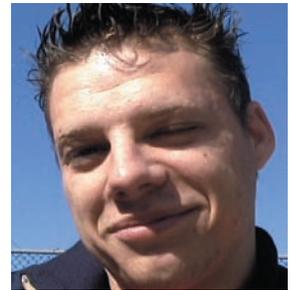


MODEL ANTI-HARASSMENT AND NON-DISCRIMINATION POLICY

FOR CHILD WELFARE OR JUVENILE JUSTICE AGENCIES



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NATIONAL CENTER FOR LESBIAN RIGHTS

MODEL ANTI-HARASSMENT AND NON-DISCRIMINATION POLICY FOR CHILD WELFARE OR JUVENILE JUSTICE AGENCIES

I. POLICY

It is the policy of the [name of your agency or organization], in accord with state and federal laws, that each youth under the jurisdiction of the [agency or organization] has the right to an environment free of harassment and discrimination. It is also the policy of the [agency or organization] in accord with state and federal laws, that each employee, contractor, and volunteer has the right to work in an environment free of harassment and discrimination. Harassment and discrimination are strictly prohibited and will not be tolerated at the [agency or organization]. The [agency or organization] will take all reasonable steps within its control to provide an environment in which all individuals are treated with respect and dignity.

It is the policy of the [agency or organization] to prohibit all forms of harassment and discrimination of or by youth, employees, contractors, and volunteers, including harassment and discrimination based on actual or perceived race, color, religion, sex, national origin, ethnicity, ancestry, age, disability, sexual orientation, gender identity and expression, or based on an individual's association with a person or group with one or more of these actual or perceived characteristics.

Retaliation against an individual who files a complaint of harassment or participates in an investigation of such a complaint is strictly prohibited.

The [agency or organization] shall ensure that all youth, employees, contractors, and volunteers receive notice of this policy.

II. DEFINITIONS

The following definitions are for purposes of this policy.

Contractor: Any person who is employed directly by an agency or organization that has a contract or Memorandum of Understanding with the [agency or organization].

Discrimination: Any act, policy or practice that, regardless of intent, has the effect of subjecting any person to differential treatment as a result of that person's actual or perceived race, color, religion, sex, national origin, ethnicity, ancestry, age, disability, sexual orientation, gender identity and expression, or based on that person's association with a person or group with one or more of these actual or perceived characteristics.

Employee: Any person who is employed directly by [agency or department].

Gender Identity and Expression: For purposes of this policy, gender identity and expression mean having or being perceived as having gender-related characteristics, appearance, mannerisms, or identity, whether or not stereotypically associated with one's assigned sex at birth.

Harassment: Unwelcome, offensive or intimidating behavior on account of an individual's (or group of individuals') membership in a protected category, as defined below. Unlawful harassment may take many forms including but not limited to:

VERBAL CONDUCT that is directed at an individual (or group of individuals) because of his or her (their) membership in a protected category. Examples include, but are not limited to, epithets, derogatory comments, unwelcome jokes or stories, slurs, unwelcome verbal advances or invitations, requests for sexual favors, or harassing phone calls.

VISUAL CONDUCT that is directed at an individual (or group of individuals) because of his or her (their) membership in a protected category. Examples include, but are not limited to, derogatory or offensive posters, cartoons, bulletins, drawings, photographs, magazines, written articles or stories, screen savers, or electronic communications.

PHYSICAL CONDUCT that is directed at an individual (or group of individuals) because of his or her (their) membership in a protected category. Examples include, but are not limited to, touching, patting, pinching, grabbing, staring, leering, lewd gestures, invading personal space, assault, blocking normal movement, or other physical interference.

SEXUAL CONDUCT that is directed at a youth by an employee, contractor, volunteer, or by another youth, which is unwelcome and/or harassing. Examples include unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature.

Protected Categories: Race, color, religion, sex, national origin, ethnicity, ancestry, age, disability, sexual orientation, gender identity and expression, or any other category protected now or in the future by state or federal laws.

Retaliation: Any adverse action taken against a person for filing a complaint of harassment, reporting a complaint of harassment, or participating in or cooperating with an investigation of a complaint of harassment.

Volunteer: Any person who provides services free of charge to the [agency or organization].

Youth: Any person committed to the custody and care of the [agency or organization], any person who is subject to supervision by the [agency or organization], or any person who is in the custody of the state who receives services from the [agency or organization].

Adverse actions may include, but are not limited to: knowingly placing a youth in a situation that jeopardizes the youth's safety, denying privileges without justification, imposing unwarranted discipline, removing the youth from a placement, making an unwarranted transfer recommendation, ignoring or ostracizing the youth, spreading rumors or innuendoes about the youth, or threatening any of the above conduct.

