



Washoe County School District
Every Child, By Name And Face, To GraduationSM

Office of the General Counsel Newsletter

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Annual Student Training

As a District, we always strive to ensure that our students feel welcome and safe at our schools. As part of the Resolution Agreement WCSD entered into with the Office of Civil Rights, the WCSD is rolling-out annual student training on the following topics: avenues for reporting bullying and cyber-bullying, how to recognize sexual harassment and/or discrimination and how to recognize racial harassment and/or discrimination. The lessons are entitled “Civil Rights and Me”.

WCSO, in partnership with the Western Educational Equity Assistance Center (WEACC), developed the four lesson plans targeted for middle school students. WEACC conducted a train-the-trainer workshop on June 11, 2019. Middle schools are presenting the material to students beginning with this school year. High schools will begin presenting the material to students starting the 2020-2021 school year, with elementary schools doing the same in the 2021-2022 school year. Once the program is introduced, it will continue as an annual training for all students.

This work is part of our on-going commitment to provide meaningful training to ensure all our students are knowledgeable about their rights and are educated in a safe and respectful environment. If you have any questions regarding this program, contact Gina Session.

Engaging in the ADA Interactive Process

Background

The Ninth Circuit Court of Appeals noted, “the interactive process is a mandatory rather than a permissive obligation on the part of employers under the ADA and . . . this obligation is triggered by an employee or an employee’s representative giving notice of the employee’s disability and the desire for an accommodation.” Barnett v. U.S. Air, Inc., 228 F.3d 1105 (9th Cir. 2000).

The ADA as amended became effective on January 1, 2009. The amendments expressed Congress’ clear intention that the ADA be interpreted broadly and that the U.S. Equal Employment Opportunity Commission (EEOC) promulgate new regulations to implement this intent. Since May 24, 2011, the bottom-line message – make it easier for individuals with disabilities to obtain protection under the ADA. As a result, the definitions of “disability,” “substantially limits” and “major life activities” are now so broad that some lawyers recommend that employers assume that everyone may have a disability, treat every impairment as a disability, and treat every employee request as a potential ADA claim. Such recommendations are not overstated. The point is that the emphasis is on an interactive process and reasonable accommodations.

Initial Response to the Reasonable Accommodation Request

Although an employee may request a reasonable accommodation from any individual with a supervisory role, employers are permitted to designate a specific worker or department for the central handling of such requests. The WCSO processes reasonable accommodation requests through the Risk Management Department (Risk) and the Department of Labor Relations (DoLR) working together to assist both supervisors and employees. Federal law does not set strict time limits for responding to an accommodation request. However, because a delay

Quick Tips/Links

- Office of the General Counsel webpage
- Civil Rights Compliance Forms
- Staff Resources – Student Bullying Complaints, Investigation and Resolution Process
- OGC FAQs, Civil Rights Compliance FAQs, Labor Relations FAQs, Administrative Investigations FAQs, Board Services FAQs

Topics for Future Newsletters

- Do you have a topic you would like covered in a future OGC Newsletter? Email your ideas or areas of interest/questions/concerns to bread@washoeschools.net for consideration of coverage in a future issue.

Upcoming Staff Training Dates

CIVIL RIGHTS COMPLIANCE

Bullying Investigations Refresher Course

- ✓ Investigations courses are mandatory for administrators conducting bullying investigations
- ✓ Register thru MyPGS
 - November 18, 2019, 4-5 pm

Coaches Training regarding bullying

- ✓ Coaches courses are mandatory for coaches
- ✓ Register thru MyPGS
 - Tuesday, February 4, 2020, 5-6 pm
 - Spanish Springs High School
 - Tuesday, February 11, 2020, 5-6 pm
 - North Valleys High School
 - Tuesday, May 19, 2020, 4-5 pm
 - Galena High School
 - Tuesday, May 26, 2020, 4-5 pm
 - Sparks High School

LABOR RELATIONS

- ✓ Conducted in the West Conference Room from 4-6 pm
- ✓ Open to all administrators and supervisors
- ✓ Register thru MyPGS
 - Tuesday, December 3, 2019
 - Discipline & Due Process - ESP Staff
 - Tuesday, February 4, 2020
 - Navigating the Certified Contract
 - Tuesday, March 3, 2020
 - Navigating the ESP Contract
 - Tuesday, April 7, 2020
 - Discipline & Due Process - Certified Staff
 - Tuesday, May 5, 2020
 - Discipline & Due Process - ESP Staff

can result in a failure to accommodate or a retaliation claim, it is imperative for supervisors to start the reasonable accommodation process as soon as a request is received from an employee. Supervisors should keep clear records, confirm receipt of the request and expeditiously contact Risk and/or the DoLR in order to engage the interactive process. A request can be verbal and an employee does not have to use specific words, such as, “I need a reasonable accommodation.” Supervisors should be aware that employees returning from medical leaves might need reasonable accommodations in order to perform the essential functions of their jobs. Therefore, supervisors should have conversations with these employees and their Human Resources Technician in order to ascertain if the employee might need reasonable accommodations.

Engaging in the Interactive Process

The “Interactive Process” determines the existence of an employee disability and reasonable accommodations that will address the disability. The Interactive Process is a good faith dialogue between an employee and the supervisor. Generally, representatives from Risk and the DoLR attend Interactive Process meetings with the employee and their supervisor to ensure the proper process is followed. Accommodations must be made on an individual basis, because the nature and extent of a disabling condition and the requirements of the job will vary in each case. During the interactive process, the supervisor and WCSD representatives may ask the employee relevant questions that will enable the WCSD to make an informed decision about the request. This includes asking for information about the desired accommodation, the nature of the problem prompting the request, and how the employee believes a disability has occasioned the need for an accommodation. The employee is also required to participate in the interactive process. Although an individual with a disability is not required to identify the exact accommodation necessary, the employee does need to describe the work-related issue(s) and why he or she believes it is related to a disability. For the interactive process to be effective, the WCSD will sometimes need medical documentation. When the disability or need for an accommodation is not obvious, the WCSD may require an employee to provide medical documentation. This information is only for purposes of establishing the existence of a qualifying disability, to show the employee needs a reasonable accommodation, or to help determine effective options. Contact OGC, Risk or DoLR if you have any questions.

Discipline and the Evaluation

While working on employee evaluations, you might encounter the question of how to address employees who have received discipline in the evaluation. Normally, discipline and the evaluation run on separate but parallel tracks – the discipline deals with the specific *conduct* that the employee engaged in while the evaluation deals with the employee’s *performance*.

While you should never mention in an employee’s evaluation any disciplinary action they might have received during the previous year, we recommend you mention the conduct the employee engaged in because the conduct impacts their performance. Also, by including the conduct in the evaluation, you can include specific steps the employee may need to take to improve his or her performance.

For example – you should not say “Ms. Smith received a Letter of Reprimand in the past year.” We suggest, however, you say “Ms. Smith had some issues with [whatever conduct she engaged in], and we expect improvement in this area in the next year.”