

Parental, Family, or Marital Status, and Pregnancy or Related Conditions of Staff

Procedure 5012P

The district is committed to a positive and productive workplace free from sex-based discrimination as required by Federal, State, and local laws for all employees and applicants for employment.

The district does not discriminate on the basis of sex and prohibits sex discrimination against applicants or employees as required by Federal, State, and local laws. Sex discrimination can include discrimination based on pregnancy, marital status, or parental status. Sex discrimination is prohibited and illegal in the district's education programs and activities, hiring, leave policies, employment policies, and health insurance coverage.

The district also prohibits adopting or implementing any policy, practice, or procedure or taking any employment action based on sex (1) Concerning the current, potential, or past parental, family, or marital status of an employee or applicant for employment, which treats persons differently; or (2) That is based upon whether an employee or applicant for employment is the head of household or principal wage earner in such employee's or applicant's family unit.

The district will not make any pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is "Miss or Mrs."

The district must treat pregnancy or related conditions in the same manner and under the same policies as any other temporary medical conditions for all job-related purposes, including commencement, duration, and extensions of leave; payment of disability income; accrual of seniority and any other benefit or service; and reinstatement; and under any fringe benefit offered to employees by virtue of employment.

The Superintendent establishes this procedure to ensure the protection and equal treatment of pregnant persons, individuals with pregnancy-related conditions, and parents. This policy and its pregnancy-related protections apply to all pregnant persons, regardless of gender identity or expression.

The district has also developed specific related policies for district employees to comply with its obligations under State and Federal laws, including Title IX, and to create an inclusive and welcoming work environment, including other nondiscrimination policies, Policy 5010 (Nondiscrimination and Affirmative Action), Policy 5014 (Racial Harassment), Policy 5015 (Disability Harassment), Policy 5011 (Sex-Based Discrimination of Staff Prohibited), and 5404 (Family Medical and Maternity Leave).

A. Key Definitions/Terms

For the purpose of this procedure and procedure 3205P.1, the following additional definitions apply:

- **Caretaking** means caring for and providing for the needs of a child.
- **Familial status** refers to the configuration of one's family or one's role in a family.
- **Marital status** refers to the state of being married, single, or divorced.
- **Medically necessary** is a determination made by a health care provider of the pregnant person's choosing.
- **Parental status** refers to the status of a person who, with respect to another person who is under the age of 18 (or a person who is 18 or older but who is incapable of self-care because of a mental or physical disability); is a biological, adoptive, foster, or stepparent; a legal custodian or guardian; in loco parentis with respect to such a person; or actively seeking legal custody, guardianship, visitation, or adoption of such a person.
- **Pregnancy and Pregnancy-Related Conditions include but are not limited to**
 - pregnancy, childbirth, termination of pregnancy, or lactation;

- medical conditions related to the above; or
 - recovery from above.
- **Pregnancy discrimination** includes treating a pregnant person or a person with a pregnancy-related condition less favorably than similar individuals not so affected and includes a failure to provide legally mandated leave or accommodations.
- **Pregnancy and pregnancy-related conditions** include (but are not limited to)
 - pregnancy, childbirth, false pregnancy, termination of pregnancy, miscarriage, lactation (the need to express breast milk);
 - medical conditions related to the above;
 - recovery from above; and
 - any other conditions in accordance with State and Federal law.
- **Pregnant person/birthparent** refers to the person who is or was pregnant.
- **Reasonable modifications** mean individualized modifications to the district's policies, practices, or procedures that are comparable to the modifications offered for any other temporary medical condition. Essentially, they are changes to the employee's workday that allow for physical needs while pregnant, recovering from childbirth, or nursing. A modification that the district can demonstrate would cause an "undue hardship" is not required. This procedure uses the term "modifications" to distinguish pregnancy modifications from disability-related accommodations, but the district does not require staff to use any specific term. The district also recognizes that some pregnancy-related complications may also qualify as disability-related accommodations. Such determinations will be made on a case-by-case basis.
- **Undue Hardship** is an action requiring significant difficulty or expense.

B. Reasonable Modifications

a. Modifications that are presumed reasonable

The district must provide the following reasonable modifications, and the employee does not need to provide a note from a healthcare provider to receive any of the following:

- Providing more frequent, longer, or flexible restroom breaks;
- Modifying a no food or drink policy;
- Allowing breaks, as needed, to eat and drink;
- Carrying water and drinking, as needed;
- Providing seating and allowing more frequent sitting or standing if the person's job requires standing; or
- Limits to lifting of seventeen pounds or less

b. Modifications upon request

The district must make other reasonable modifications to its policies, practices, or procedures as necessary to prevent sex discrimination and ensure equal access to the district's education program or activity.

Each reasonable modification must be based on the staff person's individual needs. In determining what modifications are required under this paragraph, the district must consult with the staff person. The staff person has the discretion to accept or decline each reasonable modification offered by the district. If a staff person accepts a district's offered reasonable modification, the district must implement it.

