



DoDEA ADMINISTRATIVE INSTRUCTION 1443.01, VOLUME 1

EXECUTIVE ORDER 13160 ADMINISTRATION: COMPLIANCE REQUIREMENTS AND APPEALS

Originating Division:	Investigations and Internal Review Division
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Approved by:	Thomas M. Brady, Director

Purpose: This Issuance establishes policy, defines compliance requirements, articulates rights, and assigns responsibilities for ensuring a discrimination-free learning and work environment in DoDEA-conducted education and training programs and activities in accordance with Executive Order (EO) 13160, referred to in this Issuance as EO 13160.

- Procedures on how to report, respond to, and resolve allegations of discrimination involving DoDEA students, employees, and other beneficiaries in violation of EO 13160 shall be followed in accordance with DoDEA Discrimination Complaints Processing (DCP) in Volume 2 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. No DoDEA student, employee, or other beneficiary, collectively referred to in this Issuance as a DoDEA participant, shall be excluded from participation in, be denied the benefits of, be subjected to or be permitted to subject others to, discrimination in any DoDEA-conducted education and training programs and activities on the basis of their race, sex, color, national origin, disability, religion, age, sexual orientation, or status as a parent, commonly known as their protected class, in accordance with EO 13160.

b. Although DoDEA cannot guarantee every participant a learning and work environment free from annoyances, petty slights, or minor offenses, DoDEA is committed to creating and maintaining an environment free from unlawful discrimination and will not tolerate incidents of discriminatory disparate treatment, hostile environments (including those created by sexual assault and sexual harassment), or impermissible disparate impact involving a DoDEA participant, based on their protected class, or retaliation against anyone because they have made a complaint, testified, assisted, or participated in any manner in an investigation related to an allegation of discrimination.

c. As authorized and in accordance with this Issuance, DoDEA school administrators, program directors, and managerial and senior executive officials with supervisory authority over subordinates (whether employee or volunteer) shall, as the appropriate Activity official (AAO), accept and process allegations of discrimination in accordance with Volume 2 of DoDEA Administrative Instruction 1443.01 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.

d. Complaints from, on behalf of, or about 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 DoDEA official to ensure the safety and welfare of those individuals involved and be processed at the school, program, activity, or direct supervisor level, from acceptance through to resolution. Upon substantiated findings of discrimination, corrective action may be taken to hold an offender accountable, offer equitable

remedies to a complainant, and restore and enhance protections for the school and workplace community, at large, with a right to request reconsideration of the lower-level findings and/or resolution from the next-higher-level DoDEA official.

e. 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 (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 official 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 Volume 2 of DoDEA Administrative Instruction 1443.01.

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 an actual or perceived 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 Volume 2 of DoDEA Administrative Instruction 1443.01.

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 Volume 2 of DoDEA Administrative Instruction 1443.01 and this Issuance, to include:

- a. Advising DoDEA leadership on both case-specific and overall investigative and response strategies in accordance with Volume 2 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 this Issuance.

2.6. DODEA HEADQUARTERS CIVIL RIGHTS PROGRAM MANAGER. The DoDEA HQ Civil Rights Program Manager (CRPM) is responsible for ensuring effective implementation of Volume 2 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 DCP Lead Coordinator in accordance with Volume 2 of DoDEA Administrative Instruction 1443.01.
- 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 2 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 Volume 2 of DoDEA Administrative Instruction 1443.01 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 2 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 DoDEA, 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 allegations of discrimination in accordance with Volume 2 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 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, as requested.

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: PREVENTING DISCRIMINATION

3.1. APPLICATION OF EO 13160 TO DODEA. Pursuant to Section 1-102 of EO 13160, “No individual, on the basis of race, sex, color, national origin, disability, religion, age, sexual orientation, or status as a parent, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination in, a Federally conducted education or training program or activity.”

a. DoDEA is responsible for ensuring that no DoDEA facility, policy or practice, and/or action taken by a DoDEA employee, volunteer, or other agent of DoDEA, may unlawfully discriminate against, or permit discrimination against, any DoDEA student, employee, or other beneficiary. Confronting discrimination through a separate and distinct complaint process is critical to safeguarding a culture of civil rights championship within the DoDEA school system.

b. DoDEA is committed to striving towards a higher quality learning and work experience for its students, employees, and other participants through the inclusion of a diversity of ideas, perspectives, experiences, creativity, sensitivity, cultures, talents, and ingenuity, and ensuring that diversity is embraced with respect and appreciation for the value added by each unique individual. Discrimination can make it difficult for students to learn, employees to work, and all participants to enjoy the benefits of the DoDEA school or work experience, because they do not feel safe or accepted and are denied an equitable opportunity to participate. In addition to express protections afforded under EO 13160, DoDEA follows all applicable federal laws, regulations, and DoD policy regarding issues of gender identity.

3.2. GUIDING LEGAL PRINCIPLES. Pursuant to Section 1-101 of EO 13160, “The Federal government must 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, and to private institutions receiving Federal financial assistance.” This Issuance is designed to provide antidiscrimination provisions comparable to the various existing laws and regulations that prohibit discrimination not only in federally-assisted educational programs, but also as apply to all federal employers, generally. Some of the most significant of the legal principles guiding DoDEA in fulfilling its antidiscrimination responsibilities are found in:

a. Section 1681 *et seq.* of Title 20, United States Code, also known and referred to in this Issuance as “Title IX of the Education Amendments of 1972.”

b. Section 2000d *et seq.* of Title 42, United States Code, as amended, commonly known as “Title VI of the Civil Rights Act of 1964.”

c. Section 2000e-2 of Title 42, United States Code, also known and referred to in this Issuance as “Title VII of the Civil Rights Act of 1964, as amended.”

d. Section 701 *et seq.*, of Title 29, United States Code, as amended, also known and referred to in this Issuance as “The Rehabilitation Act of 1973, as amended.”

e. Section 621 *et seq.* of Title 29, United States Code, commonly known and referred to in this Issuance as “The Age Discrimination in Employment Act of 1967, as amended.”

f. Executive Order 13166, commonly known as “Improving Access to Services for Persons with Limited English Proficiency.”

g. U.S. Equal Employment Opportunity Commission (EEOC) Guidance Notice 915.002.

