



DoDEA ADMINISTRATIVE INSTRUCTION 1443.01, VOLUME 2

EXECUTIVE ORDER 13160 ADMINISTRATION: DISCRIMINATION COMPLAINTS PROCESSING

Originating Division:	Investigations and Internal Review Division
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Incorporates and cancels:	Director of Department of Defense Education Activity Memorandum, "Executive Order 13160 Guidance: Ensuring Equal Opportunity in Federally Conducted Education and Training Programs," October 22, 2015 DoDEA Directive-Type Memorandum 10-DMEO-001, "Anti-Harassment Policy," November 4, 2009 (official cancels expired policy)
Approved by:	Thomas M. Brady, Director

Purpose: In conjunction with Volume 1 of DoDEA Administrative Instruction 1443.01, this Issuance articulates how to report, respond to, and resolve allegations of discrimination in violation of Executive Order 13160, referred to in this Issuance as **EO 13160**.

- DoDEA officials with responsibility for accepting complaints include DoDEA School Principals, Program Directors of DoDEA-sponsored programs or activities, DoDEA Supervisors, and certain next-higher-level DoDEA officials, as may be necessary.
- Information on DoDEA EO 13160 compliance requirements, generally, and how to appeal the handling and/or outcome of a discrimination complaint brought in accordance with this Issuance are contained in Volume 1 of DoDEA Administrative Instruction 1443.01.

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SECTION 1: GENERAL ISSUANCE INFORMATION

1.1. APPLICABILITY.

a. This Issuance applies to the DoDEA Headquarters Organization, the DoDEA Americas Region, the DoDEA Europe Region, the DoDEA Pacific Region, and to include all schools under the DoDEA authority, and when applicable, volunteers, students, support personnel, student teachers, contractors, and sponsors/parents.

b. This Issuance also applies to DoDEA volunteers, contractors, and any other individuals acting in their capacity as an agent of DoDEA, both on or off DoDEA premises.

c. This Issuance also applies to DoDEA students and other beneficiaries (See Glossary).

1.2. POLICY.

a. Pursuant to the responsibility to provide a discrimination-free learning and work environment as articulated in Volume 1 of DoDEA Administrative Instruction 1443.01, DoDEA School Principals, Program Directors, Supervisors, and certain next-higher-level DoDEA officials, as may be necessary, shall accept and process allegations of discrimination in accordance with this Issuance and take appropriate corrective action where allegations are substantiated, to include potential disciplinary measures against any DoDEA student or employee found in violation of this Issuance.

b. Complaints from, on behalf of, or about a DoDEA student, employee, or other beneficiary, collectively referred to in this Issuance as a DoDEA **participant**, including those made anonymously, will be accepted in verbal or written form and investigated. Complaints shall receive prompt response and intervention by an appropriate Activity official (AAO) to ensure the safety and welfare of those individuals involved and be processed at the school, program, activity, or direct supervisor level. Upon substantiated findings of discrimination, corrective action may be taken to hold an offender accountable, offer equitable remedies to the individual adversely impacted by the discrimination, and take remedial action to enhance protections for the school and workplace community, at large. Both the individual making a complaint and any person alleged to be responsible for the discrimination have a right to request reconsideration of how the complaint was processed and/or resolved at the lower level from the next-higher-level DoDEA official.

c. Any final decision on a discrimination complaint that has gone through both the lower-level complaint process and a request for reconsideration from a next-higher-level DoDEA official is eligible for appeal to the DoDEA Investigations and Internal Review Division (I&IR) at DoDEA Headquarters (DoDEA HQ) for an independent review and evaluation to determine whether or not the final decision is in compliance with EO 13160 and applicable DoDEA implementing policies or guidance, including this Issuance. Any findings by DoDEA I&IR of noncompliance shall be referred to the DoDEA Director to ensure appropriate corrective action is taken to restore compliance and a discrimination-free learning and work environment.

1.3. INFORMATION COLLECTION. This Issuance may result in the collection of information due to its policy and procedures. Any collection of information must follow all applicable Federal, DoD, and DoDEA regulations, policies, and guidance.

SECTION 2: RESPONSIBILITIES

2.1. DODEA DIRECTOR. The DoDEA Director has overall responsibility for ensuring DoDEA operates in compliance with EO 13160, delegating responsibilities and granting authority to resolve complaints as appropriate for the effective implementation of this Issuance.

2.2. DODEA ASSOCIATE DIRECTOR FOR ACADEMICS. The DoDEA Associate Director for Academics is responsible for overseeing the effective implementation of this Issuance, to include the development and dissemination of age-appropriate educational materials for students and professional development materials for educator staff in accordance with this Issuance.

2.3. DODEA DIRECTORS FOR STUDENT EXCELLENCE AND REGION CHIEFS OF STAFF. Each DoDEA Director for Student Excellence (DSE) and region Chief of Staff (COS) is responsible for overseeing the effective implementation of this Issuance within their jurisdiction, to include ensuring that the DoDEA official responsible for addressing and resolving a complaint of discrimination within their jurisdiction is the lowest level DoDEA official as appropriate under the circumstances.

2.4. DODEA DISTRICT AND COMMUNITY SUPERINTENDENTS AND DIVISION AND BRANCH CHIEFS. Each DoDEA District and Community Superintendent and Division and Branch Chief is responsible for overseeing the effective implementation of this Issuance within their district, community, division, or branch, to include:

a. Ensuring that DoDEA School Principals, Program Directors, First-Line Supervisors, or, in the event of an actual or perceived conflict of interest, other designated next-higher-level DoDEA AAO under their supervision, have independent authority to serve as the DoDEA AAO empowered to take whatever action may be warranted to accept, investigate, and resolve allegations of discrimination involving a DoDEA student, employee, or other beneficiary in accordance with this Issuance.

b. Assuming responsibility for lower-level complaint administration in circumstances where their direct-report principal, program director, branch chief, or other supervisory official is unable to fulfill their role in administering a lower-level complaint (e.g., unavailable or has a conflict of interest).

c. Reviewing requests for reconsideration of a direct-report lower-level DoDEA official's processing of a complaint and rendering a final decision in accordance with Section 5 of this Issuance.

d. Ensuring that all individuals under their authority have opportunity to be informed of their rights and responsibilities through outreach and training as developed under this Issuance.

2.5. DODEA INVESTIGATIONS AND INTERNAL REVIEW CHIEF. The DoDEA I&IR Chief is responsible for ensuring effective implementation of this Issuance, to include:

- a. Advising DoDEA leadership on both case-specific and overall investigative and response strategies in accordance with Volume 1 of DoDEA Administrative Instruction 1443.01 and this Issuance.
- b. Advising DoDEA District and Community Superintendents, School Principals, Program Directors, Division and Branch Chiefs, and other supervisory personnel on appropriate local-level response, inquiry, and reporting strategies.
- c. Ensuring the acceptance, review, coordination, investigation, resolution, tracking, and reporting of EO 13160 appeals filed in accordance with Section 5 of Volume 1 of DoDEA Administrative Instruction 1443.01.

2.6. DODEA HEADQUARTERS CIVIL RIGHTS PROGRAM MANAGER. The DoDEA HQ CRPM is responsible for ensuring effective implementation of Volume 1 of DoDEA Administrative Instruction 1443.01 and this Issuance, to include:

- a. Providing subject matter expertise in support of DoDEA's commitment to provide a discrimination-free learning and work environment in its education and training programs and activities in accordance with EO 13160, to include serving as DoDEA Discrimination Complaints Processing (DCP) Lead Coordinator in accordance with this Issuance.
- b. Coordinating EO 13160 appeals filed with DoDEA I&IR.
- c. Providing technical assistance to all levels of personnel on the effective implementation of this Issuance.
- d. Addressing inquiries from DoDEA students, employees, and other beneficiaries on their rights and responsibilities under this Issuance.
- e. Developing education, training, and outreach materials (both directly and in collaboration with other stakeholders) to promote and support the prevention, reporting, response, and resolution of allegations of discrimination.
- f. Monitoring the number, nature, and resolution of reported violations of this Issuance and conducting periodic trend analyses to evaluate effectiveness and identify recommendations for improvement.
- g. Serving as the lead point of contact (POC) for addressing inquiries regarding the various rights and responsibilities enforced under EO 13160, generally, and as enforced by DoDEA, specifically.

