

	<p align="center">State of Hawaii Department of Education Standard Practice (SP) Document</p>	<p align="center">Office of the Superintendent</p>
<p>Document No. SP 0201</p>	<p>Distribution: All DOE Employees</p>	<p>Release Date: 5/22/2018</p>
<p>SUBJECT</p>	<p>Department of Education Applicant and Employee Non-Discrimination Policy</p>	

1. Purpose

The purpose of the Employee and Applicant Non-Discrimination Policy, Board of Education Policy # 900-1, is to foster respect and enhance the morale and efficiency of State of Hawaii Department of Education (DOE) employees. The DOE is committed to promoting and maintaining a productive work environment free of any form of discrimination or harassment, including sexual harassment, based on a person's protected class. The DOE will not tolerate workplace discrimination, harassment or retaliation and will take appropriate action when discrimination, harassment or retaliation occurs. The DOE will act to curb protected class discrimination or harassment without regard to its severity or pervasiveness and does not require that discrimination or harassment rise to the level of unlawfulness before taking action. Every DOE employee is responsible for assuring that work in the DOE is conducted in an atmosphere that respects the dignity of every DOE employee. DOE employees are expected to avoid behavior that could reasonably be perceived as discrimination or harassment, including sexual harassment, prohibited under this Policy. In addition, DOE employees are expected to avoid retaliation against an individual who makes a complaint, participates in or provides information for an investigation relating to discrimination and/or harassment, or makes a request for reasonable accommodation.

A violation of this Policy may result in disciplinary action, up to and including termination, in accordance with applicable state laws, rules, policies and collective bargaining agreements.

To that end, the DOE hereby promulgates this Standard Practice Document in order to provide sufficient notice and information to its employees and applicants.

2. Effective

Immediately.

3. Applies to

All employees and applicants for employment, including, but not limited to casual hires, classified, and certificated employees.

In circumstances involving third parties or conduct that occurred outside of a DOE-sponsored program or activity, the DOE will decide whether this Policy applies to a reported incident or complaint on a case-by-case basis.

4. Definitions

As used in BOE Policy 900-1 and this SP:

“Discrimination” means any employment action taken because of a person’s protected class.

“Gender identity or expression” includes a person’s actual or perceived gender, as well as a person’s gender identity, gender-related self-image, gender-related appearance, or gender-related expression, regardless of whether that gender identity, gender-related self-image, gender-related appearance, or gender-related expression is different from that traditionally associated with a person’s sex at birth.

“Genetic information” includes information about an individual’s genetic tests and the genetic tests of an individual’s family members, as well as information about any disease, disorder, or condition of an individual’s family members (i.e. an individual’s family medical history). Family medical history is included in the definition of genetic information because it is often used to determine whether someone has an increased risk of getting a disease, disorder or condition in the future.

“Interim Measures” are services, accommodations, or other assistance that the DOE puts in place on a case-by-case and temporary basis after receiving notice of a complaint and before any outcomes – investigatory, disciplinary, or remedial – have been determined.

“Protected class” includes:

- Race,
- Color,
- Sex, including gender identity or expression,
- Sexual orientation,
- Condition of pregnancy,
- Act of breastfeeding or expressing milk,
- Religion,
- National origin,
- Ancestry,
- Age,
- Physical or mental disability,
- Genetic information,
- Marital status,
- Arrest and court record (except as permitted by applicable laws),
- Income assignment for child support,
- National guard absence,
- Uniformed service,
- Veteran status,
- Citizenship (except as permitted by applicable laws),
- Credit history or credit report (unless directly related to a bona fide occupational qualification),
- Domestic or sexual violence victim status if the domestic or sexual violence victim provides notice to the victim’s employer of such status or the employer has actual knowledge of such status, or
- Any other classification protected under applicable state or federal laws.

“Retaliation” means adverse action against anyone because he/she engaged in protected activity. Protected activity includes filing a complaint of harassment, or discrimination; participating in a complaint or investigation proceedings dealing with harassment or discrimination under this Policy; inquiring about rights under this SP; or otherwise opposing acts covered under this Policy. An adverse action is any action that would dissuade a reasonable person from making or supporting a complaint under this Policy. Examples of adverse actions that might constitute retaliation include a significant change in one’s status, such as suspension, unsatisfactory or unfair evaluations, unfair assignments, firing, failing to promote, reassignment with significantly different responsibility or a decision causing a significant change in benefits, direct or implied threats, coercion, harassment, intimidation, or encouragement of others to retaliate. There must be a causal connection between the adverse action and the protected activity, meaning that the adverse action was taken because of the protected activity. If there is a legitimate, non-retaliatory reason for the adverse action, it will not be retaliation.