3.3. COVERED EDUCATION PROGRAMS AND ACTIVITIES. Pursuant to Section 2–201 of EO 13160, “federally conducted education and training programs” include those that are “conducted, operated, or undertaken by” an executive department or agency.

a. DoDEA’s federally conducted and/or sponsored “education and training programs and activities” may include, but are not limited to, the following:

- (1) DoDEA formal schools.
- (2) Extracurricular and athletic activities.
- (3) Academic programs.
- (4) Occupational training.
- (5) Scholarships and fellowships.
- (6) Student internships.
- (7) Training for industry members.
- (8) Summer enrichment camps.
- (9) Teacher and employee training programs.

b. Exemptions from EO 13160 coverage include, but are not limited to:

(1) Military Programs: Pursuant to Section 3-301 of EO 13160, “members of the armed forces, military education or training programs, or authorized intelligence activities” are not covered under EO 13160. This exception does not include DoDEA schools.

(2) Affirmative Action: Pursuant to Section 3–302 of EO 13160, any otherwise lawful affirmative action plan or program is exempt and coverage “does not apply to, affect, interfere with, or modify the operation of any otherwise lawful affirmative action plan or program.”

(3) Programs Established Consistent With Federal Law: Pursuant to Section 3–303 of EO 13160, an individual shall not be deemed subject to discrimination by virtue of his or her “exclusion from the benefits of a program established consistent with federal law or limited by federal law to individuals of a particular race, sex, color, disability, national origin, age, religion, sexual orientation, or status as a parent different from his or her own.”

(4) Age-based Admissions: Pursuant to Section 3–306 of EO 13160, age-based admissions to DoDEA-conducted education and training programs are exempt if such programs have traditionally been age-specific or must be age-limited for reasons related to health or national security. Age-based distinctions may be used in accordance with laws designed to provide special benefits or assistance to members of a particular age group, such as children or the elderly.

3.4. DISCRIMINATION BY PROTECTED CLASS. All DoDEA participants shall be treated equitably without regard to their protected class or classes. Denying, interfering with, or otherwise preventing anyone from having equal access to participate in or enjoy the benefits of the DoDEA school or work experience based on that person’s protected class or association with someone who is a member of a protected class is prohibited. Discrimination based on each protected class is briefly summarized, for the purposes of this Issuance, as follows:

a. Race. Race discrimination involves treating someone inequitably, because they belong, or are perceived to belong, to a certain group of people with a common genealogical history who have many shared physical characteristics that distinguish them from other races, such as hair, skin color, or facial features. According to the U.S. Census Bureau website at www.census.gov/topics/population/race/about.html, the most common categories of race used in the United States are: African American, American Indian/Alaska Native, Asian (including Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam), Caucasian (including Europe, the Middle East, and North Africa), Hispanic, and Native Hawaiian or Other Pacific Islander (including Hawaii, Guam, Samoa, or other Pacific Islands).

b. Sex. Sex discrimination involves treating someone inequitably because of that person’s actual or perceived sex or gender, including unfavorable treatment based on pregnancy. Prohibited discrimination would include inequitable treatment based on stereotypes and intolerance for, or bias against, an individual’s expression of their sexual identity.

c. Color. Color discrimination involves treating someone inequitably based upon skin color complexion, which is often associated with race-based discrimination, as well, but which may occur between individuals of the same race. The most common skin color categories used in the United States, with corresponding race, are: Black (African American), Brown (Hispanic), Yellow (Asian), Red (American Indian/Alaska Native), and White (Caucasian).

d. National Origin. National origin discrimination involves treating someone inequitably, because they are from a particular country or part of the world, because of their ethnicity, because English is not their primary language, or because they merely appear to be from a certain country or ethnic background.

e. Disability. Disability discrimination involves treating someone inequitably, because they have a mental and/or physical disability, have a history of, are regarded as having, or are believed/rumored to have a mental or physical disability, or are the caretaker for someone with a mental and/or physical disability.

f. Religion. Religious discrimination involves treating someone inequitably because of their religious beliefs, whether it be a traditional religion such as Buddhism, Christianity, Hinduism, Islam, and Judaism, or some other form of deeply held religious, ethical or moral beliefs, as embraced either personally or by association with their family's beliefs.

g. Age. Age discrimination involves treating someone inequitably because of their age, which includes negatively prejudging their abilities, interests, or capacity to succeed based solely on their age.

h. Sexual Orientation. Sexual orientation discrimination involves treating someone inequitably because of their choice of sexual partnership, whether expressing preference for male-female partnership (heterosexual), same sex partnership (homosexual), both (bisexual), a fluid combination (pansexual), or none at all (asexual).

i. Status as a Parent. Status as a parent discrimination involves an individual being treated inequitably because of their status as a biological parent, adoptive parent, foster parent, stepparent, custodian/guardian of a legal ward, in loco parentis over such an individual, or someone actively seeking legal custody or adoption, and often results in unfavorable treatment based upon an adverse misperception of parental responsibilities and rights, or a lack thereof.

3.5. RECOGNIZING DISCRIMINATION. Although discrimination can take many forms, under the law the four most common theories are **Disparate Treatment, Hostile Environment Based on Discriminatory Harassment, Disparate Impact, and Retaliation.** In an effort to support reporting and accurate tracking of sexual harassment complaints, however, DoDEA policy also separately recognizes complaints of Hostile Environment Based on Sexual Harassment as a distinct category, separate from complaints alleging hostile environment based on any of the other protected classes, even though, technically, sexual harassment is a form of sex-based discriminatory harassment:

a. Disparate Treatment. A DoDEA participant treated or otherwise impacted inequitably from similarly-situated peers based solely on the participant's protected class is being subjected to a type of discrimination known as Disparate Treatment. Examples of Disparate Treatment when based on a person's protected class may include, but are not limited to:

- (1) Bias in selecting or failing to select someone for a position, program, project, or activity.
- (2) Denying someone any aid, benefit, or service offered in connection with an education program or activity.
- (3) Failing to provide or allocate educational or employment aid, benefits, or services.
- (4) Promoting or failing to promote someone.
- (5) Giving someone a positive or negative review, grade, or evaluation.
- (6) Segregating or ostracizing someone.