2.7. DODEA DISTRICT CHIEFS OF STAFF. Each DoDEA District COS is responsible for ensuring effective implementation of Volume 1 of DoDEA Administrative Instruction 1443.01 and this Issuance, to include:

- a. Serving as DoDEA DCP District Coordinator working in concert with the Lead Coordinator in accordance with this Issuance to oversee the administration of DoDEA DCP at each DoDEA school and DoDEA conducted or sponsored program or activity within their district.
- b. Providing technical assistance to those in their district with responsibilities in accordance with Volume 1 of DoDEA Administrative Instruction 1443.01 and this Issuance.
- c. Providing DCP education and outreach materials within their district to promote and support EO 13160 compliance objectives.
- d. Periodically gathering and forwarding to the DoDEA DCP Lead Coordinator data on complaint submissions and resolutions for monitoring and trend analysis.
- e. Serving as the lead POC within their district for addressing inquiries regarding the various rights and responsibilities enforced under EO 13160, generally, and as enforced by the DoDEA DCP, specifically.

2.8. DODEA SCHOOL PRINCIPALS, PROGRAM DIRECTORS, AND EMPLOYEE SUPERVISORS. Each DoDEA School Principal, Program Director, and Employee Supervisor is responsible for:

- a. Creating and maintaining a learning and work environment in which all participants in DoDEA-conducted education and training programs and activities can enjoy an atmosphere and experience free from unlawful discrimination.
- b. Serving as the lowest level DoDEA AAO for addressing an allegation of discrimination occurring within their purview, to include recognizing and promptly responding to complaints of prohibited discriminatory acts and investigating and taking necessary action to ensure prompt and equitable resolution of complaints of discrimination in accordance with Volume 1 of DoDEA Administrative Instruction 1443.01 and this Issuance.
- c. Ensuring that all individuals under their authority have opportunity to be informed of their rights and responsibilities through outreach and training as developed under this Issuance.

2.9. DODEA OFFICE OF GENERAL COUNSEL. The DoDEA Office of the General Counsel (OGC) is responsible for providing legal consultation to those with responsibilities in accordance with this Issuance and on legal matters related to effective implementation of this Issuance.

2.10. DODEA DIVERSITY MANAGEMENT AND EQUAL OPPORTUNITY CHIEF.

The DoDEA Diversity Management and Equal Opportunity Division (DMEO) Chief is responsible for ensuring DMEO consultation on effective implementation of this Issuance with regards to employment-related issues, to include ensuring designated DMEO staff are available to serve as POCs within their region or districts for inquiries from employees and applicants for employment regarding their equal employment opportunity (EEO) and EO 13160 rights and complaint procedures.

2.11. DODEA LABOR MANAGEMENT AND EMPLOYEE RELATIONS CHIEF. The DoDEA Labor Management and Employee Relations (LMER) Chief is responsible for ensuring human resources consultation on effective implementation of this Issuance, as requested.

2.12. DODEA EMPLOYEES AND VOLUNTEERS. All DoDEA employees and volunteers are responsible for all of the following:

- a. Adhering to DoDEA policy prohibitions against committing acts of discrimination or acts that have a discriminatory impact on the rights of a student, employee, or other beneficiary to enjoy a discrimination-free learning and work environment.
- b. Participating and cooperating truthfully in any investigation conducted in accordance with this Issuance, which will be done as part of their official duties.

2.13. DODEA STUDENTS AND OTHER BENEFICIARIES. All DoDEA students and other beneficiaries are responsible for adhering to DoDEA policy prohibitions against committing acts of discrimination or acts that have a discriminatory impact on the rights of a DoDEA student, employee, or other beneficiary to enjoy a discrimination-free learning and work environment.

- a. DoDEA students are responsible for cooperating truthfully, in an age and developmentally appropriate manner, with any investigation conducted in accordance with this Issuance, and only during the course of regular school hours unless otherwise approved by their parent or legal guardian.
- b. Other beneficiaries alleged to have violated this Issuance are responsible for complying with any restriction of their participation in DoDEA-conducted or sponsored education and training programs and activities pending outcome of the ensuing investigation. Other beneficiaries found to have violated this Issuance shall comply with restriction or revocation of their access to or participation in such programs and activities.

SECTION 3: HOW TO REPORT/FILE A COMPLAINT

3.1. WHO MAY FILE A COMPLAINT. An individual who submits a discrimination complaint in accordance with this Issuance is referred to as the “complainant.” The individual alleged to be responsible for the discrimination is referred to as the alleged “offender.”

a. Any DoDEA Participant (Student, Employee, or Other Beneficiary). Any DoDEA participant (i.e., student, employee, or other beneficiary) who believes they are being or have been subjected to discrimination in relationship to their participation in a DoDEA-conducted or sponsored education program or activity may submit a discrimination complaint in accordance with this Issuance, except as noted below:

(1) Individualized Education Program Disputes. Disputes involving DoDEA students entitled to an Individualized Education Program (IEP) pursuant to DoD Instruction 1342.12 are addressed and administered under the specific dispute resolution procedures provided for in DoDEA Regulation 2500.10, and DoD Instruction 1342.12 and its accompanying manual, DoD Manual 1342.12.

(2) 504 Accommodation Disputes. Disputes involving DoDEA students entitled to a 504 Accommodation Plan are addressed and administered under the specific dispute resolution procedures provided for in DoDEA Administrative Instruction 2500.14.

(3) Disability-Based Discrimination. Notwithstanding the above, students with disabilities may raise allegations of discrimination, including disability-based discrimination, in accordance with this Issuance.

b. Anyone with Knowledge. Anyone who has witnessed, or has reason to believe, a DoDEA student, employee, or other beneficiary is being, or has been, subjected to discrimination in relationship to a DoDEA facility or DoDEA-conducted or sponsored education program or activity may submit a DoDEA DCP complaint.

c. Anonymous Complaints. Anonymous complaints, or requests to keep a complainant’s identity confidential during and/or after an investigation, may be accepted. Not knowing or being able to reveal the identity of the person making the report, however, may hinder the investigation and reduce the ability to make valid findings and/or result in closure of the investigation without a final determination on the merits. Retaliation against anyone making a complaint is strictly prohibited and coming forward is strongly encouraged; nevertheless, an anonymous complaint is better than no complaint, at all.

3.2. WHO MAY ACCEPT A DODEA STUDENT OR OTHER BENEFICIARY COMPLAINT. Any allegations of discrimination involving a DoDEA student or other beneficiary in relationship to a DoDEA-conducted or sponsored education and training program or activity, must ultimately be brought to the attention of the DoDEA School Principal, Program Director, or other DoDEA AAO with authority over the program or activity within which it occurred for appropriate action. When the DoDEA School Principal, Program Director, or other

DoDEA AAO is unavailable, is the alleged offender in the complaint, or has an actual or perceived conflict of interest, allegations may be brought to the next-higher-level DoDEA official for appropriate action. Complaints may be accepted as follows:

a. DoDEA School Principal. Notification may be submitted directly to the DoDEA School Principal of the school that conducted or sponsored the program or activity in which the alleged incident or discriminatory impact occurred, where a DoDEA student complainant is enrolled, and/or where an alleged DoDEA student offender is enrolled or alleged employee, volunteer, or other agent of DoDEA offender is employed or provides services.

b. DoDEA Program Director. Where the alleged incident did not occur under the direct authority of a DoDEA School Principal, but within a DoDEA school-sponsored program or activity (e.g., an interscholastic athletic event or Junior Reserve Officers' Training Corps summer camp), notification may be submitted directly to the DoDEA Program Director or other DoDEA AAO with authority over the program or activity for initial handling, investigation, and resolution and/or forwarding to any appropriate DoDEA School Principal(s) for action, as warranted.

c. Next-Higher-Level DoDEA Superintendent or DoDEA Official. When the applicable DoDEA School Principal or Program Director is unavailable, is the alleged offender in the complaint, or has an actual or perceived conflict of interest, a complaint may be submitted to the next-higher-level DoDEA District or Community Superintendent or next-higher-level DoDEA official within the chain of command with authority over that school, program, or activity.

d. DoDEA DCP District or Lead Coordinator. Notification may be submitted to the DoDEA DCP District Coordinator where the incident occurred, and/or where a complainant or the alleged offender is enrolled/employed/provides services, or directly to the DoDEA DCP Lead Coordinator at DoDEA HQ, for forwarding to the appropriate DoDEA School Principal, Program Director, other lowest-level DoDEA AAO, or next-higher-level DoDEA official in the event the DoDEA School Principal, Program Director, or other lowest-level DoDEA AAO is unable to take action (e.g., they have an actual or perceived conflict of interest or are otherwise unavailable).

