

Category: **STUDENTS**

Issued: 11/17/08

Number: **A-830**Subject: FILING INTERNAL COMPLAINTS OF UNLAWFUL DISCRIMINATION/
HARASSMENT

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SUMMARY OF CHANGES

This regulation replaces and supersedes Chancellor's Regulation A-830 dated April 28, 2008.

Changes:

- This is updated to reflect the current Department of Education organization.
- Complaints of student-to-student bias-based harassment, intimidation and/or bullying may be filed in accordance with Chancellor's Regulation A-832.
- The Chancellor/designee now renders a determination regarding each complaint. Accordingly, the appeal process has been eliminated.
- The time frame for completing investigations pursuant to this regulation has been extended to 90 working days.
- Where a complaint is filed with an external human rights agency, OEO will not conduct an internal investigation, and will transfer the matter to the Legal Office.

ABSTRACT

This regulation supersedes and replaces Chancellor's Regulation A-830, *Procedures for Filing Internal Complaints of Unlawful Discrimination/Harassment*, dated April 28, 2008, and establishes an internal review process for employees, applicants for employment, parents* of students, and students within the jurisdiction of the Department of Education of the City of New York 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 AND LAW

- A. It is the policy of the New York City Department of Education (DOE) to provide equal educational and 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. 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 or retaliation, and to comply with all laws and provisions in the Department of Education collective bargaining agreements prohibiting discrimination.
- B. 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 IA above, or who files or participates in the investigation of an internal or external complaint of discrimination. Any adverse act against employees due to their participation in a protected activity is considered retaliatory.
- C. 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. Supervisors are required to maintain an environment free of unlawful discrimination or discriminatory harassment. Supervisors are also required to report instances and 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. Any employee found to be in violation of this policy may be subject to legal sanctions and appropriate disciplinary action.

II. DEFINITIONS/BASES OF UNLAWFUL DISCRIMINATION

The definitions of unlawful discriminatory behavior prohibited by this regulation are found in Attachment No. 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.

III. COMPLAINT PROCEDURES

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 but not later than one year after the event that is the subject of the complaint. A complaint may be filed orally or in writing.

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.¹ The Chancellor/designee will issue a written determination within 90 working days of receipt of the complaint, unless extenuating 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 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 non-discrimination policy and internal complaint procedures will be given to employees annually. In addition, each office and school must prominently post the Department's Non-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.

¹ 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. 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.

VI. 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 923
Brooklyn, NY 11201

Fax:
718-935-2531

Toll-Free:
877-332-4845

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

SUMMARY OF PROHIBITED DISCRIMINATION

Discrimination on the basis of race, color, creed, religion, ethnicity, national origin, alienage, citizenship status, gender (sex), age, marital status, partnership status, military status, disability, prior record of arrest or conviction, except as permitted by law, sexual orientation, predisposing genetic characteristic or status as a victim of domestic violence, sexual offenses or stalking is prohibited by various Federal, State and City laws, as well as by policies adopted by the Department of Education and by provisions of collective bargaining agreements. Harassment on any of these bases, and retaliation for making a claim of discrimination, also are impermissible and unlawful. Chancellor's Regulation A-830 sets forth the procedures by which employees, students and parents can raise and resolve claims of such 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.

It is unlawful to discriminate against an individual in any aspect of employment or in the provision of educational and related services on the basis of:

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.

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.

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.

COMPLAINT OF ALLEGED DISCRIMINATION FORM

Complainant Information:

Please complete every appropriate item and submit it as soon as possible after the incident of alleged discrimination or harassment to:

OFFICE OF EQUAL OPPORTUNITY
E.O. Complaint Unit
65 Court Street, Room 923
Brooklyn, NY 11201
Phone #: 718-935-3320
Fax #: 718-935-2531

➤ **A complaint must be filed within one year of the event which is the subject of the complaint.**

➤ Please ***print clearly*** all requested information.

