



Regulation of the Chancellor

Number: **A-830**

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

Category: **STUDENTS**

Issued: **August 29, 2019**

SUMMARY OF CHANGES

This regulation replaces and supersedes Chancellor's Regulation A-830 dated March 28, 2019.

Changes:

- Revises equal educational opportunity policy language to reflect that all students are to be provided with access to DOE programs, services, activities, and facilities. Section I.B.
- Revises equal educational opportunity policy language has been revised to explain what types of conduct and/or verbal or written acts may be considered discriminatory conduct or conduct that creates a hostile school environment. Section I.B.
- Clarifies that DOE programs, services, and activities are to be accessible to parents and others who do business with the DOE, use DOE facilities, or otherwise interact with the DOE. Section I.C.
- Streamlines description of procedures for filing complaints with the Office of Equal Opportunity and Diversity Management (OEO). Section III.A.
- Clarifies that the principal/designee should consider whether interim interventions/supports for a student are appropriate during an investigation pursuant to this regulation and provides examples of such interventions/supports, and clarifies that an employee's supervisor may also discuss the provision of such measures with OEO. Section III.A.
- Replaces "gender (sex)" with "gender" throughout.
- Updates definitions of protected classifications within Attachment No. 1. Attachment No. 1.
- Aligns language in the public notice of DOE's Anti-Discrimination Policy to align with language in the regulation. Attachment No. 2.

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).

¹The 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 they are an emancipated minor or has reached 18 years of age.

I. POLICY

A. It is the policy of the New York City Department of Education (DOE) to provide equal employment opportunities in accordance with applicable laws and regulations and 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, military status, unemployment status, prior record of arrest or conviction, 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 DOE'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 DOE to provide equal educational opportunities, including ensuring that all students are provided access to DOE programs, services, activities, and facilities, in accordance with applicable laws and regulations and without regard to actual or perceived race, color, religion, age, creed, ethnicity, national origin, alienage, citizenship status, disability, sexual orientation, gender 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

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

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, whether 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 their 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.

Such conduct and/or verbal or written acts may include but are not limited to: denial of access to restrooms, changing rooms, locker rooms, and/or field trips on the basis of the above-noted protected classifications; enforcement of a dress code, specific grooming or appearance standards in a manner that discriminates against a student on any of the above noted protected classifications; or the use of name(s) or pronoun(s) or pronunciation of name(s) in a manner that discriminates against a student on any of the above-noted protected classifications (e.g., deliberately using a pronoun that is not consistent with the student's gender identity asserted in school).

- C. It is the policy of the DOE to ensure DOE programs, services, and activities are accessible to parents and others who do business with the DOE, use DOE facilities, or otherwise interact with the DOE without regard to actual or perceived race, color, religion, age, creed, ethnicity, national origin, alienage, citizenship status, disability, sexual orientation, gender, marital status, veteran or active military status.
- D. 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, I.B, or I.C 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.
- E. 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, I.B, or I.C 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.

- F. 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.
- G. 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.
- H. 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.
- I. 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.
- J. 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 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.

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.

- 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. Individuals may file complaints electronically by using the complaint form available at <https://www.nycenet.edu/o eo>, or may file complaints by notifying OEO at the phone number or by visiting OEO at the address found at the end of this regulation.
2. An individual may file an anonymous complaint alleging a violation of this regulation. OEO will review anonymous complaints to determine how they should be processed in light of the information provided.
3. When a complaint is filed alleging discrimination or harassment of a student, the principal/designee should determine whether interim interventions/supports for the student are appropriate while the case is being investigated. Interim interventions and supports could include, but are not limited to, guidance interventions, counseling, assignment of an adult to check in with the student, change in schedule, or referral to the appropriate school support team or outside organization.
4. When a complaint is filed alleging discrimination or harassment of an employee, the employee's supervisor may discuss with OEO whether interim interventions for the employee are appropriate while the case is being investigated.

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 their designee. 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 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 DOE'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 transfer the matter to the DOE's Legal Office.

