

Category: **STUDENTS**

Issued: 5/11/12

Number: **A-830**Subject: ANTI-DISCRIMINATION POLICY AND PROCEDURES FOR FILING
INTERNAL COMPLAINTS OF DISCRIMINATION

1 of 1

SUMMARY OF CHANGES

This regulation replaces and supersedes Chancellor's Regulation A-830 dated September 17, 2010.

Changes:

- The title of this regulation has been changed to clarify that the regulation contains both the DOE's Anti-Discrimination Policy and procedures for filing internal complaints of discrimination.
- Clarifies what constitutes prohibited discriminatory conduct by DOE employees against other employees, applicants for employment and other individuals who do business with the DOE, use DOE facilities, or otherwise interact with the DOE. (p.1, § I.A)
- Clarifies what constitutes prohibited discriminatory conduct by DOE employees against students. (p. 1, § I.B)
- Includes "weight" as a protected category for students, in accordance with the New York State Dignity for All Students Act ("DASA"). (p.1, § I.B)
- Provides that supervisors must report instances or complaints of discrimination immediately and that a supervisor's failure to report a complaint of discrimination may constitute a violation of this regulation. (p. 2, § I.E)
- Clarifies that behavior that violates the DOE's Anti-Discrimination Policy may serve as a basis for discipline, even if the behavior does not constitute a violation of law. (p. 2, § I.F)
- Clarifies that the DOE's Anti-Discrimination Policy applies to conduct whether or not intentionally offensive or directed at a particular person or group. (p. 2, § I.G)
- Provides that employees who violate the policy may be subject to legal sanctions and appropriate disciplinary action. (p. 2, § I.H)
- Clarifies who can file complaints by providing that DOE employees, applicants for employment, parents, students and others who do business with the DOE, use DOE facilities or otherwise interact with the DOE can file complaints. (p.2, § I.I)
- Provides that DOE employees are expected to cooperate with OEO investigations and required to report if summoned by the Office of Equal Opportunity (OEO) and are expected to cooperate with OEO investigations. (p. 2, § I.I)
- Provides that witnesses who knowingly make a false accusation of discrimination may be subject to discipline. (p. 3, § II.E)

ABSTRACT

This regulation supersedes and replaces Chancellor's Regulation A-830, *Procedures for Filing Internal Complaints of Unlawful Discrimination/Harassment*, dated September 17, 2010. This regulation sets forth the New York City Department of Education's Anti-Discrimination Policy and establishes an internal review process for employees, applicants for employment, parents¹ of students, students, and others who do business with the DOE, use DOE facilities or otherwise interact with the DOE who wish to file complaints of unlawful discrimination or harassment, or retaliation based on such complaints. Complaints of peer sexual harassment and bias-based harassment, intimidation and/or bullying by one student against another may be filed in accordance with Chancellor's Regulation A-831, *Peer Sexual Harassment*, Chancellor's Regulation A-832, *Student-to-Student Bias-Based Harassment, Intimidation, and/or Bullying*, and/or through the discipline process as set forth in Chancellor's Regulation A-443 and the Discipline Code. Allegations of discrimination/harassment by students directed toward staff must be addressed in accordance with Chancellor's Regulation A-443 and the Discipline Code.

I. POLICY

- A. It is the policy of the New York City Department of Education (DOE) to provide equal employment opportunities without regard to race, color, religion, creed, ethnicity, national origin, alienage, citizenship status, age, marital status, partnership status, disability, sexual orientation, gender (sex), military status, prior record of arrest or conviction (except as permitted by law), predisposing genetic characteristics, or status as a victim of domestic violence, sexual offenses, or stalking.² It is also the policy of the DOE to maintain an environment free of harassment on any of the above-noted grounds, including sexual harassment, and to comply with all laws and provisions in the Department of Education's collective bargaining agreements prohibiting discrimination.

Accordingly, it is a violation of this policy for DOE employees to engage in behavior that subjects any employee or applicant for employment to discrimination and/or harassment at a worksite location or during a work-related function on the basis of any of the above-noted grounds where such conduct: (1) adversely affects any aspect of an employee's/applicant's employment or the compensation, terms, conditions or privileges of employment; or (2) creates a hostile, offensive, or intimidating work environment.

It is also a violation of this policy for DOE employees to engage in discriminatory behavior and/or harassment with respect to applicants for employment and other individuals who do business with the DOE, use DOE facilities or otherwise interact with the DOE.

- B. It is the policy of the New York City Department of Education to provide equal educational opportunities without regard to race, color, religion, age, creed, ethnicity, national origin, alienage, citizenship status, disability, sexual orientation, gender (sex) or weight. It is also the policy of the DOE to maintain an environment free of harassment on the basis of any of these grounds, including sexual harassment.²

Accordingly, it is a violation of this policy for any DOE employee to discriminate against or harass a student, including but not limited to verbal, written or physical acts on school property or at a school function on the basis of any of the above-noted grounds where such conduct: (1) substantially interferes with a student's ability to participate in or benefit from an educational program, school sponsored activity or any other aspect of a student's

¹ The term "parent", whenever used in this regulation, means the student's parent(s) or guardian(s), or any person(s) in a parental or custodial relationship to the student, or the student, if he/she is an emancipated minor or has reached 18 years of age.

² The definitions of the categories of unlawful discrimination are found in Attachment No. 1.

education; or (2) creates a hostile, offensive, or intimidating school environment; or (3) substantially interferes with a student's mental, emotional or physical well-being; or (4) otherwise adversely affects a student's educational opportunities.