“Unlawful Harassment” means any unwelcome behavior, based on a person’s protected class, which is sufficiently severe or pervasive, and has the purpose or effect of either unreasonably interfering with the person’s work performance or creating an intimidating, hostile; or offensive work environment. The conduct must be both objectively and subjectively perceived as offensive. That reporting party must view the conduct as offensive, and a reasonable person with the same fundamental characteristics as the reporting party (e.g., actual or perceived sex, age, race, gender, sexual orientation, gender identity or gender expression) must also view the conduct as offensive.

5. Prohibited Conduct

It is a violation of the Policy to engage in protected class discrimination or harassment. Protected class discrimination or harassment does not have to rise to the level of severe or pervasive conduct or unlawful discrimination to violate this Policy. The following conduct is prohibited:

Taking employment action or making an employment decision because of a person’s protected class that results in a significant change in benefits, or terms and conditions of employment.

Harassing or offensive conduct directed at individuals based on protected class characteristics, including, but not limited to:

Unwanted physical contact, sexually suggestive or offensive touching, patting, hugging, brushing against a person’s clothing or body, or pinching;
Requests for sexual favors, threats or adverse actions for refusing sexual favors, threats or adverse actions for refusing a sexual advance, or promises of employment benefits in exchange for sexual favors;
Lewd descriptions, sexual jokes, comments about physical attributes, pressure for sexual activity, such as repeated and unwanted attempts at a romantic relationship, or sexually explicit questions;
Displays of demeaning or insulting objects, pictures, or photographs relating to any protected class;
Demeaning, insulting, or intimidating written, recorded, or electronically transmitted messages (such as email, text messages, voicemail, and internet materials) relating to any protected class; and/or

Derogatory comments, slurs, jokes, profanity, anecdotes, and/or offensive questions based on or directed at any protected class.

It is also a violation of this Policy to engage in retaliation. Retaliation is a separate action from any complaint of discrimination or harassment.

6. Responsibilities

Civil Rights Compliance Office

The DOE, Office of the Superintendent's Civil Rights Compliance Office (CRCO) shall coordinate this policy.

Administrators, Managers, and Supervisors

Administrators, managers, and supervisors, including, but not limited to, assistant superintendents, school administrators, principals, vice principals, directors and other management personnel are responsible for maintaining a workplace free of harassment and discrimination.

Administrators, managers, and supervisors who witness or receive report(s) of discrimination or harassment shall take immediate and appropriate action reasonably calculated to end the discrimination or harassment. Administrators, managers and supervisors should immediately consult with the CRCO for appropriate action once they know about a potential discriminatory situation.

Administrators, managers, and supervisors shall report any complaints that are received to the CRCO.

Administrators, managers, and supervisors are prohibited from engaging in discriminatory or harassing conduct. Any administrator, manager or supervisor who engages in such conduct shall be investigated under the investigation procedures in this Policy.

Employees

While at work and during work-related functions, employees have a responsibility to refrain from engaging in any behavior that violates this policy.

Employees who experience or observe any job-related discrimination or harassment or believe they have been treated in a discriminatory or harassing manner are expected to report the incident(s) to any administrator, manager, supervisor or the CRCO in order to correct and prevent harassment.

7. Complaints

Any DOE employee or volunteer who witness or have knowledge of discrimination and/or harassment may file a complaint with any school administrator, manager, supervisor, or the CRCO. The employee or volunteer may use the Discrimination Complaint Form. If they choose not to use the form, the complaint should nevertheless be accepted and forwarded to CRCO.

Upon receiving notice of a complaint, the CRCO shall promptly assess the situation and take any of the following actions:

If the CRCO determines that the complaint would, if substantiated, potentially constitute a violation of the Policy, the CRCO will determine that appropriate interim measures are in place and initiate an investigation;

If the CRCO determines that the complaint is outside of the jurisdiction of the Policy, the CRCO may refer the complaint to another office for review; or

If the CRCO determines that Informal resolution is appropriate, the CRCO will determine the best means for resolution, which could include discussions with the parties, making recommendations for resolution and follow-up to assure the resolution has been implemented effectively.