VI. INQUIRIES

Inquiries pertaining to this regulation should be addressed to:

Office of Equal Opportunity and Diversity Management

NYC Department of Education

65 Court Street

Brooklyn, NY 11201

Telephone: 718-935-3320

Fax: 718-935-2531

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 New York City Department of Education (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.

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 unless expressly permitted or required by law or regulation.

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 they have a qualifying disability and is in need of a reasonable accommodation in order to fulfill the essential functions of their position, that person should contact the DOE's HR Connect Office of Medical, Leaves and Records or DOE's Disability Coordinator within the Office of Equal Opportunity and Diversity Management (OEO) 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: actual or perceived gender, pregnancy, or conditions related to pregnancy or childbirth. The prohibition against gender discrimination includes sexual harassment. The term "gender" also includes a person's actual or perceived gender identity and gender expression, meaning their self-image, appearance, behavior, expression, or other gender-related characteristic, regardless of the sex assigned to that person at birth. Gender discrimination may include, but is not limited to, denial of access to restrooms, changing rooms, locker rooms, and/or DOE programs or activities on the basis of gender or the use of name(s) or pronoun(s) in a manner that discriminates (e.g., deliberately using a pronoun that is not consistent with the individual's gender identity asserted in school, work, or other DOE program or activity).

Partnership Status: actual or perceived status of being in a registered domestic partnership.

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. After the extension of a conditional offer, the DOE requires a background investigation, including fingerprint information, which is reviewed under Chancellor's Regulation C-105 as well as any applicable laws and regulations.

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: an individual's actual or perceived romantic, physical or sexual attraction to other persons, or lack thereof, on the basis of gender. A continuum of sexual orientation exists and includes, but is not limited to, heterosexuality, homosexuality, bisexuality, asexuality, and pansexuality.

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 their 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 they are 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.



PUBLIC NOTIFICATION OF ANTI-DISCRIMINATION POLICY

It is the policy of the New York City Department of Education (DOE) to provide equal employment opportunities in accordance with applicable laws and regulations and 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, military status, unemployment status, prior record of arrest or conviction, caregiver status, consumer credit history, predisposing genetic characteristics, or status as a victim of domestic violence, sexual offenses, or stalking, and to maintain an environment free of harassment on any of the above protected classifications, including sexual harassment and retaliation.

It is the policy of the DOE to provide equal educational opportunities in accordance with applicable laws and regulations and without regard to actual or perceived race, color, religion, age, creed, ethnicity, national origin, alienage, citizenship status, disability, sexual orientation, gender, or weight and to maintain an environment free of harassment on the basis of any of the above protected classifications, 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 and Diversity Management (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 www.nyc.gov/schools/o eo/.

DOE Resources: Office of Equal Opportunity and Diversity Management New York City Department of Education 65 Court Street Brooklyn, New York 11201 Tel: 718-935-3320 Fax: 718-935-2531		External Resources:					
Questions regarding Title IX compliance should be referred to: Title IX Coordinator 65 Court Street Brooklyn, NY 11201 Tel: 718-935-3320 Title_IX_Inquiries@schools.nyc.gov		<table border="1"> <tr> <td> U.S. Equal Employment Opportunity Commission New York District Office 33 Whitehall Street, 5th Floor New York, New York 10004 212-336-3620 </td> <td> 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 </td> </tr> <tr> <td> New York State Division of Human Rights 1 Fordham Plaza - 4th Floor Bronx, New York 10458 718-741-8400 </td> <td> New York City Commission on Human Rights 22 Reade Street – 1st Floor New York, NY 10007 212-306-7450 </td> </tr> </table>		U.S. Equal Employment Opportunity Commission New York District Office 33 Whitehall Street, 5 th Floor New York, New York 10004 212-336-3620	Office for Civil Rights New York Office U.S. Department of Education 32 Old Slip, 26 th Floor New York, NY 10005-2500 646-428-3900	New York State Division of Human Rights 1 Fordham Plaza - 4 th Floor Bronx, New York 10458 718-741-8400	New York City Commission on Human Rights 22 Reade Street – 1 st Floor New York, NY 10007 212-306-7450
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Questions regarding Section 504 accommodations should be referred to: Section 504 Coordinator 504Accommodations@schools.nyc.gov							