

Category: **STUDENTS**

Issued: 3/1/18

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

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SUMMARY OF CHANGES

This regulation replaces and supersedes Chancellor's Regulation A-830 dated August 21, 2013.

Changes:

- Includes "caregiver status" and "consumer credit history" as protected categories for employees and applicants for employment, in accordance with the New York City Human Rights Law. (p. 1, § I.A)
- Clarifies that off-premises conduct may constitute a violation of this policy. (p. 1, § 1.A)
- Clarifies OEO's reporting procedures for staff members regarding complaints of discrimination and harassment committed by employees. (p. 2, § II.A)
- Adds that nothing in this regulation prevents a principal from counseling or disciplining an employee for inappropriate conduct that is not otherwise in violation of this policy. (p. 2, § I.G)
- Clarifies definition of prior conviction record. (Attachment No. 1)
- Former Attachment No. 2 is revised as an electronic complaint form.
- Attachments have been revised to reflect the changes to this regulation.

ABSTRACT

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 by DOE employees based on a protected classification, or retaliation based on such complaints. Complaints of peer sexual harassment and harassment based on a protected classification, intimidation and/or bullying by one student against another may be filed in accordance with Chancellor's Regulation A-831, Student-to-Student Sexual Harassment, or Chancellor's Regulation A-832, Student-to-Student Discrimination, Harassment, Intimidation, and/or Bullying. Allegations of discrimination/harassment by students directed toward staff must be addressed in accordance with Chancellor's Regulation A-443 and the Citywide Behavioral Expectations to Support Student Learning (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 actual or perceived race, color, religion, creed, ethnicity, national origin, alienage, citizenship status, age, marital status, partnership status, disability, sexual orientation, gender (sex), military status, unemployment status, prior record of arrest or conviction (except as permitted by law), caregiver status, consumer credit history, 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 a workplace environment free of harassment on the basis of the above protected classifications, 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 on the basis of any of the above protected classifications 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 on the basis of any of the above protected classifications 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 actual or perceived 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 educational environment free of harassment on the basis of any of the above protected classifications, including sexual harassment.²

Accordingly, it is a violation of this policy for any DOE employee to discriminate against or

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.

create a hostile school environment for a student by conduct and/or verbal or written acts on school property, or at a school function on the basis of any of the above-noted grounds where such behavior: (1) has or would have the effect of unreasonably and substantially interfering 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 education; or (2) has or would have the effect of unreasonably and substantially interfering with a student's mental, emotional or physical well-being; or 3) reasonably causes or would reasonably be expected to cause a student to fear for his/her physical safety; or 4) reasonably causes or would be expected to cause physical injury or emotional harm to a student. It is also a violation of this policy for any DOE employee to engage in the behavior noted above off school property when such behavior creates or would foreseeably create a risk of disruption within the school environment.

- 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 on the basis of any of the protected classifications 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 and harassment on the basis of any of the protected classifications as described in Sections I.A and I.B above, 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. Supervisors³ are required to maintain an environment free of unlawful discrimination and harassment on the basis of any of the protected classifications as described in Section I.A and I.B above.
- 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. An employee who violates this policy or the requirements of this regulation may be subject to discipline, which may include termination, or other appropriate follow-up action. Nothing in this regulation prevents a supervisor from counseling or disciplining an employee for inappropriate conduct that is not otherwise in violation of this policy.
- H. This policy applies to conduct and comments that constitute a violation of this policy, whether or not intentionally offensive or directed at a particular person or group.
- I. All DOE employees are expected to cooperate with any Office of Equal Opportunity and Diversity Management ("OEO") investigations and are required to report if summoned to appear by OEO. Tampering with or impeding an OEO investigation constitutes a violation of this regulation and may result in disciplinary action.

II. **REPORTING**

- A. Any DOE employee who witnesses another DOE employee discriminate or harass a student on the basis of any of the protected classifications as described in Section I.B above, or who has knowledge or information or receives notice that a student may have been the victim of such behavior by a DOE employee, is required to orally report the alleged incident to the principal/designee within one school day. Within two school days of making the oral report, the reporting DOE employee also must electronically file a written complaint as set forth in Section III.A below. If the allegation is against the principal, the reporting DOE

³ The term supervisor refers to DOE employees acting in a supervisory capacity with authority over the terms and conditions of employment. The term supervisor includes, but is not limited to, principals, assistant principals and site supervisors.

employee is not required to make an oral report to the principal but must electronically file a written complaint with OEO as set forth in Section III.A below.