(7) Assigning someone to a particular adverse or unwanted task, role, team, program, activity, or project.

(8) Treating someone less favorably with respect to the terms, conditions, or privileges of a DoDEA career, internship, academic, athletic, extracurricular, or other DoDEA-sponsored program or activity opportunity or experience.

b. Hostile Environment Based on Discriminatory Harassment. DoDEA must maintain and operate a learning and work environment that is free from discriminatory harassment that creates an objectively offensive hostile environment. Any participant who is harassed based on their protected class(es) in a way that is objectively offensive (based on the reasonable person standard) and sufficiently **severe** (a single incident is sufficient to adversely impact the complainant), **persistent** (keeps happening even after the complainant makes clear it is unwelcome), or **pervasive** (multiple people are engaging in the same type of offending behavior or multiple people are being targeted by the same offending behavior) such that it would effectively deny, limit, or negatively affect that person's equal access to educational, work, or training opportunities and benefits is being subjected to a type of discrimination known as **Hostile Environment**.

(1) Discriminatory harassment that can create an objectively offensive hostile environment may include the use of derogatory slurs, epithets, jokes, cartoons, drawings, graphics, and other verbal, visual, or physical conduct that targets or otherwise inequitably impacts a participant on the basis of their protected class. Examples of misconduct that could rise to the level of discriminatory harassment include: unwanted minor physical contact or assaults, cyberbullying, hanging a noose or posting a swastika in a locker room, drawing objectively offensive graffiti on an employee's cubicle wall or a student's locker, or otherwise acting to offend, assault, intimidate, frighten, or provoke a targeted individual or people belonging to a protected class, in general.

(2) Discriminatory harassment covered under this Issuance may extend beyond the work or school setting to include harassment by mail or electronic communications, such as emails, texts, instant messaging (IM), Snapchat, Facebook, or other online social media, and may take place or have an impact off DoDEA premises and during out-of-school or off-work hours, such as at a complainant's home, neighborhood, or place of worship, provided it is committed in relationship to, or has an adverse impact upon, participation in a DoDEA-conducted or sponsored education or training program or activity.

(3) Alleged objectively offensive harassment based on a person's protected class that is not sufficiently severe, persistent, or pervasive does not rise to the level of discriminatory harassment and is not suited for discrimination complaint processing, but instead may be treated in accordance with other applicable DoDEA misconduct and disciplinary policies, such as DoDEA Administrative Instruction 2051.02, DoDEA Administrative Instruction 2510.01, DoDEA Regulation 2051.1, and DoDEA Regulation 5751.9.

c. Hostile Environment Based on Sexual Harassment. To support comparable protections to those in "Title IX of the Education Amendments Act of 1972," DoDEA policy recognizes and

tracks complaints of discriminatory harassment based on the protected class of sex as its own distinct category of Hostile Environment discrimination.

(1) **Prohibited Conduct:** Sexual harassment can consist of unwelcome sexual advances, requests for sexual favors, and other sufficiently serious and objectively offensive verbal, written, or physical conduct of a sexual nature, as defined under DoDEA Administrative Instruction 1443.02. Sexual harassment includes gender-based harassment and can be based upon adverse stereotypes regarding how persons of each gender should or should not behave, dress, identify, or otherwise express gender.

(2) **No Same Sex or Same Gender Exceptions:** Sexual harassment can be committed by offenders of the same sex or gender, as well as different sex and/or gender.

(3) **Sexual Assault:** Physical contact that is a sexual assault, as defined pursuant to DoDEA Administrative Instruction 1443.02, could be considered a form of sexual harassment when objectively offensive and sufficiently severe, persistent, or pervasive.

d. Disparate Impact. DoDEA conducted and sponsored education and training programs and activities must be administered and operated equitably. DoDEA may not permit employees, volunteers, other agents of DoDEA, or students to utilize policies, procedures, criteria, or other methods of administration in a manner that has a disproportionate and adverse effect on certain participants based on their belonging to a protected class, unless both of the following criteria are met:

(1) The policy, procedure, criteria, or method of administration is necessary to meeting a goal that is legitimate, important, and integral to DoDEA's mission (i.e., there is an educational or business necessity).

(2) There is no equally effective alternative policy, procedure, criteria, or method of administration that would result in a less adverse impact.

e. Retaliation. DoDEA shall not retaliate and shall not permit retaliation against any DoDEA students, employees, or other beneficiaries, because they raised concerns, reported claims, filed complaints alleging discrimination, or have provided evidence, assisted, participated, or cooperated in any manner in an investigation or other proceeding involving claims of discrimination.

(1) Prohibited retaliation may take many forms including, but not limited to, intimidation, threats, coercion, harassment, cyberbullying, and adverse actions motivated by a desire to punish, discourage, or deter that individual, and any witnesses, from exercising their rights (e.g., posting offensive comments or rumors on Facebook, dropping or blocking a person from participation in an event or club, or an unwarranted adverse employment action).

(2) DoDEA must ensure that no individual is subject to any form of retaliation for their involvement in a claim regardless of whether or not the underlying claim has any merit.

SECTION 4: ADMINISTRATION OF DISCRIMINATION COMPLAINTS

4.1. OVERVIEW OF DISCRIMINATION COMPLAINTS PROCESS. DoDEA established DCP to provide clearly-defined procedures by which DoDEA participants and the lowest-level appropriate DoDEA officials may work together to identify, evaluate, and equitably address any deficiencies or barriers that may compromise DoDEA's commitment to ensure a discrimination-free learning and work environment. Allegations of discrimination are ideally resolved at the lowest level, but may be subject to reconsideration from the next-higher-level DoDEA official upon request. Final decisions may be appealed to DoDEA I&IR for an independent review. Complaints are to be submitted, accepted, and processed in accordance with Volume 2 of DoDEA Administrative Instruction 1443.01, summarized as follows:

a. Initiating a Complaint.

(1) DoDEA students and other beneficiaries at the school level. Allegations of discrimination by or on behalf of DoDEA students and other beneficiaries (including volunteers) involving participation in a DoDEA school program or activity shall be administered by the DoDEA School Principal or Program Director at the school or program level, or by the next-higher-level superintendent if the lower-level administrator is unavailable, is the subject of the complaint, or has a conflict of interest, in accordance with Sections 3.2 of Volume 2 of DoDEA Administrative Instruction 1443.01.