3.3. WHO MAY ACCEPT A DODEA EMPLOYMENT COMPLAINT. Allegations of discrimination involving DoDEA employment may be accepted as follows:

a. DoDEA DMEO Equal Employment Opportunity Counselor. A DoDEA employee (or applicant for employment) who believes they have been aggrieved by unlawful discrimination in their employment (or application for employment) may first initiate their complaint by contacting DoDEA DMEO EEO staff assigned to the district where they are employed (seek to be employed) to ensure they are fully informed as to all their dispute resolution options. District or regional POCs for DMEO may be found on the DoDEA DMEO webpage at www.dodea.edu/Offices/DMEO/index.cfm. Should a DoDEA employee (or applicant) be unable to pursue an EEO complaint (e.g., they have missed the filing deadline) or choose not to proceed under EEO, they are still free pursue an EO 13160 complaint with the applicable DoDEA AAO as an alternative.

b. DoDEA First- or Second-Line Supervisor. A DoDEA employee who wishes to pursue an allegation of EO 13160 employment discrimination (not an EEO complaint) must submit their complaint to their DoDEA First-Line Supervisor. If there is an actual or perceived conflict of interest (e.g., the DoDEA First-Line Supervisor is the alleged offender in the complaint) or their DoDEA First-Line Supervisor is not available, the complaint should be brought to the next-higher-level DoDEA official in the employee's supervisory chain of command.

c. DoDEA DCP District or Lead Coordinator. Any DoDEA employee (or applicant for employment) seeking to submit a discrimination complaint may contact the DoDEA DCP District Coordinator where the alleged discriminatory incident or impact occurred, where a DoDEA employee complainant is employed, where a sought for position is located, or contact the DoDEA DCP Lead Coordinator at DoDEA HQ, for assistance in determining the appropriate DoDEA First-Line Supervisor, or other appropriate DoDEA official, to take action on their complaint.

3.4. WHAT TO INCLUDE. There is no minimum amount of information required for making a report of discrimination.

a. Name/Contact Information. The complainant's **name, address, email, and phone number**, and the name and contact information of the person or persons adversely impacted (if not the complainant). If either or both are DoDEA students, identify the school(s) where each is enrolled.

b. Brief Description. A description of the discriminatory incident or discriminatory impact alleged, to include as much of the following information as possible:

(1) **Who** is allegedly responsible for the discriminatory incident, practice, or policy, if known.

(2) **Where it occurred** and/or within what DoDEA-conducted or sponsored education or training program or activity the alleged incident or impact occurred, or continues to occur, or if it occurred off school grounds and not in relationship to any DoDEA conducted education and training program or activity.

(3) **When** the alleged incident and/or impact occurred or became known.

(4) **What** type of discrimination occurred based on what protected class(es). Types of discrimination recognized under DoDEA DCP are **Disparate Treatment, Hostile Environment Based on Discriminatory Harassment, Hostile Environment Based on Sexual Harassment, Disparate Impact, or Retaliation**, in accordance with Volume 1 of DoDEA Administrative Instruction 1443.01. Protected classes include race, sex (including gender), color, national origin, disability, religion, age, sexual orientation, and status as a parent, in accordance with Volume 1 of DoDEA Administrative Instruction 1443.01.

(5) **How** the person (or persons) was adversely impacted by the discrimination.

c. Request for Remedy. It is helpful (but not mandatory) to include what specific remedy is requested to help restore the person adversely impacted to the status or position they would have been in were it not for the alleged discrimination. Taking corrective action that is within their authority is at the discretion of the DoDEA School Principal, Program Director, First-Line Supervisor, and/or other DoDEA AAO overseeing the complaint administration, but the complainant (and person on whose behalf the complaint was raised, if not the same) and alleged offender (and their custodial parents or legal guardians, if applicable) shall have opportunity to be heard and their interests considered in weighing what should be a fair and equitable outcome under the circumstances.

d. Use of Alternative Formats. DoDEA must accept complaints in alternative formats, in particular for people with disabilities or with limited English proficiency. For example, a complaint may be made using Braille, video, digital recording, or audiotape. Complaints submitted in languages other than English should be translated and responded to in the language in which they were made, in accordance with DoDEA's responsibilities under EO 13160. Throughout the complaint resolution process, the DoDEA official administering the complaint should ensure that all individuals involved understand their rights and responsibilities, as well as the status of the investigation insofar as it may directly involve that individual.

SECTION 4: COMPLAINT ADMINISTRATION

4.1. UPON RECEIVING NOTIFICATION. Upon notification, the DoDEA AAO shall do all of the following:

a. Welfare Check and Safety Plan. Take any immediate crisis intervention measures that may be necessary under the circumstances to obtain a welfare check on the person alleged to be adversely impacted, stop any imminent threat of physical or mental injury, and establish a safety plan to protect against any continuing threat, pursuant to DoDEA Administrative Instruction 2500.14, DoDEA Administration Instruction 2510.01, DoDEA Administrative Instruction 6055.01, and/or any other applicable DoDEA crisis management policy, regulation, manual, or procedural guide.

b. Mandatory Reporting to Outside Entities. Ensure execution of any applicable mandatory outside reporting, to include notifying military police, local law enforcement, the local DoD Family Advocacy Program (FAP) and/or other local child welfare services, installation command, or any other outside enforcement agency with jurisdiction over the type and nature of incident reported, such as (but not limited to) reporting allegations or suspicions of child abuse, juvenile-on-juvenile sexual assault, or problematic sexual behavior in children and youth (PSB-CY) to DoD FAP pursuant to DoDEA Administrative Instruction 1356.01 and DoDEA Regulation 1800.02, or reporting criminal activity to military police or local law enforcement.

c. Notifying Custodial Parents or Legal Guardians. For complaints involving DoDEA students as the alleged person adversely impacted, the alleged offender, or a material witness, the following notifications shall be made to the student's custodial parents or legal guardians:

(1) For alleged incidents **involving serious physical harm or threat to physical safety**, ensure verbal and/or electronic notification (e.g., text or email) to the custodial parents or legal guardians, if known, as soon as practical, but **no later than the end of the day**.

(2) **For all other allegations of discrimination**, ensure verbal and/or electronic notification to the custodial parents or legal guardians, if known, **within twenty-four (24) hours of receiving notification**.

(3) As soon as practicable (within three (3) business days of first notification), **follow up in writing with preliminary details** on any actions taken to report the incident to DoD FAP, installation command, and/or law enforcement, points of contact for further information, and guidance on what to expect next.

(4) **Maintain close communication** with the parents of affected DoDEA students and inform them generally of the actions being taken to ensure student safety and provide such counseling and other supportive services as are appropriate and available to the affected students and their family.

d. Due Process and Opportunity to Be Heard. Ensure that anyone making a complaint of alleged discrimination is treated with respect and provided an opportunity to be heard in a confidential, safe, collaborative environment. Both a complainant and alleged offender have the right to be treated in a fair and equitable manner and afforded the benefits of due process, to include the right to be heard and to provide evidence in their favor prior to any fact-finding determinations or imposition of final disciplinary action against them.

e. Interim Protections. Pending investigation and final resolution, the DoDEA School Principal, Program Director, First-Line Supervisor, and/or other DoDEA AAO shall arrange interim protections for those directly involved utilizing the various resources available at or through the school or office, and/or other DoDEA affiliates.

(1) Interim protections may include:

- (a) Counseling.
- (b) Extensions of time or other course or work-related adjustments.
- (c) Modifications of class, work, or bus/transportation schedules.
- (d) Campus or facility escort services.
- (e) Restrictions on contact between the alleged offender, the complainant and/or person adversely impacted, and key witnesses.
- (f) Changes in class, work, or housing locations, although an alleged person adversely impacted shall not be required to relocate or otherwise modify their activities.
- (g) Suspension of access or leave of absence.
- (h) Increased security and monitoring of certain areas and/or activities.
- (i) Other similar accommodations as may be available at the school.

(2) Interim protections may necessitate taking action to remove an alleged offender from having opportunity for contact with a person alleged to be adversely impacted and/or any other DoDEA students, employees, or other beneficiaries, as necessary; the school principal of a DoDEA student and supervisor of a DoDEA employee or volunteer alleged to be the offender must ensure cooperation with such temporary preventive efforts pending investigation.

