

Category: **STUDENTS**

Issued:

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 June 26, 2012.

### Changes:

- Includes "unemployment status" as a protected category for applicants, in accordance with the New York City Human Rights Law. (p. 1, § I.A)
- Clarifies what constitutes prohibited discriminatory conduct by DOE employees against students. (pp. 1-2, § I.B)
- Clarifies the definition of term "supervisors." (p. 2 § I.E, footnote 3)
- Clarifies that staff members who witness or have knowledge or information or receive notice that a student may have been the victim of discrimination by a staff member are required to orally report the allegation to the principal/designee within one school day and submit a written A-830 complaint form within two days of making the oral report in accordance with the New York State Dignity for All Students Act. (p. 2 § II.A)
- Clarifies that tampering with or impeding an Office of Equal Opportunity and Diversity Management ("OEO") investigation constitutes a violation of the Regulation and may result in disciplinary action (p. 2 § I.F)
- Clarifies OEO's reporting procedures for supervisors regarding oral or written complaints of discrimination or discriminatory harassment committed by employees. (pp. 2-3, § II.B)
- Clarifies time frames for filing complaints of discrimination, harassment, or retaliation (p. 3 § III.A)
- Clarifies that notice of the DOE's Anti-Discrimination Policy and internal complaint procedures must be given to employees annually. (p. 4, § IV)
- Clarifies schools' responsibilities to distribute the Respect for All brochure, which 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, annually to parents and students in accordance with Chancellor's Regulation A-832 (p. 4 § IV)
- Attachments No. 1, 2, and 3 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, parents<sup>1</sup> 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 discriminatory 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 Discrimination, 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 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), predisposing genetic characteristics, or status as a victim of domestic violence, sexual offenses, or stalking.<sup>2</sup> 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 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 environment free of harassment on the basis of any of these grounds, including sexual harassment.<sup>2</sup>

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

<sup>1</sup> 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.

<sup>2</sup> The definitions of the categories of unlawful discrimination are found in Attachment No. 1.

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 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<sup>3</sup> are required to maintain an environment free of unlawful discrimination or discriminatory harassment.
- 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 the 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 staff member who witnesses an employee discriminate or harass a student on the basis of the student's actual or perceived race, color, creed, ethnicity, national origin, citizenship/immigration status, religion, gender, gender identity, gender expression, sexual orientation, disability, or weight or who have knowledge or information or receive notice that a student may have been the victim of such behavior by a staff member are required to orally report the alleged incident to the principal/designee within one school day and complete and file a written A-830 complaint report with the principal/designee no later than two days after making the oral report (see Attachment No. 2).
- B. Supervisors are required to immediately report instances of any oral or written complaints of discrimination or discriminatory harassment committed by employees to OEO. Supervisors can make the report by calling OEO, e-mailing OEO or filing a copy of the A-830 complaint form. 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.

## **III. 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.

<sup>3</sup> 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.

#### 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 by employees, applicants for employment, and persons who do business with the DOE, use DOE facilities or otherwise interact with the DOE filed more than one year after the event that is the subject of the complaint.** However, complaints filed by parents and/or students are not subject to the one-year limit.

#### B. Procedure for Filing Complaints

1. Complainants should use the complaint form attached to the regulation to file a complaint (see Attachment No. 2). Complaint forms can be obtained directly from schools and offices upon request. 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 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.<sup>4</sup> 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.

### 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 (which provides contact information for OEO, and indicates where a copy of this regulation may be obtained (see Attachment No. 3).

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

<sup>4</sup> 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.

parents of the DOE's Anti-Discrimination Policy and the procedures for students to file complaints of discrimination/harassment against DOE employees. 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 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 DOE's 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

The time frames for filing with these agencies may vary.

**VI. INQUIRIES**

Inquiries pertaining to this regulation should be addressed to:

<u>Telephone:</u> 718-935-3320	<i>Office of Equal Opportunity and Diversity Management</i> N.Y.C. Department of Education 65 Court Street – Room 1102 Brooklyn, NY 11201	<u>Fax:</u> 718-935-2531
<u>Toll-Free:</u> 877-332-4845	Website address: <a href="http://www.nyc.gov/schools/oec/">www.nyc.gov/schools/oec/</a>	