(2) DoDEA employees. Allegations by or on behalf of a DoDEA employee shall be administered by the employee's First-line Supervisor, or next-higher-level supervisor if the First-Line supervisor is unavailable, is the alleged offender, or has a conflict of interest, in accordance with Section 3.3 of Volume 2 of DoDEA Administrative Instruction 1443.01.

(3) Other beneficiaries at DoDEA district, regional, or HQ facilities. Allegations by or on behalf of other beneficiaries participating, or seeking to participate, in DoDEA conducted or sponsored education and training programs or activities located at DoDEA district, regional, or HQ facilities shall be administered by the lowest level DoDEA official at the facility with authority over the program or activity at issue, or by the next-higher-level AAO if the lower-level official is not available, is the alleged offender, or has a conflict of interest, in accordance with Sections 3.2 of Volume 2 of DoDEA Administrative Instruction 1443.01.

b. Request for Reconsideration. All complainants and alleged or substantiated offenders may request reconsideration of the lower-level processing and outcome of a complaint from the next-higher-level DoDEA official, referred to in this Issuance as a **Request for Reconsideration**, in accordance with Section 5 of Volume 2 of DoDEA Administrative Instruction 1443.01. The decision on a Request for Reconsideration, referred to in this Issuance as the **Final Decision**, is considered the end of the complaint process, but may be subject to an EO 13160 appeal.

c. EO 13160 Appeal. The Final Decision upon a Request for Reconsideration may be appealed to DoDEA I&IR for an independent EO 13160 compliance review in accordance with Section 5 of this Issuance, referred to as an **EO 13160 Appeal**. The purpose of an EO 13160

Appeal is to ensure the underlying lower-level complaint and/or the Request for Reconsideration were properly handled and resolved in compliance with EO 13160, Volume 2 of DoDEA Administrative Instruction 1443.01, this Issuance, and any other applicable DoDEA policy.

4.2. ROLE OF A DODEA APPROPRIATE ACTIVITY OFFICIAL. Complaints alleging discrimination shall be administered by the lowest-level DoDEA AAO who is the most appropriate DoDEA official authorized to address and resolve the complaint, to include DoDEA School Principals, Program Directors of DoDEA-conducted or sponsored programs or activities, First-Line Supervisors, and other DoDEA officials with lowest-level supervisory authority, or by certain higher-level DoDEA officials as may be necessary or appropriate, on a case-by case basis. The DoDEA AAO is responsible for all of the following:

a. Ensuring there is an appropriate evaluation of the merits of the allegations, obtaining voluntary resolution of the dispute whenever possible, and determining what, if any, disciplinary, remedial, and/or other corrective action should be taken to maintain, or restore, DoDEA compliance with EO 13160.

b. Proactively working to identify potential discriminatory policy, practices, or acts under their jurisdiction as early as possible, in consultation with their DCP District Coordinator or the Lead Coordinator, as needed, without waiting for a harm to occur or for a DoDEA participant to bring the matter to their attention. The identity of a complainant does not need to be established before a DoDEA AAO shall take action upon receiving notice of alleged discrimination or upon reason to believe circumstances may lead to a discrimination complaint if left unchecked.

c. Providing DoDEA's educational materials on EO 13160 and/or the DoDEA DCP to anyone raising questions or concerns regarding alleged discrimination, to include how to access a copy of Volumes 1 and 2 of this Issuance and the name and contact information for those POCs who can assist with questions they may have about DoDEA discrimination complaints administration, requests for reconsideration, and EO 13160 appeals.

4.3. ROLE OF A COMPLAINANT. Any person who believes they are being or have been, or who knows of someone who is being or has been, discriminated against in their participation in a DoDEA conducted education or training program or activity is encouraged to alert the applicable DoDEA AAO in accordance with this Issuance, so that those concerns may be properly addressed and resolved. Allegations raised by anonymous complainants shall be accepted and processed, insofar as possible. Any attempts to resolve a discrimination dispute by means other than that provided for in this Issuance may not be eligible for the enforcement protections provided for under this Issuance.

4.4. PROCESSING ALLEGATIONS INVOLVING DODEA STUDENTS AND OTHER BENEFICIARIES. Allegations of discrimination involving any DoDEA student or other beneficiary, both juvenile and non-employee adult, must be processed in accordance with Volume 2 of DoDEA Administrative Instruction 1443.01, except for DoDEA student disputes involving Individualized Education Program (IEP) or 504 Accommodation plans.

a. Disputes Involving an Individualized Education Program Plan. Due to their enhanced statutory protections, disputes related to dissatisfaction or disagreement with a DoDEA student's IEP plan, or the delivery of IEP services, have their own separate prescribed dispute resolution procedures and protections and must be initiated in accordance with DoDEA Regulation 2500.10, and DoD Instruction 1342.12, with its accompanying manual, DoD Manual 1342.12.

b. Disputes Involving 504 Accommodation. Due to their enhanced statutory protections, disputes related to dissatisfaction or disagreement with a DoDEA student's 504 Accommodation Plan, determinations by a DoDEA student's 504 Accommodation Team, or the delivery of 504 services, have their own separate prescribed dispute resolution and appeal procedures and protections and must be initiated in accordance with DoDEA Administrative Instruction 2500.14.

c. Disability-based Discrimination. Notwithstanding the above, DoDEA students with disabilities may raise allegations of discrimination, including disability-based discrimination, in accordance with Volume 2 of DoDEA Administrative Instruction 1443.01.

4.5. PROCESSING ALLEGATIONS INVOLVING DODEA EMPLOYMENT.

a. Supplementing Employee Rights under Equal Employment Opportunity. DoDEA employees are covered under EO 13160 by virtue of their employment-related participation in DoDEA-conducted educational programs and activities. EO 13160 is a federal agency internal review and antidiscrimination mandate that, for employees, supplements the EEO laws, regulations, and Executive Orders that directly enforce an employee's rights, such as "Title VII of the Civil Rights Act of 1964, as amended;" "Section 501 of The Rehabilitation Act of 1973, as amended;" "The Age Discrimination in Employment Act of 1967, as amended" and Part 1614 of Title 29, Code of Federal Regulations. As a supplement to EEO protections, however, a DoDEA employee has the option to pursue an EO 13160 discrimination complaint as an alternative to pursuing an EEO complaint, or may utilize the EO 13160 complaints process to address and resolve workplace discriminatory harassment at its earliest stages, before it escalates into an EEO complaint.