III. PROCEDURES FOR HANDLING COMPLAINTS OF HARASSMENT OR DISCRIMINATION

A. REPORTING COMPLAINTS

1. Youth. It is the policy of the [agency or organization] to encourage any youth to report when the youth (1) legitimately and reasonably believes that he or she has been subjected to harassment or discrimination based on his or her actual or perceived membership in a protected category or based on his or her association with a person or group, or (2) has first-hand knowledge of what he or she legitimately and reasonably believes to be harassment or discrimination of another youth.

Youth may report a complaint of harassment or discrimination in two ways: a) to the Equity Coordinator(s) and/or b) to any employee. Youth may report harassment or discrimination through one or both of these methods.

a) To the Equity Coordinator(s). The [head of the agency or organization] shall designate at least one individual as an Equity Coordinator to receive complaints under this policy. The [agency or organization] shall prominently post the name and contact information of its Equity Coordinator(s). Any youth may make a verbal or written complaint of harassment or discrimination under this policy, for themselves or another youth, to the Equity Coordinator(s). The Equity Coordinator(s) shall promptly, and in no case later than 24 hours after receiving the complaint from the youth, forward the complaint to the [head of the agency or organization].

b) To an Employee. Any youth may make a verbal or written complaint of harassment or discrimination under this policy, for themselves or another youth, to any [agency or organization] employee. An employee who receives such a complaint must promptly, and in no case later than 24 hours after receiving the complaint from the youth, report the complaint to the [employee's supervisor]. The [supervisor] shall forward the complaint to the [head of the agency or organization] promptly, and in no case later than 24 hours after receiving the complaint from the employee.

2. Employees, Contractors, and Volunteers. Any employee, contractor, or volunteer who witnesses harassment of a youth shall promptly, and in no case later than 24 hours after witnessing the harassing conduct, report that conduct to [their supervisor or unit head]. The [supervisor] shall promptly, and in no case later than 24 hours after receiving the report from the employee, forward the complaint to the [head of the agency or organization].

3. Mandatory Reporting of Suspected Child Abuse. Under certain circumstances, alleged harassment may constitute child abuse under state law. Employees, contractors, volunteers, and agency staff must remain aware of their statutory obligation to report suspected abuse, when applicable.

4. Privacy. The [agency or organization] will keep complaints made under this policy confidential to the extent possible given the need to investigate, act on investigative results, and monitor and compile reports about complaints made under this policy. Complaints made under this policy shall be kept separate from any other individual files maintained on youth.

B. RESPONSE TO COMPLAINT

- 1. Immediate Action.** Upon learning the details of the complaint, if the [supervisor or head of the agency or organization] determines that the conduct alleged in the complaint is egregious or poses a threat of further potential misconduct, he or she shall take immediate action to separate the complainant(s) and the subject(s) of the complaint to the greatest degree possible consistent with practical considerations of managing the facility in question.
- 2. Investigation.** Within 24 hours of receiving a complaint of harassment or discrimination under this policy, the [head of agency or organization] shall assign either an Equity Coordinator or another designee to investigate the complaint. The [head of agency or organization] shall not assign an investigator who is either the subject of or an actual or potential witness to the harassment or discrimination alleged in the complaint. Also, within 24 hours of receipt of a complaint under this policy, the [head of agency or organization] shall forward the complaint to the assigned investigator.

The assigned investigator shall begin the investigation promptly upon receiving the complaint from the [head of agency or organization]. The assigned investigator shall interview the individuals involved, witnesses, and any other persons who may have knowledge of the circumstances giving rise to the complaint. The investigator may use other methods and documentation necessary to uncover the facts and circumstances surrounding the conduct at issue in the complaint. In determining the facts surrounding a complaint, the investigator shall consider, among other things: the nature of the alleged behavior; how often the conduct allegedly occurred; whether there were alleged or confirmed past incidents or alleged or confirmed continuing patterns of behavior; and the relationship of the parties involved.

- 3. Concluding the Investigation.** The investigator shall complete the investigation, including a written investigative report, as soon as practicable, but in no event later than thirty (30) calendar days after receiving the complaint from the [head of agency or organization]. If exceptional circumstances warrant more time, by no later than thirty (30) days from the date the investigator received the complaint, the investigator shall provide a status report to the [head of agency or organization] and shall request additional time.
- 4. Result.** After completing the investigation, the investigator shall determine the facts of the case including who did what, who said what, and who intended what. The investigator shall provide the evidence supporting these facts to the [head of agency or organization] in a written investigative report.

C. DETERMINATION

Within 10 calendar days of the date of receipt of the investigative report, the [head of agency or organization] shall make his or her determination on whether a violation of this policy occurred, whether a violation of another [agency or organization] policy occurred, or whether no violation occurred. If the [head of agency or organization] finds that a violation did occur, he or she will take appropriate action consistent with the remedial and disciplinary action provision of this policy (see section E below).