(3) Interim protections may be taken to protect the interests of the DoDEA participant alleged to be adversely impacted that, in turn, adversely impact a DoDEA student or employee alleged offender, but such action should reflect a presumption of innocence, an objective nondiscriminatory assessment of threat level, modifications that involve no more than the minimum necessary to achieve the objective during the investigative stage, and compliance with other applicable DoDEA policy and due process entitlements regarding the alleged offender's rights.

(4) If a DoDEA student alleged to be adversely impacted, an alleged student offender, or a student witness receives IEP services pursuant to DoD Instruction 1342.12, has a 504 Accommodation Plan pursuant to DoDEA Administrative Instruction 2500.14, or an English Language Learner plan, the appropriate school subject matter experts must be consulted for guidance on how best to proceed in a manner that is consistent with requirements imposed by these issuances and applicable laws, and respects and does not exploit or unduly aggravate the special needs of those students involved.

f. Coordinating Multiple DoDEA Jurisdictions. In the event there are multiple DoDEA officials with overlapping or concurrent authority over a complaint, as soon as practicable upon initial notification (but no later than five (5) business days), the multiple DoDEA officials shall consult with their DoDEA DCP District Coordinator(s) to synchronize their efforts and designate which DoDEA official shall implement what aspect of the DoDEA DCP process going forward.

(1) For example, where an alleged incident occurred at one DoDEA school, the student alleged to be adversely impacted is enrolled at another DoDEA school, and an alleged offender is enrolled at a third DoDEA school, the DoDEA School Principal at the first school might be best positioned to conduct the investigation and fact-findings, while the second and third School Principals might be better positioned to determine appropriate corrective and/or remedial action on substantiated findings. In the alternative, if the different schools were all located within the same community, having the DoDEA District or Community Superintendent administer the entire DCP process might be preferred, designating and overseeing various responsibilities to be carried out by the DoDEA School Principals at each location.

(2) Decisions on jurisdiction shall be made on a case-by-case basis depending upon the circumstances, with any disagreements resolved by the DoDEA DCP District Coordinator in consultation with the appropriate DoDEA District or Community Superintendents, Division or Branch Chiefs, or other supervisory DoDEA officials, where necessary.

(3) A DoDEA School Principal, Program Director, First-Line Supervisor, or other DoDEA AAO who received and handled the initial response on a complaint, but who lacks jurisdiction to process the matter through to resolution, should refer the complaint to the appropriate DoDEA AAO with jurisdiction, if known, or, if not known, to the DoDEA DCP District or Lead Coordinator for identification of and forwarding to the appropriate official. If the allegations clearly fall outside DoDEA jurisdiction entirely, the DoDEA School Principal, Program Director, First-Line Supervisor, or other DoDEA AAO should consult with their DoDEA DCP District Coordinator in an attempt to refer the complainant to an appropriate outside entity able to provide assistance.

4.2. ACKNOWLEDGE RECEIPT. Upon completion of initial response measures in accordance with Section 4.1. of this Issuance, each DoDEA School Principal, Program Director, First-Line Supervisor, or other DoDEA AAO with responsibility for processing a complaint shall promptly (e.g., within five (5) business days) transmit an electronic written notification acknowledging that the underlying complaint was received and is being processed, or send a letter via certified mail if electronic delivery is not possible and an address was provided. Written acknowledgement shall go to each of the following individuals for whom there is

reliable contact information: the complainant and the person alleged to be adversely impacted (if not the same), the alleged offender(s), and/or their custodial parents or legal guardians, as may be lawful and age-appropriate to do so. The acknowledgement should include:

a. Jurisdiction: Confirmation that the DoDEA School Principal, Program Director, First-Line Supervisor, or other DoDEA AAO has jurisdiction over the allegation and identification of any other known DoDEA officials and/or outside entities with concurrent jurisdiction from which they may expect to hear, as well.

b. Summary of Issues: A brief re-statement of the alleged protected classes and specific discriminatory actions or impact identified in the allegation over which the DoDEA AAO has jurisdiction to address (e.g., denial of access to a covered program, discriminatory harassment by a DoDEA student or staff member, or unequal provision of grades or services in a program based on the adversely impacted person's religion or other protected class).

c. Requests for Additional Information: Any requests for additional information to assist in clarifying the scope of the fact-finding investigation and issues to be resolved, if needed to initiate processing.

d. Next Steps/Point of Contact: A brief description of what procedural steps have already been taken and steps that may be taken next, along with the names and contact information for the appropriate DoDEA POCs available to accept additional information or documentation, answer questions or address requests, or provide status updates.

e. Statement Prohibiting Retaliation: Affirmation that DoDEA prohibits retaliation, intimidation, threats, coercion, or discrimination against any individual, because they have made a complaint, testified, assisted, or participated in any manner in an investigation related to an allegation of discrimination.

4.3. INVESTIGATION. DoDEA discrimination complaint investigations extend only to evaluating potential violation of DoDEA policy. DoDEA does not conduct criminal or DoD FAP investigations, which shall be referred to the appropriate outside enforcement entity, such as military police, local law enforcement, or DoD FAP, in addition to proceeding with a concurrent DoDEA-led investigation on the potential policy violation. The DoDEA AAO shall ensure sufficient credible information is gathered to provide an understanding of both the individual perceptions of what happened and overall context in which it happened, and to either support or refute the allegations of the complaint insofar as the allegations allege potential violation of DoDEA's antidiscrimination policy in Volume 1 of DoDEA Administrative Instruction 1443.01 and this Issuance.

a. Cooperation with Outside Investigations. In the event there is a concurrent investigation by an outside entity, the DoDEA AAO shall do all of the following:

(1) Take whatever steps may be reasonable to facilitate, and not otherwise interfere with or adversely compromise, such outside investigation.

(2) Cooperate with outside investigators and facilitate the cooperation of DoDEA students, staff, volunteers, contractors, and any other agents of DoDEA, as requested.

(3) Adopt/incorporate into their DoDEA fact-finding the results of any such outside enforcement investigation, as may be appropriate to the circumstances, but not unduly delay investigation and the determination of findings related to the alleged violation of DoDEA policy.

(4) Continue to conduct an investigation into allegations and surrounding circumstances leading up to the alleged discrimination for the purposes of identifying any not only potential DoDEA policy violations, but also any systemic, cultural, or other root causes of the discrimination or potential corrective action that may address contributing factors so as to prevent future recurrence of similar offenses.

b. Scope of the Investigation. An internal DoDEA investigation should include a thorough review of the totality of circumstances under which the alleged discrimination occurred, the manner in which the allegations have or are being handled by appropriate DoDEA staff, and any other circumstances which may constitute, or appear to constitute, discrimination in violation of DoDEA policy. The investigation should be confined to the issues and facts relevant to the alleged violation of DoDEA policy, unless evidence shows the need to extend the issues to other collateral concerns.

c. Standard of Proof. The standard of proof for evaluating the sufficiency of the evidence in determining the merits of an allegation shall be by a preponderance of the evidence, in consultation with the DoDEA HQ CRPM and DoDEA OGC, as needed.

d. Confidentiality. Every reasonable effort shall be made to preserve confidentiality for all individuals involved, including witnesses, consistent with applicable laws and DoD and DoDEA policy. Subject lines in emails and titles of electronic documents shall not include personally identifiable information.

e. Collecting Data and Document Discovery. The types of data collected during an investigation will vary from case-to-case depending upon the issues in question, the availability of the information, governing privacy law and policy, and the investigative strategy.

f. Interviews. During the investigative process, the complainant (and person alleged to be adversely impacted, if not the same), any alleged offenders, and both identified witnesses and likely potential witnesses should be interviewed.

(1) **Objectives:** The main objectives of an interview are to gather information that will either support or refute the allegations in the complaint, and obtain an understanding of the actions, practices, or adverse impact that are alleged.

(2) **Format:** Interviews should be conducted in person whenever possible, but may be conducted over the telephone and, in some cases, through written questions followed-up by telephone or e-mail, as may be considered most effective under the circumstances.