Examples of modifications that can be requested include, but are not limited to:

- Suspending essential job function(s) if the modification sought is temporary, the essential job function can be performed in the near future, and the inability to

perform the essential functions can be reasonably accommodated and will not cause an undue hardship

- Job restructuring, part-time or modified work schedules, or reassignment to a vacant position
- Providing for a temporary transfer to a less strenuous or less hazardous position
- Scheduling flexibility for prenatal visits
- Intermittent absences to attend medical appointments;
- Changes in physical space or supplies (for example, access to a bigger desk or a footrest)
- Acquiring or modifying equipment, devices, or an employee's workstation
- Allowing the person to sit or stand or carry or keep water nearby
- Providing assistance with manual labor and limits on lifting under seventeen pounds
- Providing reasonable break time to express breast milk or breastfeed for two years after the child's birth each time the employee needs to express the milk
- Requested modifications to protect the health and safety of the staff person and/or their pregnancy (such as allowing the staff person to maintain a safe distance from hazardous substances)
- Elevator access.

The district does not have to create additional employment that it would not otherwise have created, unless the district does so or would do so for other classes of employees who need accommodation for any temporary medical condition. Further, the district is not required to discharge any employee, transfer any employee with more seniority, or promote any employee who is not qualified to perform the job, unless the employer does so or would do so to accommodate other classes of employees who need accommodation for any temporary medical condition.

The district is not required to request medical documentation in instances when the person's limitation or need for a modification is obvious. However, the district may request and review medical documentation to support a modification request under reasonable circumstances. The documentation requested must be the minimum sufficient to confirm the limitation. When medical documentation is provided, the district must give reasonable consideration in consultation with information provided on pregnancy accommodation by the Department of Labor and Industries or the attending health care provider of the employee.

The district must also keep all medical records confidential, and maintained in separate medical files.

C. Voluntary leaves of absence and intermittent absences

The district must allow leaves of absence for pregnancy and pregnancy-related conditions. Information on employment leave can be found in Policy 5404 - Family, Medical, and Maternity Leave.

In the case of an employee who (1) does not have enough leave time available or (2) has not accrued enough employment time to qualify for leave, the district must treat pregnancy or related conditions as a justification for a voluntary leave of absence without pay for a reasonable period. At the conclusion of the leave period, the employee shall be reinstated to the status held when the leave began or to a comparable position without a decrease in the rate of compensation, loss of promotional opportunities, or any other right or privilege of employment.

D. Lactation space

The district must ensure that an employee can access a lactation space, which must be a space other than a bathroom, which is clean, shielded from view, free from intrusion from others, and may be used by an employee for expressing breast milk or breastfeeding as needed.

E. Discrimination and Retaliation Prohibited

The district prohibits discrimination against employees because they are pregnant or have asked for modification or accommodation. Specifically, the district shall not:

- Retaliate or punish employees who have requested modification(s);
- Deny employment opportunities because they have been granted modification(s);
- Make an employee take time off instead of allowing a reasonable modification; nor
- Deny a request for modifications, unless an undue hardship can be shown.

“Retaliation” means intimidation, threats, coercion, or discrimination against any person for the purpose of interfering with any right or privilege secured by Title IX, this district policy and procedure, or because the person reported information, made a complaint, was a witness or provided information, assisted, or participated or refused to participate in any manner in an investigation or appeal under the Title IX regulations and this process. Retaliation is prohibited from the district, students, employees, or any other person authorized by the district to provide any aid, benefit, or service under the district’s education program or activity.

When the district has information about conduct that reasonably may constitute retaliation under Title IX or this policy and procedure, the district is obligated to respond promptly and effectively, inform the Title IX Coordinator, and provide notice of the district’s grievance process for addressing complaints of retaliation. Upon receiving a complaint alleging retaliation, the district must initiate its grievance procedures as described below or, as appropriate, an informal resolution process under those procedures.¹

F. Grievance Procedure

The district has adopted procedure 3205P.1 to set forth the process for receiving, investigating, and resolving reports or complaints of sex-based discrimination, including harassment based on a person’s actual or perceived pregnancy status, and retaliation. Such complaints are to be taken seriously and handled in the same manner as other sex-based discrimination and harassment complaints. Procedure 3205P.1 is designed to provide for a prompt, thorough, and equitable investigation of complaints and to take appropriate steps to resolve such situations. If sex-based discrimination or retaliation is found to have occurred, the district must take immediate action to eliminate the discrimination or retaliation, prevent its reoccurrence, and address its effects.

Other forms of discrimination against employees or applicant employees that do not fall under this policy and its related procedure may be addressed under other district policies and procedures, such as Policy 5010.

For questions about this procedure, contact the district’s Title IX Coordinator, who can be reached at:

Gunnar Guttormsen
Title IX Coordinator
Kelso School District
gunnar.guttormsen@kelsosd.org
360-501-1905

G. Other Complaint Options

Office for Civil Rights (O.C.R.), U.S. Department of Education

¹ As discussed in 3205P.1, the Title IX regulations permit, but do not require, informal resolution processes.

O.C.R. enforces several federal civil rights laws, which prohibit discrimination in public schools on the basis of race, color, national origin, sex, disability, and age. File complaints with O.C.R. within 180 calendar days of the date of the alleged discrimination.

206-607-1600 | TDD: 1-800-877-8339 | OCR.Seattle@ed.gov | www.ed.gov/ocr

Washington State Human Rights Commission (WSHRC)

WSHRC enforces the Washington Law Against Discrimination (RCW 49.60), which prohibits discrimination in employment and places of public accommodation, including schools. File complaints with WSHRC within six months of the date of the alleged discrimination.

1-800-233-3247 | TTY: 1-800-300-7525 | www.hum.wa.gov

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Revised: