Title: Nondiscrimination/Discriminatory Harassment - Employment Practices

Code: 104

Status: Active

Legal:
1. 20 U.S.C. 1681 et seq
2. 29 U.S.C. 206
3. 29 U.S.C. 621 et seq
4. 29 U.S.C. 794
5. 42 U.S.C. 12101 et seq
7. 42 U.S.C. 2000e et seq
8. 42 U.S.C. 2000ff et seq
9. 43 P.S. 336.3
10. 43 P.S. 951 et seq
11. U.S. Const. Amend. XIV, Equal Protection Clause
12. Pol. 317
13. Pol. 806
14. Pol. 824
15. 29 CFR 1604.11
16. 29 CFR 1606.8
17. EEOC Enforcement Guidance on Harris v. Forklift Sys., Inc., November 9, 1993
18. EEOC Enforcement Guidance on Vicarious Employer Liability for Unlawful Harassment by Supervisors, June 18, 1999
20. 18 Pa. C.S.A. 2709
21. Pol. 815
16 PA Code 44.1 et seq
28 CFR 35.140
28 CFR Part 41
29 CFR Parts 1600-1691
Authority

The Board declares it to be the policy of the Intermediate Unit to provide to all persons equal access to all categories of employment in this Intermediate Unit, regardless of race, color, age, creed, religion, sex, sexual orientation, ancestry, national origin, marital status, genetic information, pregnancy or handicap/disability. The Intermediate Unit shall make reasonable accommodations for identified physical and mental impairments that constitute disabilities, consistent with the requirements of federal and state laws and regulations.[1][2][3][4][5][6][7][8][9][10][11]

The Board encourages employees and third parties who believe they or others have been subject to discrimination to promptly report such incidents to designated employees.

The Board directs that verbal and written complaints of discrimination shall be investigated promptly, and appropriate corrective action be taken when allegations are substantiated. The Board directs that any complaint of discrimination brought pursuant to this policy shall also be reviewed for conduct which may not be proven discriminatory under this policy but merits review and possible action under other Board policies.[12][13][14]

Confidentiality

Confidentiality of all parties, witnesses, the allegations, the filing of a complaint, and the investigation shall be handled in accordance with this policy and the Intermediate Unit's legal and investigative obligations.

Retaliation

The Board prohibits retaliation against any person for making a report of discrimination or participating in a related investigation or hearing, or opposing practices the person reasonably believes to be discriminatory. A complaint of retaliation shall be handled in the same manner as a complaint of discrimination.

Definitions

Discriminatory Harassment

Harassment by students, employees or third parties on the basis of race, color, age, creed, religion, sex, sexual orientation, gender identity, ancestry, national origin, veteran's status, marital status, genetic information, pregnancy or disability is a form of discrimination and is subject to this policy. A person who is not necessarily an intended victim or target of such harassment but is adversely affected by the offensive conduct may file a report of discrimination on his/her own behalf.[8][15][16][17][18][19]

For purposes of this policy, harassment shall consist of unwelcome conduct such as graphic, written, electronic, verbal or nonverbal acts including offensive jokes, slurs, epithets and name-calling, ridicule or mockery, insults or put-downs, offensive objects or pictures, physical assaults or threats, intimidation, or other conduct that may be harmful or humiliating or interfere with a person's work performance and which relates to an individual's or group's race, color, age, creed, religion, sex, sexual orientation, gender identity, ancestry, national origin, veteran's status, marital status, genetic information, pregnancy or disability when such conduct is:
1. Sufficiently severe, persistent or pervasive; and

2. A reasonable person in the complainant’s position would find that it creates an intimidating, threatening or abusive work environment such that it deprives or adversely interferes with or limits an individual or group of the ability to participate in or benefit from the services, activities or opportunities offered by a school.

For purposes of this policy, sexual harassment shall consist of unwelcome sexual advances; requests for sexual favors; and other inappropriate verbal, nonverbal, written, electronic, graphic or physical conduct of a sexual nature when:

1. Submission to such conduct is made explicitly or implicitly a term or condition of an employee’s status; or

2. Submission to or rejection of such conduct is used as the basis for employment-related decisions affecting an employee; or

3. Such conduct is sufficiently severe, persistent or pervasive that a reasonable person in the complainant’s position would find that it unreasonably interferes with the complainant’s performance at work or otherwise creates an intimidating, hostile, or offensive working environment such that it alters the complainant’s working conditions.

Delegation of Responsibility

In order to maintain a program of nondiscrimination practices that is in compliance with applicable laws and regulations, the Board designates the Chief Financial and Operations Officer as the Intermediate Unit’s Compliance Officer. All nondiscrimination notices or information shall include the position, office address, telephone number and email address of the Compliance Officer.

The Compliance Officer shall publish and disseminate this policy and complaint procedure at least annually to students, parents/guardians, employees and the public to notify them of where and how to initiate complaints under this policy.

The Compliance Officer shall be responsible to ensure adequate nondiscrimination procedures are in place, to recommend new procedures or modifications to procedures and to monitor the implementation of nondiscrimination procedures in the following areas:

1. Review - Review of personnel practices and actions for discriminatory bias and compliance with laws against discrimination to include monitoring and recommending corrective measures when appropriate to written position qualifications, job descriptions and essential job functions; recruitment materials and practices; procedures for screening applicants; application and interviewing practices for hiring and promotions; performance evaluations; review of planned employee demotions, non-renewal of contracts, and proposed employee disciplinary actions up to and including termination.

2. Training - Provision of training for supervisors and staff to prevent, identify and alleviate problems of employment discrimination.

3. Resources - Maintain and provide information to staff on resources available to alleged victims in addition to the complaint procedure such as making reports to the police, available assistance from domestic violence or rape crisis programs, and
community health resources including counseling resources.

4. Complaints - Monitor and provide technical assistance to, program supervisors or
designees in processing complaints.

The program supervisor shall be responsible to promptly complete the following duties
upon receipt of a report of discrimination or retaliation from employees or third parties:

1. If the program supervisor is the subject of the complaint, refer the complainant to the
Compliance Officer to carry out these responsibilities.

2. Inform the employee or third party about this policy including the right to an
investigation of both verbal and written complaints of discrimination.

3. Provide relevant information on resources available in addition to the complaint
procedure such as making reports to the police, available assistance from domestic
violence and rape crisis programs, and community health resources including
counseling resources.

4. Immediately notify the Compliance Officer of the complaint. The Compliance Officer
shall assess whether the investigation should be conducted by the program
supervisor, another employee, the Compliance Officer or an attorney and shall
promptly assign the investigation to that individual.

5. After consideration of the allegations and in consultation with the Compliance Officer
and other appropriate individuals, promptly implement interim measures as
appropriate to protect the complainant and others as necessary from violation of this
policy during the course of the investigation.

Guidelines

Complaint Procedure – Employee/Third Party

Step 1 – Reporting

An employee or third party who believes s/he has been subject to conduct by any student,
employee or third party that constitutes a violation of this policy is encouraged to
immediately report the matter to the program supervisor. Any person with knowledge of
conduct which may violate this policy, is encouraged to immediately report the matter to
the program supervisor.

If the program supervisor is the subject of a complaint, the employee or third party shall
report the incident directly to the Compliance Officer. The complainant or reporting
employee may be encouraged to use the Intermediate Unit’s report form, available from
the program supervisor or Compliance Officer, or to put the complaint in writing; however,
oral complaints shall be accepted, documented and the procedures of this policy
implemented. The person accepting the verbal or written complaint may provide factual
information on the complaint and the investigative process, the impact of choosing to seek
confidentiality and the right to file criminal charges. In all other respects, the person
accepting the complaint shall handle the report objectively, neutrally and professionally,
setting aside personal biases that might favor or disfavor the complainant or those accused
of a violation of this policy.

Step 2 – Investigation
The Compliance Officer shall ensure that the individual assigned to investigate the complaint has an appropriate understanding of the relevant laws pertaining to discrimination issues and this policy and how to conduct investigations.

The investigator shall work with the Compliance Officer to assess the anticipated scope of the investigation, who needs to be interviewed and what records may be relevant to the investigation.

The investigator shall conduct an adequate, reliable and impartial investigation. The complainant and the accused may suggest additional witnesses and provide other evidence during the course of the investigation. When the initial complaint involves allegations relating to conduct which took place outside of Intermediate Unit or Intermediate Unit-sponsored activities, the investigation may include inquiries related to these allegations to determine whether they resulted in continuing effects such as harassment in Intermediate Unit settings.