- B. Any supervisor who becomes aware of actions by a DOE employee that may violate any provision of this regulation must immediately report such violation to OEO. Supervisors must make the report by electronically filing a written a complaint as set forth in Section III.A below. A supervisor's failure to file a complaint in accordance with this paragraph may constitute a violation of this regulation.
- C. 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 alleging a violation of this policy.
- D. Except as set forth in Sections II.A and II.B above, all complaints must be filed with OEO as soon as possible in order facilitate the prompt, thorough and fair resolution of such complaints.
- E. OEO will not accept complaints filed more than one year after the event that is the subject of the complaint. However, complaints alleging discrimination, harassment or retaliation committed against students are not subject to this one year limit.

III. **COMPLAINT PROCEDURES**

A. Procedures for Filing Complaints

- 1. Complaints filed by DOE employees must be filed electronically by using the complaint form available at <https://www.nycenet.edu/o eo>.
- 2. Individuals not employed by the DOE (e.g., parents) may file complaints electronically by using the complaint form available at <https://www.nycenet.edu/o eo>, or may request that schools or DOE offices print a copy of such form, which such individuals must file with OEO. In addition, such individuals may file complaints by notifying OEO at the phone number or address found at the end of this regulation.
- 3. An individual may file an anonymous complaint alleging a violation of this regulation. OEO will review such complaints to determine how they should be processed in light of the information provided.

B. Procedures for Investigating Complaints

- 1. Upon receipt of a complaint, OEO will determine whether the complaint articulates a violation of this regulation and, if so, will assign the complaint to an OEO investigator who shall conduct an investigation. If OEO believes that irreparable harm will occur before the complaint can be fully investigated and resolved, OEO may recommend interim relief pending completion of the investigation of the complaint.
- 2. Following the investigation, OEO will submit written findings and a recommendation as to whether there has been a violation of this regulation to the Chancellor or his or her designee.⁴ The Chancellor/designee will issue a written determination as to whether there has been a violation of this regulation within 90 working days of OEO's 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 the determination concludes that a violation of this regulation has occurred, OEO will confer with the respondent's supervisor to determine if any disciplinary or corrective action is required.
- 4. OEO will ensure that any corrective action required by the written determination is

⁴ The Chancellor's designee for complaints filed against pedagogical employees is the General Counsel. For complaints filed against non-pedagogical employees, the Chancellor's designee is a Deputy Chancellor.

implemented.

C. Confidentiality

It is the DOE'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.

D. False Accusations of Discrimination

An individual 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.

IV. DISSEMINATION OF THESE PROCEDURES

Notice of the DOE's Anti-Discrimination Policy and internal complaint procedures must be given to employees annually. In addition, each office and school must prominently post the Department's Anti-Discrimination Policy (see Attachment No. 2), which provides contact information for OEO, and indicates where a copy of this regulation may be obtained.

In accordance with Chancellor's Regulation A-832, each school must distribute a copy of the Respect for All brochure annually to parents and students. This brochure informs students and parents of the DOE's Anti-Discrimination Policy and the procedures for students to file complaints of discrimination/harassment against DOE employees on the basis of any of the protected classifications as described in Section I.B above. Parents/students entering the school during the school year must receive a copy of the brochure upon registration.

V. ALTERNATIVE COMPLAINT PROCEDURES

These internal procedures do not deny the right of any individual to pursue other avenues of recourse, which may include filing charges with any of the external agencies noted below.

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

The time frames for filing with these agencies may vary. Where a complaint is filed with an external agency or a court of competent jurisdiction, OEO will not conduct an internal investigation, and will transfer the matter to the DOE's Legal Office.

VI. INQUIRIES

Inquiries pertaining to this regulation should be addressed to:

<p><u>Telephone:</u> 718-935-3320</p> <p><u>Toll-Free:</u> 877-332-4845</p>	<p><i>Office of Equal Opportunity and Diversity Management</i> NYC Department of Education 65 Court Street – Room 1102 Brooklyn, NY 11201</p> <p>Website address: www.nyc.gov/schools/o eo/</p>	<p><u>Fax:</u> 718-935-2531</p>
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SUMMARY OF PROHIBITED DISCRIMINATION

Chancellor's Regulation A-830 sets forth the procedures by which employees, applicants for employment, students, parents and others who do business with the DOE, use DOE facilities or otherwise interact with the DOE can raise and resolve claims of discrimination within the New York City public school system. The following information is intended to provide guidance to assist people in avoiding discriminatory practices but is not, however, exhaustive.

Age: actual or perceived age.

Alienage/Citizenship: actual or perceived immigration status or status as a citizen of a country other than the United States of America. It shall not be an unlawful discriminatory practice for any person to discriminate on the ground of alienage or citizenship status or to make inquiry as to a person's alienage or citizenship status or to give preference to a person who is a citizen or native of the United States when such preference is expressly permitted or required by a federal, city or state law or regulation.