(3) **Interviews with Juveniles and Legally Incompetent Individuals:** Every reasonable effort should be made to respect the rights and welfare of a juvenile or legally incompetent

person during the investigative process. When possible and time permits, appropriate DoDEA school counseling and/or special education staff should be consulted prior to conducting an interview to obtain guidance on how best to protect the welfare of a DoDEA student or juvenile other beneficiary during the interview process. If there is any uncertainty regarding how to proceed, a local DoDEA OGC representative should be consulted for guidance.

g. Voluntary Resolution. The opportunity to resolve an allegation of discrimination voluntarily prior to completion of a thorough investigation should be encouraged throughout the administrative and investigative process (separate from any pending criminal or other enforcement action external to DoDEA), if doing so reflects the best interests of those involved.

(1) Voluntary resolution of complaints provides opportunity for the DoDEA School Principal, Program Director, First-Line Supervisor, or other DoDEA AAO, the complainant (and person alleged to be adversely impacted, if not the same) and, under appropriate circumstances, the alleged offender to reach a mutually acceptable agreement as to accountability, remedies, and corrective action that will resolve the allegations promptly and maintain a safe equitable learning and work environment for the person alleged to be adversely impacted, the alleged offender, and the school and work community, at large.

(2) All persons are entitled to keep certain personal information confidential under the law, and no offer of voluntary resolution may be conditioned upon forcing or coercing an individual to disclose information that is otherwise privileged by law (e.g., disclosure of disciplinary action to be taken against an offender).

(3) Terms of a voluntary resolution agreement should reflect principles of restorative justice and opportunity for rehabilitation, as may be appropriate.

h. Time Frame. An internal DoDEA-led investigation into alleged policy violations shall be initiated promptly (within five (5) business days of the date of the written acknowledgement of receipt) and concluded within a reasonable amount of time given the circumstances of the case. The DoDEA AAO shall notify the DoDEA District DCP Coordinator in the event an investigation extends, or is expected to extend, beyond sixty (60) calendar days to ensure matters are proceeding in as reasonable a manner as possible.

(1) Additional time may be required when DoDEA's cooperation with a concurrent outside investigation into potential criminal or child abuse activity takes priority over DoDEA's investigation, in which case DoDEA may proceed in the interim with issuing and acting upon a partial determination with regards to the policy violation issues within its authority.

(2) Waiting on the outcome of any concurrent outside enforcement actions should not prevent DoDEA from taking action on the findings made within its internal investigation into potential violation of DoDEA policy. When reasonable to do so, however, the DoDEA AAO may adopt and/or incorporate the fact-findings from any external law enforcement or child welfare agency investigations into the final resolution on the DoDEA discrimination complaint, if applicable.

4.4. FINDINGS OF FACT. Upon completion of an investigation, the investigating DoDEA official must prepare a written investigation report for the record setting forth the resulting findings of fact with regards to the allegations.

a. Incorporation of Outside Investigative Findings. Where there was an investigation conducted by an outside enforcement entity, the DoDEA investigation report may adopt and incorporate those external investigative findings into the final determinations made on the DoDEA discrimination complaint, as may be relevant to the alleged policy violation and upon determining in consultation with local OGC that it is reasonable and appropriate to do so.

b. Differentiating Discriminatory Misconduct. An investigation report must be clear on when alleged misconduct has been found to be discriminatory and when it has not. The difference between general misconduct and discriminatory misconduct commonly lies with the underlying motivation or adverse impact.

(1) Misconduct, generally, is an unacceptable act or improper behavior that violates DoDEA policy and may be subject to discipline and/or corrective action. Misconduct becomes discriminatory misconduct when the intent behind the act or behavior is to inflict unjust or unequitable treatment of or impact upon an individual or group based on their belonging to a protected class.

(2) There does not need to be actual harm found or identification of a specific individual adversely impacted where a general intent to offend or have an adverse impact upon all people of a protected class is found. For example, spray painting graffiti on a school wall is general misconduct. The same act is discriminatory if the message or imagery is derogatory towards a specific individual or group based on their race, sex (including gender), color, national origin, disability, religion, age, sexual orientation, or status as a parent, even if it is discovered and removed before the start of school or work and/or prior to any DoDEA participants having seen it.

c. Threshold for “Hostile Environment.” For discriminatory misconduct to rise to the level of creating a Hostile Environment, it must be something more than mere annoyances, petty slights, or a single non-severe act. DoDEA participants cannot be guaranteed an environment completely free of irritating, unpleasant, socially awkward, insensitive, or otherwise annoying behaviors on the part of those around them. The discriminatory misconduct must be both objectively offensive and sufficiently severe, persistent, or pervasive under the **Reasonable Person Standard** to rise to the level of a Hostile Environment. Section 3.5.b. and Section 3.5.c. of Volume 1 of DoDEA Administrative Instruction 1443.01 should be consulted for guidance on what constitutes prohibited sexual or other discriminatory harassment creating a Hostile Environment.

d. Determination: Unsubstantiated or Substantiated. The final determination of findings of fact shall take into consideration any DoDEA HQ CRPM and/or DoDEA OGC recommendations, as needed. The facts must support one of either two possible findings:

(1) Unsubstantiated. There is insufficient credible evidence to corroborate and validate the truth of the allegations, in which case the finding on the allegation is “unsubstantiated.”

(2) **Substantiated.** By a preponderance of credible evidence the allegations are considered true, in which case the finding on the allegation is “substantiated.”

4.5. FINAL RESOLUTION.

a. Corrective Action. Upon completion of an investigation and fact-finding conducted pursuant to this Issuance, the DoDEA School Principal, Program Director, First-Line Supervisor, and/or other DoDEA AAO may take whatever corrective and remedial action deemed necessary within their authority, and/or make recommendations to higher level DoDEA officials for corrective action, to address whatever deficiencies and/or opportunities for improvement were identified as a result of the investigation. There does not need to be a substantiated finding to warrant taking additional measures to address requests for supportive services or accommodations, or to address systemic concerns raised during the investigation or otherwise improve efforts to ensure a discrimination-free learning and work environment.

(1) Corrective action may take a variety of forms customized on a case-by-case basis, to include discipline, oral and written apologies, targeted education or training, evaluation for special services or counseling, changes in school or work practices or assignment of responsibilities, modification of facilities, increased supervision over certain areas or activities, or whatever else may be necessary to ensure a discrimination-free learning and work environment.

(2) The DoDEA DCP District and/or Lead Coordinator may be consulted, along with local DoDEA OGC, as needed, when considering what corrective action to take on substantiated findings.

b. Discipline. DoDEA employees and students are responsible for their misconduct and may be subject to discipline where a violation of this Issuance is substantiated. Anyone found to have engaged in discrimination will be directed that the behavior must stop and subject to appropriate disciplinary action that fits both the nature and circumstances of the offense and the adverse impact that resulted. Discipline and any other corrective or remedial action will be recommended or implemented, as appropriate and in accordance with DoDEA policy, at the discretion of the DoDEA AAO with authority over the offender, practice, and/or policy at issue in a substantiated violation.

(1) Where discipline is deemed appropriate, any known cognitive or developmental disabilities, and genuine cultural or limited English proficiency misunderstandings, shall be given due consideration as a mitigating factor in consultation with appropriate DoDEA subject matter experts.

(2) Any action taken to discipline a DoDEA student must be taken pursuant to DoDEA Administrative Instruction 2051.02, DoDEA Regulation 2051.1, and any otherwise applicable student policy or regulations.

(3) Any action taken to discipline a DoDEA employee, including removal, must be taken in accordance with *Public Law 95-454* (also known as the “Civil Service Reform Act of 1978”),

DoDEA Regulation 5751.9, and any otherwise applicable DoDEA employee policy or procedures.

c. Remedies. Pursuant to Section 4–402(b) of EO 13160, there is no authorization to provide monetary relief to a complainant (or person adversely impacted, if not the same) as a form of remedy. As a general matter, upon substantiated findings a person adversely impacted by discrimination may be entitled to all appropriate, non-monetary, equitable relief available under the discretion and authority of the DoDEA AAO that may help to remove or alleviate the effects of the discrimination. An unsubstantiated finding does not preclude the provision of remedial supportive services and/or accommodations to anyone involved in the complaint, which may be offered at the discretion of the DoDEA AAO. Although the wishes of the complainant (and person adversely impacted, if not the same) and their custodial parents or legal guardians, as may be applicable, shall be given serious consideration, what remedy may be offered is ultimately up to the discretion of the presiding DoDEA School Principal, Program Director, First-Line Supervisor, or other DoDEA AAO processing the complaint.