(1) An aggrieved DoDEA employee's EEO rights are directly enforceable through the separate EEO complaint program administered by the DoDEA DMEO Resolution and Compliance Branch. Under EEO, a DoDEA employee or applicant for employment has up to forty-five (45) days to initiate a claim (subject to extension under certain circumstances), which claim is subject to several stages, beginning with a mandatory counseling stage, followed by a formal complaint stage with independent investigation and a decision on the merits after a hearing presided over by an administrative law judge or after a review of the investigative record, which decision on the complaint is appealable to the U.S. EEOC. A prevailing EEO claimant may be awarded a variety of relief, including monetary awards in the form of compensatory damages and attorney's fees, which are not remedies available under EO 13160.

(2) Under EO 13160, the DoDEA DCP procedures permit an employee to, at any time, bring their complaint up through the two (2) next-higher-level DoDEA officials in the chain of command, and then still have up to one-hundred-eighty (180) days to file an EO 13160 appeal to have the lower-level handling of their complaint independently reviewed by DoDEA I&IR.

There is no employee or applicant right to a hearing under EO 13160. If a claim of discrimination is substantiated, only non-monetary, equitable relief is available to the person adversely impacted, at the discretion of the DoDEA AAO and as part of the corrective action DoDEA may take to restore compliance with EO 13160. A substantiated finding of discrimination under EO 13160 does not, and should not be construed to, create a private right of action against the United States, DoD, DoDEA, its officers, or its employees.

(3) To preserve the integrity of the individual rights protections and remedies available under EEO dispute resolution, EO 13160 requires that employee and applicant claims timely filed under both EEO and EO 13160 be consolidated and adjudicated only under the relevant EEO statutes. For this reason, any DoDEA employee seeking to file an appeal with DoDEA I&IR under EO 13160 must indicate whether or not their claim is related to employment and, if so, whether or not they have or plan to file any EEO claims based on the same underlying circumstances. If they do, their EO 13160 claim must be transferred to the DoDEA DMEO for consolidation into their EEO complaint, proceeding solely under EEO.

(4) A DoDEA employee or applicant has the option of proceeding solely under EO 13160, even if they have not missed the EEO forty-five (45) day deadline.

b. Procedures for Handling Employment-related EO 13160 Complaints. A DoDEA AAO who receives an employment-related discrimination complaint shall first ensure the complainant is aware of their right to contact DoDEA DMEO to ensure they are fully informed as to all their options for seeking relief, to include consideration of an EEO complaint and/or the DoDEA Center for Early Dispute Resolution alternative dispute resolution program. If the complainant chooses to proceed solely under EO 13160, the DoDEA AAO shall process the complaint in accordance with the complaint acceptance, investigation, fact finding, and resolution procedures contained in Volume 2 of Administrative Instruction 1443.01.

SECTION 5: EO 13160 APPEAL

5.1. OVERVIEW OF EO 13160 APPEAL PROCESS. The objective of an EO 13160 appeal is to ensure and, when necessary, restore DoDEA compliance with its responsibility to operate in a discrimination-free manner.

a. DoDEA I&IR has the exclusive authority within DoDEA to conduct a formal independent compliance review into whether or not DoDEA policy and practices and the actions taken by DoDEA administrators, staff, volunteers, contractors, and any other agents of DoDEA are in compliance with DoDEA's obligations under EO 13160.

b. Where a violation of EO 13160 is substantiated on appeal, the matter shall be referred to the DoDEA Director to ensure implementation of whatever corrective action is necessary to return DoDEA to full compliance.

c. When discrimination is substantiated on EO 13160 appeal, at the discretion of the DoDEA Director or his designee, a complainant may be offered various non-monetary equitable remedies as part of the corrective action taken to address the past inequity and restore DoDEA to EO 13160 compliance.

5.2. WHO MAY FILE. A complainant, and/or alleged or substantiated offender, in a discrimination complaint that has gone through both the lower-level complaint process and a Request for Reconsideration in accordance with Volume 2 of DoDEA Administrative Instruction 1443.01, who feels the complaint was not handled equitably and/or in accordance with DoDEA implementing policies is eligible to file an EO 13160 appeal.

a. Appellant and Respondent. The DoDEA participant who brings the appeal is the **Appellant**, and any DoDEA official alleged to be responsible for the alleged inequity or noncompliance is a **Respondent**.

b. Representative on Behalf of Appellant. An appeal may be filed on behalf of an Appellant, where the filer has the legal authority to so act or they have the Appellant's lawful consent.

c. Limited Right to Anonymity. Anonymous appeals are not accepted by DoDEA I&IR; an Appellant must provide their name and contact information. An Appellant may refuse, however, to have their identity revealed during the investigation of their appeal, but refusal to release their identity may hinder the process to the point where no valid determination can be rendered. Refusal by an Appellant to authorize the release of their identity may result in closure of the appeal without a determination on the merits.

5.3. TIME LIMITS. An appeal may be submitted as follows:

a. Within one hundred and eighty (180) days from the date of the Final Decision on a Request for Reconsideration rendered in accordance with Section 5.7 of Volume 2 of DoDEA Administrative Instruction 1443.01.

b. After thirty (30) days have passed, but no more than one hundred and eighty (180) days, since submitting a Request for Reconsideration in accordance with Section 5 of Volume 2 of DoDEA Administrative Instruction 1443.01 and not receiving an Acknowledgment of Receipt or any other confirmation that the request was received and is being processed.

c. The filing date of an appeal is the earlier of either:

(1) The post-mark of a mailed appeal or date stamp of an email or fax addressed to DoDEA I&IR.