Caregiver Status: actual or perceived status as a caregiver. The term caregiver means person who provides direct and ongoing care for a minor child or a care recipient. A care recipient is defined as a person with a disability who: (i) is a covered relative, or a person who resides in the caregiver's household; and (ii) relies on the caregiver for medical care or to meet the needs of daily living. A covered relative includes a caregiver's child, spouse, domestic partner, parent, sibling, grandchild or grandparent, or the child or parent of the caregiver's spouse or domestic partner, or any other individual in a familial relationship with the caregiver.

Consumer Credit History: an individual's credit worthiness, credit standing, credit capacity, or payment history. Employers may not request or use the consumer credit history of an applicant or employee for the purpose of making any employment decisions, including hiring, compensation, and other terms and conditions of employment.

Disability: actual or perceived disability, or history of disability. The term "disability" means any physical, medical, mental, or psychological impairment or history or record of such impairment, or a condition regarded by others as a disability. It is not discriminatory for an employer to require that any employee or applicant be able to perform the essential functions of a job with or without reasonable accommodation. If a person believes that he/she has a qualifying disability and is in need of a reasonable accommodation in order to fulfill the essential functions of his/her position, that person should contact the Department's HR Connect Medical Office or OEO's Disability Coordinator for additional information.

Ethnicity/National Origin: actual or perceived national origin or ethnic identity. National origin is distinct from race/color or religion/creed because people of several races and religions or their forbearers may come from one nation. The term "national origin" includes members of all national groups and groups of persons of common ancestry, heritage, or background; it also includes individuals who are married to or associated with a person or persons of a particular national origin.

Gender (Sex): actual or perceived gender (sex), pregnancy, or conditions related to pregnancy or childbirth. The prohibition against gender discrimination includes sexual harassment. The term "gender" shall also include a person's gender identity, self-image, appearance, behavior or expression, whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the legal sex assigned to that person at birth.

Marital Status: actual or perceived marital status.

Military Status: a person's participation in the military service of the United States or the military service of the state, including but not limited to, the Armed Forces of the United States, the Army National Guard, the Air National Guard, the New York Naval Militia, the New York Guard and such additional forces as may be created by the federal or state government as authorized by law.

Predisposing Genetic Characteristic: any inherited gene or chromosome, or alteration thereof, determined by a genetic test or inferred from information derived from an individual or family member that is scientifically or medically believed to predispose an individual or the offspring of that individual to a disease or disability, or is associated with a statistically significant increased risk of development of a physical or mental disease or disability.

Prior Arrest/Conviction: record of prior arrests and convictions for criminal offenses. The Department does not inquire

about or consider arrests that do not result in a criminal conviction. After the extension of a conditional offer, the Department may inquire about criminal convictions and deny employment because of a conviction record if there is a direct relationship between the offense and the job or if hiring would create an unreasonable risk to property or the safety and welfare of others.

Race/Color: actual or perceived race or color.

Religion/Creed: actual or perceived religion or creed (set of fundamental beliefs, whether or not they constitute a religion). An employee requesting a reasonable accommodation for religious reasons should follow the procedures in Chancellor's Regulation C-606. A student requesting a reasonable accommodation for religious reasons should follow the procedures in Chancellor's Regulation A-630.

Sexual Harassment

A. Sexual Harassment between Employees

Sexual harassment of one employee by another consists of unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or communication of a sexual nature when:

1. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
2. submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
3. such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

Sexual harassment may take different forms, including explicit sexual propositions or threats, sexual innuendos, sexually suggestive comments, sexually oriented jokes, obscene gestures, displays of pornographic or obscene visual or printed material, and physical contact, such as touching, patting, pinching or brushing against another's body. These behaviors can constitute sexual harassment whether they are directed at persons of the same or opposite sex and may also constitute criminal behavior.

B. Sexual Harassment of Students by Employees

OEO will forward complaints of this nature to the Special Commissioner of Investigations who will determine how to proceed.

Sexual conduct between an adult employee and a student can *never* be considered welcome or appropriate. Sexual harassment of a student by an employee consists of sexual advances, requests for sexual favors and other verbal and physical conduct of a sexual nature. It includes situations where:

1. submission to such conduct is a condition of the student's advancement or obtaining an education;
2. submission to or rejection of such conduct by a student is used as a basis for evaluating or grading a student or as a factor in decisions affecting the student's education; or
3. such conduct has the purpose or effect of unreasonably interfering with a student's education or creating an intimidating, hostile or offensive educational environment.