(1) If the DoDEA AAO determines that, as part of the corrective action, some form of equitable remedy is appropriate, they shall notify the complainant (or person adversely impacted, if not the same) in writing in the notification of closure provided in accordance with Section 4.6 of this Issuance and take all necessary steps to ensure that the remedy ordered is implemented.

(2) If the DoDEA AAO determines that the complainant (or person adversely impacted, if not the same) is not entitled to any equitable remedy or a specific remedy requested, they shall notify the complainant (or person adversely impacted, if not the same) of this decision and the reasons for this determination in writing in the notification of closure provided in accordance with Section 4.6 of this Issuance.

4.6. CLOSING A COMPLAINT. At the conclusion of complaint processing, the DoDEA AAO shall prepare one of the following three (3) primary types of written notifications of closure: **Unsubstantiated Findings**, **Voluntary Resolution**, or **Substantiated Findings**. Notification shall be sent by email or letter to the complainant (and person adversely impacted, if not the same) and the investigated alleged offender, together with any respective custodial parent or legal guardian where a student is involved. At the discretion of the DoDEA AAO, witnesses may be given simple notification that an investigation is closed and thanked for their service.

a. Required Information for a Notification of Closure. Different types of notification will be issued depending upon the findings of an investigation or how the case is resolved. All notifications of closure, however, should be copied to the applicable DoDEA DCP District Coordinator(s) and include the following:

(1) A restatement of each original allegation and any additional allegations made known and considered during the investigation of potential policy violations.

(2) An explanation of the status of any issues still under investigation by an outside entity, or that were investigated but still pending and not included in the closure action (e.g., where criminal prosecution against the alleged offender is pending), or any issues that were raised, but not investigated.

(3) The name and telephone number of the POC for follow up questions or requests for additional information.

(4) Notice of the right to submit a Request for Reconsideration to the DoDEA DCP District or Lead Coordinator in accordance with Section 5 of this Issuance.

(5) A statement on the DoDEA prohibition of retaliation against anyone who has participated in the investigation of the underlying claim.

b. On Unsubstantiated Findings. If a determination is made that the credible evidence does not substantiate the allegations, the DoDEA AAO shall send a written “Notification of Closure on Unsubstantiated Findings,” to include the following:

(1) All of the items required, generally, under Section 4.6.a. of this Issuance.

(2) A brief explanation of the results of the fact-finding investigation that support why the allegations were unsubstantiated.

(3) If applicable, a list of any minor procedural missteps or other concerns uncovered during the investigation that may have contributed to the perception of discriminatory intent may be included so as to highlight how to avoid further confusion or misunderstandings in the future, or brief explanation as to how the offense was corrected prior to the complaint being submitted and no further corrective action is necessary.

c. On Voluntary Resolution. When the complainant (and person alleged to be adversely impacted, if not the same), DoDEA AAO, and, where appropriate, alleged offender have voluntarily taken actions to resolve the dispute prior to the DoDEA AAO competing the investigation and making a finding (separate from any pending criminal or other enforcement action external to DoDEA), the DoDEA AAO shall send a written “Notification of Closure on Voluntary Resolution,” to include the following:

(1) All of the items required, generally, under Section 4.6.a. of this Issuance.

(2) A summary of the agreed upon steps that were or will be taken to resolve the concerns raised in the allegations and an explanation of how these actions will achieve their goal.

(3) Notice that failure to take or continue these agreed upon actions may result in the reopening of the complaint and that compliance will be monitored, if necessary.

(4) If applicable, the date(s) that any agreed upon action will occur and when, how, and by whom monitoring or other follow up supervision will be done.

d. On Substantiated Findings. If voluntary resolution cannot be achieved and a determination is made that the credible evidence does substantiate the allegations, the DoDEA AAO shall send a written “Notification of Closure on Substantiated Findings,” to include the following:

(1) All of the items required, generally, under Section 4.6.a. of this Issuance.

(2) A statement of the findings of fact for each allegation, supported by a brief explanation or analysis of the evidence on which the findings are based, if appropriate, to the extent such information may be lawfully disclosed.

(3) A list of the proposed corrective action and/or remedies that directly involve the specific recipient that have been or shall be taken to resolve the matter. Private information regarding any individual involved shall not be unlawfully disclosed in a Notification of Closure or at any other time during or after administration of a complaint. A complainant may be informed, generally, that appropriate action has been taken to protect against further discriminatory acts, but there shall be no disclosure to a complainant that the offender in a substantiated complaint was disciplined and/or what discipline was imposed, except for circumstances in which the enforcement of that discipline directly involves a legitimate need for the complainant to know. For example, a complainant may be informed that the offender must comply with a no-contact order, so that the complainant may report to the DoDEA AAO if it is violated.

SECTION 5. REQUEST FOR RECONSIDERATION

5.1. RIGHT TO RECONSIDERATION. Any complainant, or alleged or substantiated offender (or parent or legal guardian on behalf of a student), who alleges fault with the handling and/or outcome of a discrimination complaint at the lower-level, or who alleges further discrimination in how the complaint was handled, referred to in this Issuance as the **Requestor**, may submit a **Request for Reconsideration** from the next-higher-level DoDEA official in the chain of command, referred to in this Issuance as the **DoDEA Reviewing Official**, to question the findings and/or corrective action taken (or not taken) by the lower-level DoDEA AAO.

a. Student or Other Beneficiary School, District, or Program Level Complaints. A Request for Reconsideration of a student or other beneficiary educational- or program-related complaint at the school, district, or program level shall be **submitted to the DCP District Coordinator** where the school or program is located, in accordance with Section 5.4.a. of this Issuance. The DCP Coordinator shall identify the appropriate DoDEA Reviewing Official to conduct the review and forward the matter as follows:

(1) A Request for Reconsideration of how a complaint was handled by a DoDEA School Principal or Program Director as DoDEA AAO shall be reviewed by the next higher-level Community Superintendent with authority over that lower-level DoDEA AAO.

(2) Where the complaint was handled by a DoDEA Community Superintendent in lieu of the DoDEA School Principal or Program Director, or a DoDEA Community Superintendent is unable to accept, has a conflict of interest, or is not available, a Request for Reconsideration shall be reviewed by the DoDEA District Superintendent with authority over that DoDEA school or program/activity where the complaint originated.

(2) Where a DoDEA District Superintendent is unable to accept, has a conflict of interest, or is unavailable, their DoDEA DSE shall assume the responsibility on their behalf.

b. Employment-related Complaints and Other Beneficiary Region or HQ Level Complaints. A Request for Reconsideration of any employment-related complaint handled by a DoDEA Supervisor, or a complaint from an other beneficiary handled by a DoDEA AAO at the region or headquarters level, shall be **submitted to the DCP Lead Coordinator**, in accordance with Section 5.4.b. of this Issuance. The DCP Lead Coordinator shall identify and forward the request to the appropriate next-higher-level DoDEA Official in the chain of command who does not have a conflict of interest and is both able and available to perform an appropriate review.

5.2. TIMEFRAME. A Request for Reconsideration may be submitted as follows:

a. Within thirty (30) days from receipt of the Notification of Closure from the lower-level DoDEA AAO in accordance with Section 4.6 of this Issuance.

b. After thirty (30) days have passed since submitting a lower-level complaint and not receiving an Acknowledgement of Receipt in accordance with Section 4.2. of this Issuance or any other confirmation that the complaint was received and is being processed.

c. Upon credible reason to believe the complaint is not being investigated in accordance with this Issuance or is being delayed without a reasonable explanation or expectation for when it may conclude.

5.3. WHAT TO INCLUDE. A Request for Reconsideration must be in writing and should include:

a. The Requestor's name and preferred contact information and all other additional information as listed under Section 3.4. of this Issuance.

b. The DoDEA AAO(s) who processed the discrimination complaint.

c. A brief statement explaining the reason for the Request for Reconsideration, to include the alleged facts that support the request, such as a claim that the lower level DoDEA AAO did any of the following:

(1) Failed to accept or respond to the complaint.

(2) Failed to follow DoDEA policy or improperly deviated from policy when addressing the complaint.

(3) Improperly or inequitably executed their responsibilities under this Issuance. Examples of alleged basis for reconsideration include, but are not limited to: a key witness was not interviewed, one offender was disciplined more leniently than another for the same offense, an allegation was unsubstantiated despite clear credible evidence to substantiate, no corrective action was taken to address a Hostile Environment, a discipline did not equitably fit the nature of the offense, or the DoDEA AAO discriminated in the performance of their responsibilities.

d. Any new information and/or evidence to support the request not already submitted into the prior record.

