing among available methods for meeting the requirement of program accessibility, ESU #13 shall give priority to those methods that offer programs and activities to handicapped persons in the most integrated setting appropriate.

Transition plan. In the event structural changes to facilities are necessary to meet the requirement of program accessibility, ESU #13 shall develop a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum: (a) identify physical obstacles in ESU #13's facilities that limit the accessibility of its program or activity to handicapped persons; (b) describe in detail the methods that will be used to make the facilities accessible; (c) specify the schedule for taking the steps necessary to achieve full program accessibility and, if the time period of the transition plan is longer than one year, identify the steps that will be taken during each year of the transition period; and (d) indicate the person responsible for implementation of the plan.

Notice. ESU #13 shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by handicapped persons.

3. New Construction (34 CFR 104.23)

Each facility or part of a facility constructed by, on behalf of, or for the use of ESU #13 shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by handicapped persons.

Each facility or part of a facility which is altered by, on behalf of, or for the use of ESU #13 shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by handicapped persons.

J. Program Accessibility to Students (34 CFR 104.32 to .38)

To the extent the services to a qualified handicapped student are the responsibility of ESU #13, the services are to:

1. be in conformance with the 504 Plan developed by the 504 team for the student by the school in which the student is enrolled, and
2. afford handicapped students an equal opportunity for participation in programs and services without discrimination on the basis of handicap.

Legal Reference:	Rehabilitation Act of 1973, Section 504--29 U.S.C. §791, et seq.; 34 CFR §104, et seq. ADA-42 U.S.C. §12101 et seq.; 28 CFR §35.101 et seq. Nebraska Fair Employment Practices Act, Neb. Rev. Stat. §§48-1101 to 48-1126
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