



DEPARTMENT OF DEFENSE
EDUCATION ACTIVITY
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DEPARTMENT OF DEFENSE EDUCATION ACTIVITY
POLICY MEMORANDUM

Executive Order 13160 Guidance: Ensuring Equal Opportunity in Federally Conducted
Education and Training Programs

On June 23, 2000, the President of the United States signed Executive Order 13160, which prohibits discrimination on the basis of race, sex, color, national origin, disability, religion, age, sexual orientation, and status as a parent in federally conducted education and training programs. Executive Order 13160 was issued in order to achieve equal opportunity in all federally conducted education and training programs and is premised upon the notion that the Federal government should hold itself to at least the same principles of nondiscrimination in educational opportunities as it applies to the educational programs and activities of state and local governments or private entities receiving Federal financial assistance. Executive Order 13160 is intended to supplement existing laws that already prohibit many forms of discrimination such as the Rehabilitation Act of 1973, 29 U.S.C. 701 *et seq.*, as amended (Sections 501/504) (disability); the Age Discrimination in Employment Act of 1967, 29 U.S.C. 621, *et seq.*, (ADEA) (age); and Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e-17, as amended (Title VII) (race, color, religion, sex, and national origin).

This policy memorandum implements Executive Order 13160 within the Department of Defense Education Activity (DoDEA). It applies to educational and training programs and activities conducted, operated or undertaken by DoDEA including, but not limited to: (1) formal schools, (e.g., Department of Defense Dependents Schools (DoDDS) and Department of Defense Domestic Dependent Elementary and Secondary Schools (DDESS)); (2) short-term job training programs (e.g., computer training programs for Federal employees); (3) student extracurricular activities; (4) student internships; (5) summer enrichment camps; (6) leadership and executive training programs; (7) teacher training programs; (8) scholarships and fellowships; and (9) outreach.

Under Executive Order 13160, all individuals involved in federally conducted education and training programs or activities must be treated equally and not subjected to discrimination. In order to comply with Executive Order 13160, DoDEA will ensure that in its educational and training programs and activities: (1) individuals are not subjected to disparate treatment based on race, sex, color, national origin, disability, religion, age, sexual orientation, or status as a parent; and (2) individuals are provided a learning environment free of harassment. DoDEA

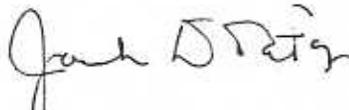


educational and training programs and activities will not utilize policies, procedures, criteria, or other methods of administration that while facially neutral, have a disproportionate and adverse effect on certain individuals based on their race, sex, color, national origin, disability, religion, age, sexual orientation, or status as a parent, unless: (1) there is a bonafide educational or business necessity for the policy, procedure, criteria, or method of administration; and (2) there are no equally effective alternative practices that would result in less adverse impact.

Under Executive Order 13160, DoDEA may not retaliate against any individual because he or she raised concerns, reported claims, or filed complaints alleging discrimination. DoDEA is similarly prohibited from retaliating against any individual who has testified, assisted, or participated in any manner in an investigation or other proceeding raising claims of discrimination.

Any individual, who believes himself or herself to be aggrieved by a violation of Executive Order 13160 or by its implementing regulations, rules, policies, or guidance, may personally or through a representative, file a written complaint. In order to promote the consistent and effective enforcement of equal employment opportunity mandated for all DoDEA employees, and to preserve the integrity of statutorily protected equal employment opportunity rights, complaints filed under both this Executive Order and existing employment opportunity laws will be reviewed and referred to the most appropriate forum.

Procedures for filing written complaints are included in the attached guidance.


Joseph D. Tafoya
Director

Attachment:
As stated

Executive Order 13160: Ensuring Equal Opportunity in Federally Conducted Education and Training Programs

Department of Defense Education Activity (DoDEA) Procedural Guidance

A. Definitions

For purposes of this document, the term—

Agency means the DoDEA and its components, i.e., Department of Defense Dependents Schools (DoDDS) and Domestic Dependent Elementary and Secondary Schools (DDESS).

Appropriate agency official means DoDEA senior level management official or officials within the agency designated to determine what, if any, disciplinary, corrective, or other remedial action should be taken as a result of violation of Executive Order 13160.

Complete complaint means a written statement that contains:

1. Complainant's name, address, and phone number;
2. Description of alleged discriminatory action in sufficient detail to inform the agency of the nature and approximate date of the alleged violation;
3. Identification of whether the complainant is a DoDEA employee; and
4. Whether the complainant's involvement in the relevant educational or training program was related to his or her employment. A complete complaint must be signed and dated by the complainant or by someone authorized in writing by the complainant to sign and date on his or her behalf.