(2) The date the appeal is received by DoDEA I&IR.

d. If an appeal is received that was not filed within the applicable timeframe, DoDEA I&IR should notify the Appellant of the right to request a waiver. The DoDEA I&IR Chief, or designee, may grant an extension under any of the following circumstances:

(1) The Appellant was unable to file an appeal because of incapacitating illness or other incapacitating circumstances during the filing period, and the appeal was filed within sixty (60) days after the period of incapacitation ended.

(2) Unique circumstances generated by DoDEA's actions have adversely affected the Appellant's ability to timely file.

5.4. REQUIRED INFORMATION. An EO 13160 appeal is a statement submitted in writing (see Section 5.4.c. of this Issuance for exceptions permitting alternative formats) alleging that administration of a lower-level discrimination complaint and/or a Request for Reconsideration was not handled or the discrimination not corrected in accordance with EO 13160, this Issuance, and/or other applicable DoDEA policy intended to protect against inequitable treatment or impact based on a person's protected class. An EO 13160 appeal must be "complete" to be eligible for acceptance and consideration.

a. To be "complete," an appeal must meet the following four (4) criteria:

(1) Include the Appellant's name, address, and phone number (plus email address, if available), along with the identity of the person or persons adversely impacted, if not the Appellant.

(2) If sent by letter, be signed by the Appellant or someone lawfully authorized to sign on the Appellant's behalf; If submitted electronically, be sent from a verifiable, secure email account.

(3) Identify if the Appellant (or the person adversely impacted by discrimination as alleged in the underlying complaint, if not the Appellant) is a DoDEA employee or applicant for employment. If so, the appeal should also indicate if their allegations are related to their employment and if an EEO complaint has been, or is planned to be, filed alleging the same issues.

(4) Identify the Respondent(s), who is the DoDEA AAO(s) and/or next-higher-level DoDEA official(s) alleged to have acted improperly or inequitably in processing the underlying discrimination complaint and/or Request for Reconsideration.

(5) A description of the original underlying complaint of discrimination, the basis for seeking an EO 13160 appeal (e.g., how the original discrimination complaint had been improperly processed at the lower-level and/or upon the Request for Reconsideration), and what corrective or remedial action is requested, if known.

b. An appeal submission may be rejected for the following reasons:

(1) Not “complete” after attempts to obtain missing information were made in accordance with Section 5.8.c.(2) of this Issuance.

(2) Appellant has not first attempted to address their complaint, or has not otherwise provided DoDEA with a reasonable opportunity to resolve their complaint, through DoDEA DCP in accordance with Volume 2 of DoDEA Administrative Instruction 1443.01.

(3) Anonymous correspondence.

(4) Inquiries merely seeking advice or information.

(5) Submissions that are too vague or speculative to provide any factual basis on which to proceed or that contain only allegations that, if accepted as true, would not support a finding of violation of EO 13160. For example, claims that an Appellant did not like or agree with a Final Decision with no additional grounds alleged on which to challenge the soundness of the decision might not be eligible for acceptance if the missing information is not supplied upon request for clarification from DoDEA I&IR.

(6) Verbally submitted allegations. (See Section 5.4.c. of this Issuance for exceptions for people with disabilities or limited English proficiency.)

c. DoDEA must accept appeals in alternative formats for people with disabilities or with limited English proficiency (LEP) as follows.

(1) Disabilities: Although complete appeals must be in writing, DoDEA must accept appeals in alternative formats from people with disabilities otherwise impairing their ability to submit an appeal in writing. For example, an appeal may be filed by Braille, video, digital recording, or audiotape. (An unrecorded phone or video call is not sufficient to satisfy the “complete” appeal criteria.) If an Appellant is unable to produce a written appeal due to their disability, receiving DoDEA I&IR staff, or their designee, will transcribe sufficient information to meet the minimum criteria for acceptance and may not mandate that a person with a writing

impairment use a representative on their behalf where transcription assistance would not be disruptive, a hardship, or a conflict of interest for either the Appellant or the staff member. Transcribed appeals shall identify the person and/or service that performed the transcription.

(2) Limited English Proficiency: DoDEA must ensure that people with LEP can meaningfully access its programs and activities, including the EO 13160 appeals process, as set forth in Executive Order 13166. Appeals filed in languages other than English should be translated and responded to in the language in which they were received.

(3) Accommodating Persons with Disabilities or LEP: It is important to recognize that the need to modify practices to serve Appellants with disabilities or LEP may extend beyond the appeal intake stage. For both Appellants with disabilities and LEP, staff must provide any applicable DoDEA I&IR forms and other vital documents in alternative formats (e.g., an electronic text file or in Spanish) when requested. Steps also must be taken to ensure an Appellant with cognitive disabilities understands the legal implications of signing any document. For those Appellants with known disabilities who are physically unable to sign forms, staff should use other means to ensure the Appellant can confirm they understand their rights, such as through an oral confirmation or via e-mail. Throughout the appeal resolution process, staff should ensure these individuals understand their rights and responsibilities, as well as the status of their appeal.

5.5. WHERE TO FILE. Appeals must be filed directly with DoDEA I&IR by either:

a. Email. Email should be sent to: HQ.OI&IR@hq.dodea.edu, with Subject Heading: “EO 13160 Appeal.”

b. DoDEA “IIR Action Request form.” Use of fillable electronic submission form located on the DoDEA I&IR “Complaints” webpage at www.dodea.edu/Offices/IIR/complaints.cfm.

c. Regular or Express Mail. Regular or express mail should be addressed to:

DoDEA Investigations & Internal Review Division
Attn: EO 13160 Appeal
4800 Mark Center Drive
Alexandria, VA 22350-1400

5.6. CONSOLIDATION WITH EMPLOYEE EEO COMPLAINTS. Where a DoDEA employee timely files separate claims under both EO 13160 and EEO, DoDEA I&IR must transfer the EO 13160 appeal to DoDEA DMEO to be consolidated into and adjudicated under the EEO complaint process, exclusively, in accordance with Section 4.5 of this Issuance, and then close the EO 13160 appeal.

5.7. CLASS APPEALS. To avoid duplication of efforts and promote a more expedient process, in the event multiple Appellants each seek to bring an appeal on the same allegations addressing the same DoDEA Respondent(s), practices, or policies, the separate appeals may be consolidated

into a single class appeal, in which a lead Appellant proceeds as representative of the allegedly aggrieved class of Appellants.