The CRCO may investigate allegations of violations of the SP even absent the filing of a formal complaint or if a complaint has been withdrawn.

Interim Measures

Administrators, managers or supervisors may implement Interim Measures to ensure the complainant's safety, ensure the safety of all parties and the broader DOE community, maintain the integrity of the investigative and/or resolution process, and deter retaliation. The DOE may provide Interim Measures regardless of whether the complainant seeks formal disciplinary action. Interim Measures shall be available throughout all phases of an investigation. Interim Measures are initiated based on information gathered following a complaint and are not intended to be permanent resolutions; hence, they may be amended or withdrawn as additional information is gathered. Failure to comply with the terms of Interim Measures may be considered a separate violation of this Policy, which may result in a separate investigation, findings, and determination.

8. Investigations

When the CRCO determines that an investigation will be conducted, CRCO will assign an investigator who will notify the complainant of the investigation. The individual against whom the complaint was made ("the respondent") will be provided notice of the investigation. The investigator will interview the witnesses that are necessary to gather all relevant information relating to the complaint, including the complainant, the respondent, any witnesses whom the investigator determines to be relevant, and individuals with unique knowledge pertinent to the complaint. The investigator will collect all relevant documents, notes and photographs relating to the complaint. Once the investigator has obtained all of the information and documents that he/she determines to be relevant, the investigator will prepare a report, which will include findings of facts and determinations of any violations of policies. The investigation will be completed in a prompt and equitable manner.

The report will be forwarded to the decision maker, who will determine any appropriate discipline, in consultation with CRCO.

Standard of Review

In determining whether alleged behavior violates this Policy, the DOE will consider the totality of the facts and circumstances involved in the incident, including the nature of the alleged behavior and the context in which it occurred, and determine whether it is more likely than not that the alleged prohibited behavior occurred.

9. Limited Confidentiality

The DOE will take appropriate steps to protect the confidentiality of discrimination, harassment and retaliation complaints, investigations, and reports, whether substantiated or unsubstantiated. However, once the DOE has notice of alleged prohibited behavior, the DOE is obligated to take appropriate action and cannot guarantee complete confidentiality. Information relating to complaints, investigations and reports shall be shared with appropriate individuals on a “need to know” basis.

10. Violation of Policy

Employees who violate this policy shall be subjected to disciplinary action reasonably calculated to stop the discrimination or harassment, which may include dismissal, in accordance with applicable DOE policies, regulations, rules, collective bargaining agreements, and other DOE and civil service laws, rules, and regulations.

11. Referring Complaints to External Agencies

In addition to the procedures described above, employees may make complaints about discrimination, harassment or retaliation in the workplace to other appropriate agencies, including but not limited to, the federal Equal Employment Opportunity Commission (www.eeoc.gov) and the Hawai'i Civil Rights commission (<http://labor.hawaii.gov/hcrc>).

Employees wishing to file complaints with other agencies should contact that agency to obtain information on their specific procedures and should not wait for resolution of a complaint made to the employer. Agencies may have time limitations for filing complaints. For example, complaints of unlawful discriminatory practices must be filed with the Hawaii Civil Rights Commission no later than one hundred eighty (180) days or with the Equal Employment Opportunity Commission no later than three hundred (300) days from the date: (1) the alleged discriminatory act occurred, or (2) the last occurrence in a pattern of ongoing discriminatory conduct.

12. SP Maintenance Responsibility

The CRCO is responsible for the maintenance and administration regarding this SP and for answering any questions relating to the SP.

13. References, Resources, and Forms

Title VII of the Civil Rights Act of 1964 as amended
The Pregnancy Discrimination Act
The Age Discrimination in Employment Act of 1987
The Equal Pay Act of 1963
Titles I and II of the Americans with Disabilities Act of 1990
The ADA Amendments Act of 2008
Sections 102 and 103 of the Civil Rights Act of 1991
Sections 503 and 504 of the Rehabilitation Act of 1973
The Genetic Information Nondiscrimination Act of 2008
The Immigration Reform and Control Act of 1986
Chapter 378, Hawaii Revised Statutes
Discrimination Complaint Form BOE Policy #900-1 (Complaint form 900-1)
<http://www.hawaiipublicschools.org/DOE%20Forms/Civil%20Rights/DiscriminationComplaintForm.pdf>