

**FROM:** Ann Chapman, Employment, Policy & Higher Education Consultant and  
DWM School Law Group

**DATE:** October, 2020

**RE: Affirmative Action Plan Template**

As you requested, we are providing you with a copy of our Affirmative Action Plan template. The sample plan can be used as a starting point in developing a plan that meets your particular needs.

This memorandum discusses the legal requirements connected to the Affirmative Action Plan. The template was developed to meet the requirements under federal and state nondiscrimination laws, without creating significant duties and obligations on the part of the school unit beyond what is legally required. The intent of the template is to pull together all of the overlapping affirmative action/nondiscrimination and harassment obligations of a school unit into one document and provide a streamlined process that will hopefully be simple to implement and use.

We think the sample plan strikes a good balance in terms of giving appropriate opportunities for individuals within the school unit to make inquiries or complaints regarding discrimination, while maintaining a flexible and workable process for school administrators.

The following sections will discuss each section of the Affirmative Action Plan template, including when our suggestions reflect legal requirements and when we are making more practical suggestions. Needless to say, you may make revisions in the sample plan to reflect local practice and priorities where appropriate, but we recommend checking with legal counsel to ensure the legal compliance of any substantive changes.

### **Affirmative Action Plan**

#### **Section 1: General Policy Statement**

The first section of the sample plan contains four parts: 1) a statement of nondiscrimination (and reference to the Board's nondiscrimination policy); 2) a list of the federal and state nondiscrimination laws with which the school unit is obligated to comply; 3) a list of parties who may be contacted regarding inquiries or complaints; and 4) a statement regarding the availability of complaint procedures for employees and students. We believe this section provides the backbone of any Affirmative Action Plan and should be included in all required notices to employees, students, parents and others. The statement of nondiscrimination follows the wording recommended by the federal Office for Civil Rights and clearly applies to both education programs/activities and employment practices of the school unit.

#### **Section 2: Dissemination Procedures**

Section 2 addresses the legal requirement under most of the applicable nondiscrimination laws to provide notification of the rights at issue. In particular, nondiscrimination notices are needed in relation to sex (and sexual harassment), sexual orientation and gender identity/expression,

race, color, national origin, age, and disability. Maine law requires that the hazing policy be disseminated to students, but since the statute was changed many years ago to include school employees, we suggest that it be disseminated to staff as well. In this area, the law does not detail the approaches you must take to providing notice. It will be important, however, to meet the standards you set forth for the school unit in the plan you adopt. The sample plan provides some examples, such as publishing annual notices in local newspapers and handbooks, but you can decide whether there are alternative methods you want to use. Please note that Maine's sexual harassment laws require individual written notice to all employees on an annual basis regarding the illegality and definition of sexual harassment. In addition, the new Title IX regulations require that pertinent information be included in handbooks and the school unit's website. You may wish to consider including notice with each employee's first paycheck/stub of the year or use some other method to ensure that each employee receives a copy, such as providing notices during the first in-service day each year.

Posting of notice is required at least for sexual harassment, disability discrimination and employment discrimination under state and federal laws. We have included in Section 2 requirements that the general policy statement and required workplace posters be posted in all school buildings

### **Section 3: Training**

School units are required by state law to provide in-service training programs on gender equity for teachers, administrators and the School Board. In addition, for all employers with more than 15 employees, state law requires training programs on sexual harassment for both new employees and supervisors. The Title IX regulations also require specific training for employees involved in addressing Title IX sexual harassment reports and complaints. Although we are not aware of any other specific legal requirements for in-service training programs under nondiscrimination laws, your school unit may want to offer such programs in Section 6 (Goals, Procedures and Timetables).

### **Section 4: Responsibility for Implementation**

A number of state and federal laws require that you have an individual able to assist with discrimination issues. School units have a wide range of options as to how many individuals you designate to deal with the various nondiscrimination requirements. Some school units appoint separate individuals to serve as Affirmative Action Officer, Section 504/ADA Coordinator, Title IX Coordinator, etc. Although this division of responsibilities is permissible under the law, we believe that many school units prefer to consolidate these responsibilities in the single position of Affirmative Action Officer. Note that under the new Title IX regulations, if the Affirmative Action Officer is also the Title IX Coordinator, "Title IX Coordinator" must be included in the title, and the description of duties (discussed below) should be consolidated. We strongly recommend that the Affirmative Action Officer, Title IX Coordinator and Section 504/ADA Coordinator be in high level administrative positions.

We have structured the sample plan to provide for an Affirmative Action Officer to handle all duties related to enforcement of most nondiscrimination laws and a Title IX Coordinator to handle duties related to gender-based discrimination, including Title IX. Section 4 includes a description of responsibilities for each position. As noted above, the positions can be consolidated and the description of responsibilities revised accordingly.

## **Section 5: Assessment of Current Workforce and Utilization Analysis**

As part of your Affirmative Action Plan, some sort of an assessment of the current workforce is required to be done under state law. 5 M.R.S.A. § 782 (last revised in 1985) defines Affirmative Action Plans as including:

Procedures designed to increase the numbers of minorities, women and handicapped at all levels and in all segments of the workforce where imbalances exist. Such a program should include an assessment of the existing situation, and the development of realistic goals for necessary action. These goals and related procedures and timetables should not require rigid quotas, but are commitments which an employer should make every good faith effort to achieve.

The theory is that if you are going to take affirmative steps to address a disparity, you need to have done an assessment to be sure that the disparity exists. Such an effort also insulates the school unit against complaints that its facially neutral employment practices actually have a discriminatory impact on persons in different categories.

Although some sort of an assessment must be done under the statute cited above and under 20-A M.R.S.A. § 4502(4-A), there appears to be no legal requirement governing the form or frequency of that assessment. The sample plan therefore generally acknowledges the school unit's obligation to do a periodic assessment to determine where imbalances in the workforce may exist, but does not specify how the assessment must be done or how frequently.

You may want to consider conducting a utilization analysis as part of updating your Affirmative Action Plan. Please let us know if you have questions about this.

## **Section 6: Goals, Procedures, and Timetables**

As discussed in the previous section, state law requires the development of realistic goals for action when an assessment reveals that imbalances exist in the workforce regarding gender, minority status, or disability. Procedures and timetables should accompany these goals. It is not entirely clear to us what the scope of these goals, procedures and timetables should be. We have included some general goals for you to consider, but these can certainly be modified to address any current local concerns or issues. Please let us know if you would like any assistance with drafting other goals.

## **Section 7: Procedure on Recruiting and Hiring of Administrative Staff**

Under Maine law (20-A M.R.S.A. § 1001(13)), school units are required to have a "nondiscriminatory hiring practice for positions requiring administrator certification." Policy GCFB and the accompanying procedure accomplish this and are referenced in the sample plan.

## **Appendices A-E: Board Policies and Procedures**

The sample plan has been structured to include several separate policies and procedures as appendices. You should ensure that the plan is updated as necessary whenever these policies/procedures are revised.

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### **Requirement to Provide Updated Plans to the Commissioner of Education**

20-A M.R.S.A. § 4501(4-A) requires that school units provide the Commissioner of Education with a copy of the Affirmative Action Plan whenever it is updated.

Please feel free to give me or another member of our School Law Group a call if you have any questions at all about this template or related policies.