- C. It is the policy of the DOE to prohibit retaliation against any individual who objects to discriminatory practices in the workplace, who complains of discrimination or harassment as described in Section I(A) or I(B) above, or who files or participates in the investigation of an internal or external complaint of discrimination. Any adverse act against individuals due to their participation in a protected activity is considered retaliatory.
- D. In order to develop and maintain a positive and supportive learning and working environment that is free of discrimination, harassment, retaliation and intimidation, the full cooperation of every staff member is necessary. Employees are expected to be exemplary role models in the schools and offices in which they serve.
- E. Supervisors are required to maintain an environment free of unlawful discrimination or discriminatory harassment. Supervisors are also required to immediately report instances of any oral or written complaints of such discrimination or discriminatory harassment to the Department's Office of Equal Opportunity ("OEO"). Advice and assistance on how to proceed will be provided as needed. A supervisor's failure to report complaints or instances of discrimination to OEO may constitute a violation of this policy.
- F. Behavior which violates this policy may serve as a basis for discipline, even if it does not rise to the level of a violation of federal, state or local discrimination laws.
- G. This policy applies to conduct and comments, whether or not intentionally offensive or directed at a particular person or group, which constitute a violation of this policy.
- H. Any employee found to be in violation of this policy may be subject to legal sanctions and appropriate disciplinary action.
- I. All DOE employees are expected to cooperate with OEO investigations and are required to report if summoned to appear by OEO.

II. COMPLAINT PROCEDURES

Employees, applicants for employment, parents, students, and others who do business with the DOE, use DOE facilities, or otherwise interact with the DOE may file complaints of discrimination, harassment, or retaliation as set forth below. Such complaints may be filed in writing or orally by contacting OEO at the phone number/address found at the end of this regulation.

A. Deadline for Filing a Complaint

In order to facilitate the prompt, thorough and fair resolution of complaints of unlawful discrimination, all complaints must be filed with OEO as soon as possible. **OEO will not accept complaints filed more than one year after the event that is the subject of the complaint.**

B. Procedure for Filing Complaints

1. Complainants should use the complaint form attached to the regulation (Attachment No. 2). Upon receipt of a complaint, OEO will determine whether the complaint alleges a violation of this regulation and, if so, will assign the complaint to an OEO investigator. If OEO believes that irreparable harm will occur before the complaint can be fully investigated and resolved, OEO may recommend appropriate interim relief pending completion of the investigation of the complaint.

2. Following the investigation, OEO will submit written recommended findings as to whether there has been a violation of this Regulation to the Chancellor/designee.³ The Chancellor/designee will issue a written determination within 90 working days of receipt of the complaint, unless circumstances warrant extension of the time period. Complainant(s) and Respondent(s) will be informed in writing of the determination.
3. If a violation of this regulation is substantiated, the respondent's supervisor will confer with OEO to determine if any disciplinary or corrective action is required.
4. OEO will ensure that any corrective action required by the decision is implemented.

C. Anonymous Complaints

A complainant may file an anonymous complaint with OEO alleging that a particular practice or policy is discriminatory. OEO will review such complaints in order to determine how they should be processed in light of the information provided by the anonymous complainant.

D. Confidentiality

It is the Department of Education's policy to respect the privacy of all parties and witnesses regarding complaints brought under this regulation. However, the need for confidentiality must be balanced against the obligation to cooperate with lawful investigations, to provide due process to the accused, and/or to take necessary action to conciliate, investigate, or resolve the complaint. Therefore, information regarding the complaint may need to be disclosed in certain appropriate circumstances.

E. False Accusations of Discrimination

A complainant or witness who knowingly makes a false accusation of discrimination or knowingly provides false information in the course of an investigation of a complaint, may be subject to discipline. A complaint made in good faith, even if found to be unsubstantiated, will not be considered a false accusation.

III. DISSEMINATION OF THESE PROCEDURES

Notice of the DOE's Anti-Discrimination Policy and internal complaint procedures will be given to employees annually. In addition, each office and school must prominently post the Department's Anti-Discrimination Policy (which provides contact information for OEO, and indicates where a copy of this regulation may be obtained); see Attachment No. 3. A complaint form may be obtained directly from the school or office upon request.

IV. ALTERNATIVE COMPLAINT PROCEDURES

These internal procedures do not deny the right of any individual to pursue other avenues of recourse that may include filing charges with any of the external agencies noted below. However, where a complaint is filed with an external agency, OEO will not conduct an internal investigation, and will transfer the matter to the Legal Office.

- New York City Commission on Human Rights
- U.S. Department of Education, Office for Civil Rights
- U.S. Equal Employment Opportunity Commission
- New York State Division of Human Rights
- U.S. Department of Labor

The time frames for filing with these agencies may vary.

³ The Chancellor's designee for complaints filed by or against pedagogical employees is the General Counsel. For complaints filed by or against non-pedagogical employees, the Chancellor's designee is a Deputy Chancellor.

V. INQUIRIES

Inquiries pertaining to this regulation should be addressed to:

Telephone:
718-935-3320

Office of Equal Opportunity
N.Y.C. Department of Education
65 Court Street – Room 1102
Brooklyn, NY 11201

Fax:
718-935-2531

Toll-Free:
877-332-4845

Website address:
www.nyc.gov/schools/oeo/