➤ Also attach additional pages and supporting documentation, if necessary.

Check () One: Employee Student Parent Applicant for Employment

Name: _____ Title: _____

*Student's Name: _____

(If complaint is being filed by parent)*

Home Address: _____ City: _____ State: _____ Zip: _____

Phone # Home: _____ Cell: _____ Work: _____

Head of Site Information:

Name of Principal or Head of Site: _____
Title: _____
School/Office/District: _____
Site Address: _____
Site Phone#: _____

(over)

Nature of Complaint:

1. Check below why you believe you were discriminated against.

- | | |
|--|--|
| <input type="checkbox"/> Age | <input type="checkbox"/> Partnership Status |
| <input type="checkbox"/> Alienage/Citizenship Status | <input type="checkbox"/> Predisposing Genetic Characteristic |
| <input type="checkbox"/> Arrest/Conviction | <input type="checkbox"/> Race |
| <input type="checkbox"/> Color | <input type="checkbox"/> Religion |
| <input type="checkbox"/> Creed | <input type="checkbox"/> Retaliation (for asserting a claim of discrimination) |
| <input type="checkbox"/> Disability | <input type="checkbox"/> Sexual Harassment |
| <input type="checkbox"/> Ethnicity/National Origin | <input type="checkbox"/> Sexual Orientation |
| <input type="checkbox"/> Gender/Sex | <input type="checkbox"/> Status as a Victim of Domestic Violence, Sexual Offenses
or Stalking |
| <input type="checkbox"/> Marital Status | |
| <input type="checkbox"/> Military Status | |

2. Name(s)/title(s) of person(s) you believe discriminated against you.

1. Name: _____	1. Title: _____	2. Name: _____	2. Title: _____
3. Name: _____	3. Title: _____	4. Name: _____	4. Title: _____

3. Where did it take place?

4. Date(s) on which alleged act(s) of discrimination occurred.

Month: _____ Day _____ Year _____ Month: _____ Day _____ Year _____

Month: _____ Day _____ Year _____ Month: _____ Day _____ Year _____

5. Explain what happened (cite names and evidence, if any, and attach extra pages if needed).

6. What relief or corrective action are you seeking?

Signature: _____

Date: _____



PUBLIC NOTIFICATION OF NON-DISCRIMINATION POLICY

It is the policy of the Department of Education of the City of New York to provide educational and 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 and stalking, and to maintain an environment free of harassment on any of the above-noted grounds, including sexual harassment or 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 Non-Discrimination in Collective Bargaining Agreements of the Department of Education of the City of New York.

Chancellor's Regulation A-830 governs the filing of complaints of internal complaints of discrimination/harassment. Any person who believes they have experienced discrimination may file a complaint in accordance with Chancellor's Regulation A-830 by contacting the Office of Equal Opportunity ("OEO"), or file with one of the agencies identified below. A copy of Chancellor's Regulation A-830 may be obtained from OEO or at: www.nyc.gov/schools/oeo.

The Office of Equal Opportunity
New York City Department of Education
65 Court Street – Suite 923
Brooklyn, New York 11201
Tel: 718-935-3320 Fax: 718-935-2531
Website: www.nyc.gov/schools/oeo/

New York City Commission on Human Rights
40 Rector Street
New York, New York 10006
212-306-5070

Office for Civil Rights
New York Office
U. S. Department of Education
32 Old Slip, 26th Floor
New York, NY 10005-2500
Telephone: 646-428-3900

U. S. Equal Employment Opportunity Commission
New York District Office
33 Whitehall Street, 5th Floor
New York, New York 10004
212-336-3620

New York State Division of Human Rights
1 Fordham Plaza - 4th Floor
Bronx, New York 10458
718-741-8400

New York District Office
U.S. Department of Labor
ESA – Office of Federal Contract Compliance
Programs (OFCCP)
26 Federal Plaza, Room 36-116
New York, NY 10278
212-264-7743