5.4. WHERE/TO WHOM TO SUBMIT. To ensure a Request for Reconsideration is executed by the appropriate DoDEA Reviewing Official, the request must be submitted in writing to the DCP District Coordinator, or, if unsure where to send, to the DoDEA Lead DCP Coordinator for forwarding to the appropriate District DCP Coordinator, as follows:

a. DoDEA DCP District Coordinator. Each DoDEA District COS serves as DoDEA DCP District Coordinator for complaints that arise within their district. A DoDEA District COS may be found by consulting DoDEA's Civil Rights Program webpage at www.dodea.edu/IIR/CivilRights or DoDEA chain of command at www.dodea.edu/aboutDoDEA/command.

b. DoDEA DCP Lead Coordinator. The DoDEA HQ CRPM serves as the DoDEA DCP Lead Coordinator, located at DoDEA HQ, and may be reached by:

(1) Email at: Civil.Rights@hq.dodea.edu.

(2) Regular or express mail addressed to:

DoDEA Civil Rights Program Manager
DoDEA Investigations & Internal Review Division
4800 Mark Center Drive
Alexandria, VA 22350-1400

5.5. ACKNOWLEDGEMENTS OF RECEIPT AND ACCEPTANCE.

a. DCP Coordinator. Upon receipt of a Request for Reconsideration, the receiving DoDEA DCP Coordinator shall promptly (e.g., within five (5) business days) **send a written Acknowledgement of Receipt** to the Requestor to acknowledge receipt of the request, provide directions on what to expect next, list POCs to use going forward, and request any missing information or documentation that may be necessary, along with how and where to submit any requested additional information.

b. DoDEA Reviewing Official. Once a “Request for Reconsideration” has been forwarded to the appropriate DoDEA Reviewing Official, that official shall, **within five (5) business days, send a written Acknowledgement of Acceptance to the Requestor and the named DoDEA AAO** acknowledging acceptance, copied to the DoDEA DCP Coordinator, and indicating an estimated date by which a determination is expected to be rendered.

c. Handling Submissions Not First Submitted to the DCP Coordinator. In the event a Request for Reconsideration is submitted directly to a DoDEA official without first going through the appropriate DoDEA DCP Coordinator as directed in Section 5.4 of this Issuance, the DoDEA official shall promptly notify their DCP Coordinator to ensure either of the following:

(1) They are the appropriate DoDEA official to review the request under the circumstances, and they may proceed as the DoDEA Reviewing Official in accordance with Section 5.5.b. of this Issuance.

(2) They are not the appropriate DoDEA Reviewing Official for this request under the circumstances and the request is forwarded to the DoDEA DCP Coordinator for re-assignment.

5.6. STANDARD OF REVIEW. A Request for Reconsideration must be based upon alleged facts that, if true, would show the complaint was not processed by the lower-level DoDEA AAO in accordance with this Issuance or that the findings and/or corrective actions taken (or not taken) did not adequately reflect the credible evidence available, did not fit the nature of the offense and its impact, or are not adequately effective in resolving the issues raised.

a. A review is not intended to reinvestigate the underlying allegations, but to evaluate the sufficiency with which the lower-level administration was properly handled.

b. Consideration should be given to any DoDEA incident reporting records, any pertinent evidence or documentation submitted by the Requestor, and records gathered from the lower-level DoDEA AAO(s), and may include requests for additional information and interviews with

the Requestor, DoDEA AAO(s), and anyone else likely to have relevant information with regard to evaluating the adequacy of the DoDEA DCP performed at the lower level.

c. Requests for Reconsideration shall be evaluated on a factual basis. Requests based solely on allegations that lack factual grounds, such as upon speculation, opinion, or unreasonable personal expectations, may lack sufficient basis to challenge the discretionary authority a DoDEA AAO has to conduct a fact-finding investigation, make findings, and determine appropriate corrective and remedial action at their school, program, or activity.

5.7. AFFIRM OR REMAND PRIOR TO FINAL DECISION. Within thirty (30) days of sending an Acknowledgement of Acceptance, the DoDEA Reviewing Official shall consider any new information and/or documentation submitted, together with the records, findings, and/or corrective action taken on a complaint at the lower-level and make a determination as to whether or not the complaint was, or is being, handled in a reasonable, non-discriminatory, and objective manner by the lower-level DoDEA AAO and in accordance with applicable DoDEA regulations, rules, policies, or guidance, including this Issuance. Within this time period, the DoDEA Reviewing Official shall do one of either of the following:

a. Affirm. If the DoDEA Reviewing Official is satisfied that the handling and outcome of the lower-level complaint as administered by the DoDEA AAO(s) were in compliance with EO 13160 and this Issuance, the lower-level administration shall be “affirmed.”

b. Remand for Further Action. If the DoDEA Reviewing Official is not satisfied that the handling and/or outcome of the lower-level complaint as administered by the DoDEA AAO(s) were in compliance with EO 13160 and/or this Issuance, the underlying complaint shall be remanded for further action as follows:

(1) DoDEA Reviewing Official shall notify the DoDEA DCP Coordinator tracking the complaint that a remand for further action on the complaint is necessary, include a list of the express objectives to be achieved and any timeframe in which the action is expected to be completed, and work with the DoDEA DCP Coordinator on how the actions on remand shall be monitored, if necessary. The DoDEA DCP Coordinator (not the DoDEA Reviewing Official) shall contact the Requestor and DoDEA AAO and provide written notification that the underlying complaint has been remanded for further action prior to final decision, with a brief explanation for why the remand is necessary.

(2) Remand shall be directed in one of the following ways:

(a) The DoDEA Reviewing Official shall send the matter back to the DoDEA AAO(s) with a clearly defined list of issues and/or deficiencies to be addressed and a deadline by which the DoDEA AAO(s) shall demonstrate the issues/deficiencies have been resolved to the DoDEA Reviewing Official’s satisfaction.

(b) The DoDEA Reviewing Official shall designate a new DoDEA AAO under their supervision and forward the underlying complaint to the new designee for further action, with a clearly defined list of issues and/or deficiencies to be addressed and corrected and a deadline by

which the new assigned DoDEA AAO shall demonstrate the issues/deficiencies have been resolved to the DoDEA Reviewing Official's satisfaction.

(c) The DoDEA Reviewing Official shall personally take steps to address and resolve the issues and/or deficiencies and see to it they are resolved to their satisfaction.

(3) Further action on remand should be completed within no more than an additional thirty (30) calendar days from the date when written notification of the remand is sent to the Requestor and original or newly designated DoDEA AAO. The time may be extended on a case-by-case basis for good cause, upon the concurrence of the applicable DoDEA DCP Coordinator tracking the Request for Reconsideration.

5.8. FINAL DECISION ON COMPLAINT. A written final decision on the underlying complaint, referred to in this Issuance as the **Final Decision**, shall be sent to the Requestor, original DoDEA AAO, and any newly designated DoDEA AAO, if applicable, copied to the DoDEA DCP Coordinator, and be executed as follows:

a. If the handling and/or outcome of the underlying complaint was affirmed upon initial review, the Final Decision shall:

(1) Be issued within thirty (30) calendar days from the date of the Acknowledgement of Acceptance.

(2) State that the actions by the DoDEA AAO are affirmed, and the complaint is closed.

(3) Include a prominently displayed notice of the Requestor's right to an EO 13160 appeal in accordance with Section 5.9 of this Issuance.

b. If the underlying complaint was resolved subsequent to a Remand for Further Action, the written Final Decision shall:

(1) Be issued within sixty (60) calendar days from the date of the Acknowledgement of Acceptance, unless the timeframe for resolution on remand was extended beyond an additional thirty (30) days in accordance with Section 5.7.b.(3) of this Issuance.

(2) State that the underlying complaint was resolved upon remand as follows:

(a) Where the actions on remand do not change the lower-level DoDEA AAO's findings and/or corrective and remedial action taken, and the DoDEA Reviewing Official agrees there should be no change, the Final Decision on the complaint shall affirm the actions of DoDEA AAO(s), making note of the actions on remand taken to address the complainant's concerns, but that the additional steps did not warrant a change in the outcome.