Investigating office means offices within DoDEA designated by the DoDEA Office of Compliance and Assistance (OCA) to investigate complaints regarding violations of the Executive Order 13160 or its implementing rules, regulations, policies, or guidance.

Respondent means the DoDEA or its components in which the alleged discrimination occurred.

B. Filing a Complaint

Prior to filing a written complaint with the DoDEA OCA, complainants are strongly encouraged to attempt to resolve their complaints at the appropriate level within the DoDEA chain of command.

The DoDEA Chain of Command:

- School Principal
- District Superintendent
- Director, Department of Defense Dependents Schools, Europe
(Bavaria, Heidelberg, Isles, Kaiserslautern, and Mediterranean Districts); or
- Director, Department of Defense Dependents Schools, Pacific
(Japan, Korea, and Okinawa Districts); or
- Director, Domestic Dependent Elementary and Secondary Schools
(Antilles, Georgia/Alabama, Guam, Kentucky, New York/Virginia, North Carolina, South Carolina/Fort Stewart Districts)
- Principal Deputy Director, DoDEA
- Director, DoDEA

Any individual who believes he or she is aggrieved by a violation of Executive Order 13160 or its implementing regulations, rules, policies or guidance, may, personally or through a representative, file a written complaint to:

Department of Defense Education Activity
Office of Compliance and Assistance
4040 North Fairfax Drive
Arlington, VA 22203-1635

1. Complete Complaints.

In order to be accepted for investigation, all written complaints must be "complete complaints." As defined above, a complete complaint must include the name, address, and telephone number of the complainant; must identify whether the complainant is a Federal employee and whether the complainant's involvement in the relevant education program was related to his or her employment; and must describe the alleged discriminatory conduct in sufficient detail to inform the DoDEA OCA as to the nature and approximate date of the alleged violation. A complete complaint also must be signed and dated by the complainant or by someone authorized by the complainant to sign on his or her behalf.

2. Time Limits for Filing Complaints.

All complaints to be processed under Executive Order 13160 must be filed, i.e., either postmarked or received, within 180 calendar days of the alleged discrimination. However, this time limit may be extended under the following conditions:

- a. If the complainant can demonstrate that he or she was prevented by circumstances beyond his or her control from submitting the complaint in a timely fashion; or
- b. For other extenuating circumstances, considered sufficient by the DoDEA OCA.

For purposes of determining when a complaint is timely filed, a complete complaint mailed to the DoDEA OCA will be deemed filed on the date that it is postmarked.

If a complaint is filed within 180 calendar days of the alleged discrimination, but the DoDEA OCA office subsequently determines that the complaint is not a "complete complaint," the complainant's claims shall nevertheless be deemed filed in a timely manner and the complainant shall be given an appropriate opportunity to amend his or her original complaint. *See Section C* below for further information regarding the process for requesting additional information from a complainant in order to supplement an incomplete complaint.

3. Class Complaints.

Any individual who believes that any specific class of persons has been subjected to discrimination prohibited by Executive Order 13160 or any of its implementing regulations, rules, policies, or guidance, may file a class complaint with the DoDEA OCA, provided that the individual is either a member of the allegedly aggrieved class of persons or a representative of a member of the allegedly aggrieved class of persons.

4. Representation.

Any individual filing a complaint under Executive Order 13160 or any of its implementing regulations, rules, policies, or guidance may be represented and assisted in all stages of these proceedings by an attorney or other representative of his or her own choosing. An individual has a responsibility to promptly inform the DoDEA OCA in writing if legal counsel is retained. In addition, an individual has an obligation to notify the DoDEA OCA in writing if he or she wishes to have any other representative included in these proceedings. It is the responsibility of the complainant to provide the investigating office with the name, address, and phone number of any attorney or representative. In addition, it is the ongoing responsibility of the complainant to advise the investigating office in writing as to any changes with respect to the status of his or her legal and/or non-legal representation in any proceeding under the Executive Order 13160 or any of its implementing regulations, rules, policies, or guidance. The complainant has an obligation to notify the DoDEA OCA in writing of any change in address or phone numbers.

C. Initial Review

Upon receipt of a complaint, the DoDEA OCA will make the determination for further processing under the Executive Order 13160.

After reviewing the complaint, the DoDEA OCA may need to obtain additional information from the complainant. For example, the DoDEA OCA may ask the complainant to supply additional information if the complaint is not complete. Additional information also may be

required by the DoDEA OCA to determine whether to waive the time limits to filing a complaint. If a complainant fails to provide additional information, or otherwise respond to the DoDEA OCA's request, within 30 calendar days of receipt of the written request for additional information, without good cause shown, the investigating office may dismiss the complaint.