5.8. ACTION UPON RECEIPT OF APPEAL. Upon receipt to DoDEA I&IR, an appeal shall be assessed and a determination made on how to proceed. Considerations include whether the appeal is complete, whether it was filed in a timely manner, whether the underlying complaint is current (involves an active, ongoing threat of discrimination), and, in the case of a DoDEA employee, whether the appeal should be consolidated with an EEO claim and transferred for adjudication in accordance with Section 4.5 and Section 5.6 of this Issuance.

a. Tracking an Appeal. An appeal should be date stamped upon receipt by DoDEA I&IR and the appropriate information pertaining to the appeal entered into the investigative case file. For multiple appeals involving duplicative claims, the following guidelines should be applied to determine how many case numbers should be assigned:

(1) New allegations filed by the same Appellant involving the same DoDEA Respondent(s) and the same or related underlying allegations after the appeal process has begun should be reviewed on a case-by-case basis to determine whether the allegations should be added to the existing appeal or treated as a new appeal.

(2) Appeals filed by more than one Appellant that raise substantially identical allegations against the same DoDEA Respondent(s) and/or their lower-level decisions or actions taken (or not taken) on lower-level complaints may proceed as a Class Appeal and assigned a single case number.

b. Acknowledgement of Receipt. Prompt written notification should be sent by DoDEA I&IR to the Appellant within five (5) business days acknowledging that the appeal correspondence has been received. The acknowledgement should include:

(1) A statement that the appeal will be evaluated to determine whether the information is complete and that a written notification of acceptance or dismissal shall follow within ten (10) business days.

(2) A request for additional information if an appeal is not complete or if needed to determine whether or not to waive the time limits for filing, or, in the case of an employee with an existing EEO claim, if the allegation(s) should be consolidated in accordance with Section 5.6. of this Issuance. The Appellant should be informed that DoDEA I&IR will close the appeal if the additional requested information is not provided within thirty (30) calendar days. DoDEA I&IR may extend the deadline depending upon any anticipated difficulty in responding to the information request or other special circumstances (e.g. it is summer break and the Appellant's access to the requested information is delayed until the start of a new school year).

(3) A statement that, if an appeal is accepted, DoDEA I&IR has the discretion to recommend the Appellant and Respondent(s) attempt voluntary early resolution prior to DoDEA I&IR initiating investigative action in accordance with Section 5.11. of this Issuance and that further communications will follow.

c. Evaluation for Acceptance. DoDEA I&IR shall determine whether the appeal is “complete” and timely filed in order to proceed with processing and resolution.

(1) Jurisdiction: If it is immediately clear from the information provided that DoDEA does not have jurisdiction over the appeal, DoDEA I&IR staff should attempt to refer the Appellant to the appropriate agency. A dismissal letter, instead of the standard acknowledgment of receipt, should be sent to the Appellant indicating that the appeal has been received and the allegations fall outside DoDEA’s jurisdiction, together with notification of a right to appeal the dismissal as detailed in Section 5.10.b. of this Issuance.

(2) Identifying Issues: The specific alleged discriminatory policy, practice, or act that is the basis of the underlying original discrimination complaint (e.g., denial of services or access to a covered program, or discriminatory harassment by a student or staff member) and the basis for the appeal shall be identified, if possible (e.g., the Respondent DoDEA AAO imposed inequitable discipline among multiple equally accountable DoDEA student offenders of different races and the Respondent Community Superintendent who reviewed the Request for Reconsideration affirmed the discipline decision without any reasonable nondiscriminatory explanation for the difference in treatment). When identification is uncertain from the information submitted, the appeal may be accepted and additional information requested, or it may be dismissed as not “complete,” at DoDEA I&IR discretion.

d. Time Frame for Adjudicating Appeal. To comply with EO 13160 guidance, DoDEA I&IR should attempt to complete the compliance review within one hundred and eighty (180) days of receipt of a complete appeal. This time limit includes any time spent attempting to negotiate an early voluntary resolution in accordance with Section 5.11 of this Issuance.

5.9. ACCEPTANCE OF APPEAL. Within ten (10) business days of the Acknowledgement of Receipt, if the appeal is timely, sufficiently complete, and within DoDEA’s jurisdiction, DoDEA I&IR shall send to the Appellant and Respondent(s) a written notification of acceptance. The acknowledgement should include:

a. Statement of Jurisdiction. Confirmation of DoDEA I&IR’s jurisdiction over the allegation.

b. Summary of Issues. A brief statement of the protected classes and specific discriminatory actions or impact alleged in the original underlying complaint and the alleged noncompliance issues at the lower-level and/or Request for Reconsideration stages that make up the basis for the appeal.

c. Requests for Additional Information. Any requests for additional information from the Appellant and/or Respondent to assist in clarifying the scope of the investigation and issues to be resolved, if needed.

d. Next Steps/Point of Contacts. A brief description of what the Appellant and Respondent may expect next going forward, along with the names and contact information for the appropriate DoDEA I&IR 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 and shall not permit 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 EO 13160 appeal or other allegation of discrimination.

5.10. DISMISSAL OF APPEAL. Under certain circumstances, DoDEA I&IR may decline to accept an appeal, initially, or to proceed further with an accepted appeal.

a. Grounds for Dismissal. DoDEA I&IR may send a dismissal letter to the Appellant if one or more of the following conditions exist:

- (1) The appeal is untimely filed.
- (2) The allegations are too lacking in detail even after requests for additional information, or so vague even after requests for clarification, such that, even if true, they would not constitute discrimination as prohibited by EO 13160 or a violation of applicable DoDEA policy.
- (3) The Appellant fails to respond within thirty (30) calendar days to repeated requests for additional information needed to process the appeal.
- (4) The Appellant cannot be located after reasonable attempts.
- (5) The Appellant refuses to allow their identity to be revealed during the appeals process.
- (6) DoDEA lacks jurisdiction in the matter, or the Appellant does not allege any harm with regard to current DoDEA programs or statutes.
- (7) The issues in dispute on appeal are foreclosed by a previous decision on the merits by the federal courts, the EEO complaints process, or some other applicable adjudicative authority.
- (8) DoDEA I&IR obtains conclusive evidence at any time indicating that the allegations raised by the appeal have been resolved or are moot, and there are no class-wide allegations or implications. In such a case, DoDEA I&IR will attempt to ascertain the apparent resolution. If DoDEA I&IR determines that there are no current allegations appropriate for further dispute resolution, the appeal will be closed.
- (9) It is clear that the appeal is duplicative of recently filed EO 13160 appeals brought by or on behalf of the same adversely impacted individual involving the same or materially similar allegations against the same DoDEA Respondent(s) or same DoDEA policy, regulation, or practice and the allegations were found factually or legally unsubstantiated by DoDEA I&IR, and there is no new factual basis on which to challenge the previous findings.
- (10) All of the same allegations raised in the appeal have been addressed in another recently resolved complaint, grievance, appeal, or compliance review.