The investigation may consist of individual interviews with the complainant, the accused, and others with knowledge relative to the allegations. The investigator may also evaluate any other information and materials relevant to the investigation. The person reporting the alleged discrimination, relevant parties, parents/guardians and witnesses shall be informed of the prohibition against retaliation for anyone’s participation in the process and that conduct believed to be retaliatory should be reported. All individuals providing statements or other information or participating in the investigation shall be instructed to keep the matter confidential and to report any concerns about confidentiality to the investigator.

If the investigation reveals that the conduct being investigated may involve a violation of criminal law, the investigator shall promptly notify the Compliance Officer, who shall promptly inform law enforcement authorities about the allegations.[13][20][21]

The obligation to conduct this investigation shall not be negated by the fact that a criminal or child protective services investigation of the allegations is pending or has been concluded. The investigator should coordinate with any other ongoing investigations of the allegations, including agreeing to requests for a short delay in fulfilling the Intermediate Unit’s investigative responsibilities during the fact-finding portion of a criminal or child protective services investigation. Such delays shall not extend beyond the time necessary to prevent interference with or disruption of the criminal or child protective services investigation.

**Step 3 – Investigative Report**

The investigator shall prepare and submit a written report to the Compliance Officer within twenty (20) days of the initial report of alleged discrimination, unless the nature of the allegations, anticipated extent of the investigation or the availability of witnesses requires the investigator and the Compliance Officer to establish a different due date. The parties shall be notified of the anticipated date the investigative report will be completed and of any changes to the anticipated due date during the course of the investigation.

The report shall include a summary of the investigation, a determination of whether the complaint has been substantiated as factual, the information and evaluation that formed the basis for this determination, whether the conduct violated this policy and any other violation of law or Board policy which may warrant further action by the Intermediate Unit, and a recommended disposition of the complaint. An investigation into discriminatory harassment or sexual harassment shall consider the record as a whole and the totality of circumstances in determining whether a violation of this policy has occurred, recognizing
that persistent and pervasive conduct, when taken together, may be a violation even when the separate incidents are not severe.

The complainant and the accused shall be informed of the outcome of the investigation, for example, whether the investigator believes the allegations to be founded or unfounded, within a reasonable time of the submission of the written report. The accused shall not be notified of the individual remedies offered or provided to the complainant.

**Step 4 – Intermediate Unit Action**

If the investigation results in a finding that some or all of the allegations of the complaint are established and constitute a violation of this policy, the Intermediate Unit shall take prompt, corrective action designed to ensure that such conduct ceases and that no retaliation occurs. The Intermediate Unit shall promptly take appropriate steps to prevent the recurrence of the prohibited conduct and to address the discriminatory effect the prohibited conduct had on the complainant and the program environment. Intermediate Unit staff shall document the corrective action taken and, where not prohibited by law, inform the complainant. The Compliance Officer shall follow-up by assessing the effectiveness of the corrective action at reasonable intervals.

If an investigation results in a finding that a different law or Board policy was violated separately from or in addition to violations of this policy, or that there are circumstances warranting further action, such matters shall be addressed at the conclusion of this investigation or through disciplinary or other appropriate referrals where further evaluation or investigation is necessary.

Disciplinary actions shall be consistent with Board policies and administrative regulations, Intermediate Unit procedures, applicable collective bargaining agreements, and state and federal laws.

**Appeal Procedure**

1. If the complainant or the accused is not satisfied with a finding made pursuant to the policy or with recommended corrective action, s/he may submit a written appeal to the Compliance Officer within fifteen (15) days from receipt of the report. If the Compliance Officer investigated the complaint, such appeal shall be made to the Executive Director.

2. The individual receiving the appeal shall review the investigation and the investigative report and may also conduct or designate another person to conduct a reasonable supplemental investigation to assess the sufficiency and propriety of the prior investigation.

3. The person handling the appeal shall prepare a written response to the appeal within twenty (20) days. Copies of the response shall be provided to the complainant, the accused and the investigator who conducted the initial investigation.

4. The review of this matter on appeal shall be the final review of the organization of the matter and no further appeals exist.

104-AttachRprtForm.docx (18 KB)