Sexual harassment may take different forms, including explicit sexual propositions or threats, sexual innuendos, sexually suggestive comments, sexually oriented jokes, obscene gestures, displays of pornographic or obscene visual or printed material, and physical contact, such as touching, patting, pinching or brushing against another's body. These behaviors can constitute sexual harassment whether they are directed at persons of the same or opposite sex and may also constitute criminal behavior.

C. Sexual Harassment of Students by Students:

Please refer to Chancellor's Regulation A-831: Student-to-Student Sexual Harassment.

Sexual Orientation: actual or perceived sexual orientation. The term sexual orientation means heterosexuality, homosexuality or bisexuality.

Unemployment Status: The term unemployment means not having a job, being available for work and seeking employment. However, there are allowances in the law that permit an employer to consider an applicant's unemployment when there is a substantially-job related reason for doing so or to inquire into the circumstances surrounding an applicant's separation from prior employment.

Victim of Domestic Violence, Sexual Offenses, or Stalking: An actual or perceived victim of domestic violence is a person who has been subjected to acts or threats of violence, not including acts of self-defense, committed by a current or former spouse of the victim, by a person who is cohabitating with or who has cohabitated with the victim, by a person who is or has been in a continuing social relationship of a romantic or intimate nature or a person who is or has continuously or at regular intervals lived in the same household as the victim.

An actual or perceived victim of sex offenses or stalking is a person who has been subjected to such behavior as defined by the penal code.

An employee may request a reasonable accommodation due to his/her status as an actual or perceived victim of domestic violence, sex offenses or stalking in order to fulfill the essential requests of a job. The employee may be asked to provide certification that he/she is a victim of domestic violence, sex offenses or stalking. An employee requesting the reasonable accommodation shall provide a copy of such certification within a reasonable period after the request is made. The certification requirement may be satisfied by providing a police or court record, documentation from an employee, agent, or volunteer of a victim services organization, an attorney, a member of the clergy, or a medical or other professional service provider that the employee or that employee's family or household member sought assistance as an actual or perceived victim of domestic violence, sex offenses, or stalking and/or the effects of the violence or stalking; or other information consistent with the employee's disclosure and the request for accommodation.

Weight: actual or perceived weight.



PUBLIC NOTIFICATION OF ANTI-DISCRIMINATION POLICY

It is the policy of the Department of Education of the City of New York 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, caregiver status, consumer credit history, unemployment 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 and stalking, and to maintain an environment free of harassment on any of the above-noted grounds, including sexual harassment and retaliation.**

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

This policy is in accordance with Title VI and Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Age Discrimination in Employment Act of 1967, Section 503 and Section 504 of the Rehabilitation Act of 1973, Fair Labor Standards Amendments of 1974, Immigration Reform and Control Act of 1986, The Americans with Disabilities Act of 1990, Civil Rights Act of 1991, New York State and City Human Rights Laws and Provisions of Anti-Discrimination in Collective Bargaining Agreements of the Department of Education of the City of New York.

Chancellor's Regulation A-830 sets forth the procedures for employees, parents of students, students and others who do business with, use DOE facilities or otherwise interact with the DOE to file complaints of unlawful discrimination, harassment by DOE employees or retaliation based upon such complaints. Complaints may be filed by contacting the office of Equal Opportunity (OEO) or by filing with one of the agencies identified below. A copy of Chancellor's Regulation A-830 may be obtained from OEO or at: <http://schools.nyc.gov/NR/rdonlyres/B5924420-C861-41DB-A586-DCF899060B29/0/A830.pdf>.

Internal Resources:		External Resources:	
<p>The Office of Equal Opportunity New York City Department of Education 65 Court Street – Room 1102 Brooklyn, New York 11201 Tel: 718-935-3320 Fax: 718-935-2531 Website: www.nyc.gov/schools/oeo/</p>		<p>U.S. Equal Employment Opportunity Commission New York District Office 33 Whitehall Street, 5th Floor New York, New York 10004 212-336-3620</p>	<p>Office for Civil Rights New York Office U.S. Department of Education 32 Old Slip, 26th Floor New York, NY 10005-2500 646-428-3900</p>
<p>Questions regarding Title IX compliance should be referred to:</p> <p>Jeannie Gallego, Acting Title IX Coordinator 65 Court Street - Room 1102 Brooklyn, NY 11201 Tel: 718-935-4478 E-mail: Title_IX_Inquiries@schools.nyc.gov</p>	<p>Questions regarding § 504 accommodations should be referred to:</p> <p>504Accommodations@schools.nyc.gov</p>	<p>New York State Division of Human Rights 1 Fordham Plaza - 4th Floor Bronx, New York 10458 718-741-8400</p>	<p>New York City Commission on Human Rights 22 Reade Street – 1st Floor New York, NY 10007 212-306-7450</p>