Department of Education

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.

Race/Color: actual or perceived race or color.

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.

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.

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.

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.

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.

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.

Age: actual or perceived age.

Marital Status: actual or perceived marital status.

Weight: actual or perceived weight.

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

Prior Arrest/Conviction: It may be unlawful to deny employment because of a conviction record unless there is a direct relationship between the offense and the job or unless hiring would create an unreasonable risk. However, there are allowances in the law to review a person's arrest or conviction record under certain circumstances.

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.

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.

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: Peer Sexual Harassment.