(b) Where the lower-level findings and/or corrective and remedial action taken are modified by the lower-level DoDEA AAO as a result of fulfilling the directives ordered on remand and the DoDEA Reviewing Official is satisfied with the results, the Final Decision shall affirm the new findings and/or corrective and remedial actions taken on the complaint, making

note of the actions taken to address the complainant's concerns and how that supported the changes made.

(c) Where the DoDEA Reviewing Official does not agree with the findings and/or corrective and remedial action taken by the DoDEA AAO at the lower-level even after the designated DoDEA AAO did as directed in the remand, the DoDEA Reviewing Official may override the lower-level findings and/or corrective and remedial action decisions and in the Final Decision issue their own new findings and corrective and remedial action based on the new expanded record.

(3) Include a prominently displayed notice of the Requestor's right to an EO 13160 appeal in accordance with Section 5.9 of this Issuance.

5.9. RIGHT TO EO 13160 APPEAL. The Final Decision rendered on a Request for Reconsideration may be appealed in accordance with Section 5 of Volume 1 of DoDEA Administrative Instruction 1443.01. An accepted EO 13160 appeal initiates a DoDEA I&IR internal compliance review to determine if EO 13160 has been violated. The aim is to provide an independent review to ensure and, when necessary, restore DoDEA compliance with its responsibility to operate in a discrimination-free manner.

GLOSSARY

G.1. ACRONYMS.

AAO	appropriate Activity official
COS	Chief of Staff
CRPM	Civil Rights Program Manager
DCP	Discrimination Complaints Processing
DMEO	Diversity Management and Equal Opportunity Division
DSE	Director for Student Excellence
EEO	Equal Employment Opportunity
EO	Executive Order
FAP	Family Advocacy Program
HQ	headquarters
I&IR	Investigations and Internal Review Division
IEP	Individualized Education Program
LMER	Labor Management and Employee Relations
OGC	Office of General Counsel
POC	point of contact
PSB-CY	problematic sexual behavior in children and youth

G.2. DEFINITIONS. Unless otherwise noted, these terms and their definitions are for the purpose of this Issuance.

504 Accommodation plan. A written plan for a student with a disability developed by a DoDEA school's 504 Accommodation Team specifying the nature of the student's disability(ies) and the major life activity(ies) it limits; the basis for determining the disability(ies); the educational impact of the disability(ies); the area(s) for 504 Accommodation(s); and the 504 Accommodation strategies and documentation concerning how the student's progress will be determined.

AAO. The appropriate DoDEA official with lowest-level supervisory authority to administer a complaint of discrimination involving a DoDEA participant or DoDEA conducted or sponsored educational program, activity, division, branch, office, policy, or practice over which they have authority.

Hostile Environment. A Hostile Environment is an environment created by discriminatory harassment that is so sufficiently severe, persistent, or pervasive that it adversely alters the conditions of the educational or training program or activity for a participant such that it denies, limits, or negatively affects their equal access to educational, work, or training opportunities and benefits. A Hostile Environment may be the result of directly inflicted discriminatory harassment or from being a third-party witness to discriminatory acts. Hostility created by non-discriminatory personal or labor-management disputes or other non-discriminatory conflict does not meet the definition of a Hostile Environment under this Issuance and is to be addressed in accordance with the respective student and/or employee conduct and disciplinary policy that applies.

IEP plan. A written document that is developed, reviewed, and revised at a meeting of a DoDEA school's case study committee, identifying the required components of an individualized education program and related services designed for a child with a learning disability, aged three (3) through twenty-one (21) years, that are provided under the general supervision and direction of DoDEA at no cost to parents for a child found eligible in accordance with DoD Instruction 1342.12.

juvenile. A person under the age of eighteen (18) years of age.

objectively offensive. Something evaluated as being offensive under the Reasonable Person Standard (what any similarly situated person in the same set of circumstances would likely feel or believe if they were in the complainant's place).

other beneficiary. An individual entitled to participate in a DoDEA learning and work environment under EO 13160 who is not a DoDEA student or employee, such as a non-DoDEA student visiting from another school, a family member attending a school event, a non-DoDEA federal employee invited to attend a DoDEA-conducted training event, DoDEA volunteers, contractors, vendors, agents of DoDEA, or other lawful visitors or participants.

participant. A student, employee, or other beneficiary entitled to EO 13160 protections in relationship to their involvement in a DoDEA conducted or sponsored education and training program or activity.

persistent. An unwelcome action or behavior that continues unabated even after the offender has been given clear notice the action or behavior is unwelcome.

pervasive. An unwelcome harassing action or behavior that spreads widely and that is not discriminatory as a single, isolated act by one harasser, but becomes discriminatory if the act or behavior by the harasser spreads to targeting multiple people, or the offending act or behavior spreads in that it is repeated by others, as well. An example would include when one student or employee calls another student or employee by an offensive nickname a single time, but then other students or employees begin to use the same nickname for that person, or the offending person's own behavior spreads to calling multiple other people by different objectively offensive nicknames.

preponderance of the evidence. Based on the credibility of the evidence considered, it is more likely than not an allegation is true or not true.

problematic sexual behavior in children and youth (PSB-CY). See DoDEA Administrative Instruction 1443.02 for definition.

protected class. One of nine (9) classifications of individual characteristics entitled to protection from discrimination under this Issuance, specifically: race, sex (including gender), color, national origin, disability, religion, age, sexual orientation, and status as a parent.

Reasonable Person Standard. What any similarly situated person (e.g., another student or employee of the same age, grade, abilities, background, etc.) in the same set of circumstances would likely feel or believe if they were in the complainant's place.

restorative justice. A model of dispute resolution in which the offender and person found to have been adversely impacted may have a role in helping to negotiate a more creative, meaningful way to both hold an offender accountable and make amends directly to the person adversely impacted and/or the school or work community, as opposed to using only a strict adherence to a table of preset standardized penalties.

severe. A single unwelcome discriminatory harassing action or behavior that is so extreme in its adverse impact upon the target (at the time of the incident and/or its aftereffects) that a reasonable person would agree it effectively denies or limits that individual's equal access to participate or perform in DoDEA educational, work, or training opportunities and benefits.

voluntary resolution. An early resolution and closing of a complaint before an investigative report is completed, obtained when the DoDEA School Principal, Program Director, First-Line Supervisor, or other DoDEA AAO, the complainant (and person alleged to be adversely impacted, if not the same), and, under appropriate circumstances, the alleged offender reach a mutually acceptable agreement as to accountability, remedies, and corrective action that will resolve the allegations promptly and restore a safe equitable learning environment for the alleged person adversely impacted, offender, and school community, at large (entered into separate from any external criminal or other enforcement action still pending outside DoDEA authority).

REFERENCES

- DoD Instruction 1342.12, “Provision of Early Intervention and Special Education Services to Eligible DoD Dependents,” June 17, 2015
- DoD Manual 1342.12, “Implementation of Early Intervention and Special Education Services to Eligible DoD Dependents,” June 17, 2015
- DoDEA Administrative Instruction 1356.01 “DoDEA Family Advocacy Program Process for Reporting Incidents of Suspected Child Abuse and Neglect,” November 5, 2018
- DoDEA Administrative Instruction 1443.01, Volume 1, “Executive Order 13160 Administration: Compliance Requirements and Appeals,” February 22, 2019
- DoDEA Administrative Instruction 1443.02, “Prohibited Sexual, Sex-Based, and Other Abusive Misconduct Reporting and Response,” February 21, 2019
- DoDEA Administrative Instruction 2051.02, “Student Rights and Responsibilities,” April 17, 2012
- DoDEA Administrative Instruction 2500.14, “Nondiscrimination and 504 Accommodation on the Basis of Disability in DoDEA Conducted Education Programs and Activities,” April 29, 2009, as amended
- DoDEA Administrative Instruction 2510.01, “Student Behavior Interventions,” July 6, 2015
- DoDEA Administrative Instruction 6055.01, “DoDEA Safety Program,” November 27, 2017
- DoDEA Regulation 2051.1, “Disciplinary Rules and Procedures,” April 4, 2008, as amended
- DoDEA Regulation 2500.10, “Special Education Dispute Management System,” August 28, 2001
- DoDEA Regulation 5751.9, “Disciplinary and Adverse Actions,” August 27, 1999
- Executive Order 13160, “Nondiscrimination 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,” June 23, 2000
- Public Law 95-454*, “The Civil Service Reform Act of 1978,” October 13, 1978