In certain instances, the DoDEA OCA may determine that a complaint should be dismissed because the alleged discriminatory conduct did not occur in a federally conducted education or training program, was untimely, or did not meet the criteria under Executive Order 13160. In such cases, the investigating office will issue a brief written determination setting forth the basis for the dismissal and advising the complainant of his or her right to appeal this decision to the Attorney General for a final determination regarding coverage pursuant to Section 2-203 of the Executive Order 13160. Responsibility for issuing such final determinations regarding coverage is delegated to the Assistant Attorney General for Civil Rights, who shall conduct, handle, or supervise the performance of this function.

D. Informal Resolution

Before undertaking a formal investigation, all parties are strongly encouraged to pursue informal voluntary resolution. Toward this end, alternative dispute resolution techniques will be used whenever appropriate.

If an informal resolution of a complaint cannot be reached within 45 calendar days (time limit may be adjusted due to spring, winter or summer breaks), or if efforts to achieve an informal resolution appear futile, the investigating office will initiate a formal investigation after receiving a complete written complaint. However, efforts to achieve voluntary resolution will be undertaken whenever possible and should continue throughout the course of a formal investigation if and when appropriate opportunities arise.

E. Formal Investigation

If a decision is made to initiate a formal investigation, the investigating office will notify the complainant in writing. The investigating office will complete the investigation within 180 calendar days (time limit may be adjusted due to spring, winter or summer breaks) of the DoDEA OCA's receipt of a complete complaint. The investigation will consist of a thorough review of the circumstances under which the alleged discrimination occurred.

A formal investigation requires the full cooperation and participation of all agency employees. Employees who are required by the investigating office to participate in any investigation concerning violations of the Executive Order 13160 will do so as part of their official duties and during the course of regular working hours.

Upon completion of a formal investigation, the investigating office will prepare a written report setting forth the results of the investigation. A copy of the investigative report will be sent to the DoDEA OCA. After review, the DoDEA OCA will provide copies to the complainant and the employee who is the subject of the report.

F. Findings

Upon receipt of a report from an investigating office that indicates there has been a violation of the Executive Order 13160 or its implementing rules, regulations, policies, or guidance, the appropriate agency official shall review the report and all relevant supporting material in order to determine what, if any, disciplinary action is appropriate. Any action taken to discipline an employee, including removal, must be taken in accordance with otherwise applicable procedures, including the Civil Service Reform Act of 1978, Pub-L-95-454, 92 Stat. 1111, and DoDEA Regulation 5751.9, "Disciplinary and Adverse Actions," dated August 27, 1999.

The appropriate agency official will review the report of the investigating office in order to determine whether any corrective or remedial action should be initiated. Pursuant to Section 4-402(b) of the Executive Order 13160, no monetary relief to the complainant as a form of remedial or corrective action is authorized. If the appropriate agency official determines that the complainant is entitled to some form of remedial or corrective action, the appropriate agency official will notify the complainant in writing. The appropriate agency official also shall take all necessary steps to ensure that the corrective or remedial action ordered is implemented. If a determination is made that the complainant is not entitled to any corrective or remedial action, the appropriate agency official shall notify the complainant of this decision in writing and the reasons for this determination.

G. Available Remedies

As discussed above, in addition to making final decisions regarding disciplinary measures, the appropriate agency official shall have the authority to order corrective and/or remedial action, where appropriate. As a general matter, if there has been a violation of the Executive Order 13160, the complainant shall be entitled to all appropriate, non-monetary, equitable relief. The appropriate agency official should ensure that the aggrieved individual is made whole. In the context of violations of this Executive Order 13160, examples of relief may be placement in the next available education or training program of a comparable nature; the development of an individualized training opportunity; the cancellation of an unwarranted personnel action or the expungement of adverse materials from agency records; the awarding of a diploma, other certificate, or specific grade; and the provision of reasonable accommodations.

Complainants should be aware, though, that Section 8 of the Executive Order 13160 specifically provides that the Order "is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or its employees." Section 8 further provides however, that the Order is not intended "to preclude judicial review of final decisions in accordance with the Administrative Procedures Act, 5 U.S.C. 701, *et seq.*"

H. Reporting Requirements

For the initial 3 years of the issuance of the Executive Order 13160, the DoDEA OCA shall file annual reports with the Attorney General that summarizes the number, nature, and disposition of complaints filed under Executive Order 13160. Reports are to be submitted to the

Assistant Attorney General for Civil Rights within 90 days of the end of the preceding year's activities. Subsequently reports are submitted every three (3) years and within 90 days of the end of the 3-year period.