D. NOTIFICATION

Within two business days of making a determination on whether there has been any violation of this or another [agency or organization] policy, the [head of agency or organization] shall advise the complainant of this determination and what action has been or will be taken for any violations.

E. REMEDIAL AND DISCIPLINARY ACTION

The [agency or organization] shall take remedial or disciplinary action as appropriate to ensure that harassment or discrimination does not reoccur. All remedial and disciplinary action shall comply with applicable state and federal laws, local ordinances, collective bargaining agreements, and, where applicable, the [agency or organization] policies and procedures. The [head of agency or organization] shall establish a remedial and disciplinary structure consistent with this policy.

- 1. Youth.** If the [head of agency or organization] determines that a youth violated this policy, the [head of agency or organization] shall take appropriate remedial or disciplinary action that may include, but is not limited to: counseling, awareness training, warning, transfer, or other actions consistent with the [agency or organization] policies and procedures. The emphasis of such action should be on rehabilitation.
- 2. Employees.** If the [head of agency or organization] determines that an employee has violated this policy, the [head of agency or organization] shall take appropriate remedial or disciplinary action, including counseling, training, or disciplinary action including but not limited to: written reprimand, suspension or termination.
- 3. Contractors.** If the [head of agency or organization] determines that a contractor has violated this policy, the [head of agency or organization] shall promptly notify the contract agency. The contract agency shall be responsible for taking appropriate remedial or disciplinary action involving their employees. If the same contract agency staff member or the same contract agency is involved in repeated violations of this policy, the [agency or organization] reserves the right to ban that contract agency staff member from working with youth at the [agency or organization] and/or to terminate the contract with that agency.
- 4. Volunteers.** If the [head of agency or organization] determines that a volunteer has violated this policy, the [head of agency or organization] shall take appropriate remedial or disciplinary action, including: counseling, training, or disciplinary action including but not limited to written reprimand, suspension, or termination.

F. REQUESTS FOR RECONSIDERATION AND APPEALS

To facilitate the delivery of requests for reconsideration and appeals, the [head of agency or organization] shall institute a procedure for reconsideration and appeals and the [agency or organization] shall prominently post this procedure.

G. RETALIATION

Retaliation against an individual for reporting harassment or discrimination under this policy or for participating in an investigation of a harassment or discrimination complaint is a violation of this policy and strictly prohibited. Any individual who retaliates against an individual for making a report or participating in any investigation under this policy will be subject to appropriate action and/or discipline, consistent with the remedial and disciplinary actions specified in this policy.

H. DUTY TO FOLLOW PROCEDURE

All [agency or organization] employees are required to comply with this policy. Any employee who fails to comply with this policy may be subject to disciplinary action, up to and including termination of employment.

I. RIGHT TO FILE OTHER COMPLAINTS

This policy shall not alter or affect the right of any person to file a complaint alleging harassment or discrimination in state or federal court, to file a complaint with an appropriate governmental agency, or to consult with a private attorney or union representative.

IV. RECORD KEEPING

The [agency or organization] shall track all complaints made under this policy, whether sustained or not, as well as any remedial, disciplinary or other action taken for any violation of this policy.

V. NOTICE

The [head of agency or organization] shall provide notice of this policy to all youth, employees, contractors, and volunteers.

The [agency or organization] shall prepare a one-page summary of the policy, and include the summary in the materials the [agency or organization] gives to youth upon admission into [agency or organization]. The [agency or organization] shall also post the one-page summary prominently in several places accessible to youth in all facilities run by the [agency or organization].

The [agency or organization] shall include a copy of this policy in its employee handbook and shall give a copy to all contractors and volunteers.

VI. TRAINING

The [head of the agency or organization] shall develop age-appropriate methods of discussing the meaning and substance of this policy with youth, employees, volunteers, and contractors to help prevent harassment and discrimination.

The training curriculum and educational materials developed under this policy shall (1) inform youth, employees, contractors, and volunteers about the policy, and (2) raise awareness about different types of harassment and discrimination; how to prevent harassment and discrimination; and the devastating emotional consequences of harassment and discrimination.

VII. SEVERABILITY

The provisions of this policy shall be severable. If any provision or portion of this policy or its application to any person or circumstance is held invalid, the remainder of the policy or the application of the provision to other persons or circumstances is not affected.

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YOUTH PROJECT has been advocating for LGBTQ youth in schools, foster care, juvenile justice settings, and the mental health system since 1993. The Project provides direct, free legal information to youth, legal advocates, and activists through a toll-free line; advocates for policies that protect and support LGBTQ youth in these different arenas; and litigates cases that are creating new legal protections for youth in schools, foster care, juvenile justice, and other settings.

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