(11) The Appellant decides to withdraw their appeal. If the appeal included class allegations, DoDEA I&IR may close out the entire appeal, pursue resolution of the class allegations, or use the information to target future internal compliance review activity.

(12) Litigation has been filed raising the same allegations with the same bases and issues involved in the appeal. In such cases, the appeal should not be held in abeyance, but dismissed. An appeal, however, may be re-filed within sixty (60) days following termination of the court proceeding if there has been no decision on the merits or settlement of the appeal allegations. Dismissal with prejudice by a court of competent jurisdiction is considered a decision on the merits.

(13) The same appeal allegations have been filed with another federal, state, or local agency, or through other administrative grievance procedures, and DoDEA I&IR anticipates that the Appellant will be provided with a comparable resolution process under comparable legal standards (i.e., all allegations were investigated, appropriate legal standards were applied, and any remedies secured meet EO 13160 standards).

(14) The death of the Appellant (or adversely impacted person, if not the Appellant) makes it impossible to investigate the allegations fully, or when the death forecloses the possibility of relief, because the appeal involved potential relief solely for the Appellant (or adversely impacted person, if not the Appellant).

(15) An appeal, because of its scope, may require unreasonable and extraordinary resources. Before electing this option, DoDEA I&IR shall consult with DoDEA OGC.

b. Right to Appeal Dismissal Based on Lack of Jurisdiction. In certain instances, DoDEA I&IR may determine that an appeal should be dismissed, because the alleged discrimination did not occur in a DoDEA-conducted education or training program or activity. In such cases, DoDEA I&IR shall issue a brief written determination setting forth the basis for the dismissal and advising the Appellant of their right to appeal this decision to the U.S. Attorney General for a final determination regarding coverage pursuant to Section 2–203 of the EO 13160. Responsibility for issuing such final determinations regarding coverage is delegated to the U.S. Assistant Attorney General for Civil Rights, who has ultimate federal authority to conduct, handle, or supervise the performance of this function.

5.11. EARLY VOLUNTARY RESOLUTION. The opportunity to resolve an allegation of noncompliance voluntarily should be encouraged throughout the appeals process. Early resolution of accepted appeals provides opportunity for the Appellant(s) and Respondent DoDEA AAO(s) involved to reach a mutually acceptable agreement that will resolve the allegations promptly and ensure DoDEA maintains, or is restored to, EO 13160 compliance. As early as in the initial discussions with the Appellant and Respondent(s), a DoDEA I&IR investigator should request information on acceptable resolution options. When the DoDEA I&IR investigator determines early voluntary resolution may be appropriate under the circumstances, they shall contact the Appellant and Respondent(s) to offer this resolution option.

a. Timeframe. DoDEA I&IR has the discretion to suspend initiation of investigative action on a compliance review for up to forty-five (45) calendar days to facilitate attempts to achieve early voluntary resolution.

(1) When considering whether an accepted appeal is appropriate for early voluntary resolution, DoDEA I&IR must be mindful that mandatory time limits for completing the appeals process are not tolled during an Appellant's participation in early resolution efforts.

(2) If successful early resolution cannot be reached within a reasonable period of time (approximately forty-five (45) days), or if efforts to achieve a voluntary resolution appear to become futile, DoDEA I&IR should proceed with the investigative review process. However, efforts to achieve voluntary resolution should continue to be undertaken whenever possible throughout the process, if and when appropriate opportunities arise.

b. Criteria. In general, early voluntary resolution is appropriate for use in addressing specific and discrete issues that involve easily achieved individual remedies. Criteria in considering whether attempting early voluntary resolution is appropriate include:

(1) Are there specific/discrete issues that involve individual remedies (i.e., not affecting a class of persons)?

(2) Can those individual specific/discrete issues be addressed in full through voluntary resolution without affecting DoDEA I&IR's ability to evaluate or resolve the other issues raised in the appeal?

(3) If the answer to both of the above questions is yes, early voluntary resolution may be appropriate.

(4) If attempts at early voluntary resolution are successful, DoDEA I&IR shall obtain written acknowledgement of the resolution signed by the Appellant and Respondent(s), which shall contain the following:

(a) The steps that the Respondent(s) has/have taken or will take to resolve the Appellant's concerns.

(b) Notice that failure to take or continue these actions may result in the finding of an EO 13160 violation and that compliance will be monitored, if necessary.

(c) If applicable, the date(s) that any promised action will occur and when monitoring or other follow up reporting will be done.

(d) Once the acknowledgement of resolution has been signed, DoDEA I&IR shall issue a Letter of Voluntary Resolution in accordance with Section 5.14.c. of this Issuance indicating that the allegation(s) has/have been resolved and that DoDEA I&IR will close the case.

(e) Any other outstanding non-EO 13160 issues, if any, are to be resolved through the applicable appropriate investigation and resolution process. A copy of any written acknowledgement of the resolution will be included with the Letter of Voluntary Resolution.

5.12. COMPLIANCE REVIEW AND FACT-FINDING.

a. Scope of the Appeal. Investigative action on an appeal should include a thorough review of the circumstances under which the alleged discrimination occurred, the manner in which the allegations have been or are being handled by appropriate DoDEA officials, and any other circumstances which may constitute, or appear to constitute, discrimination in violation of EO 13160. The evaluation should be confined to the issues and facts relevant to the allegations in the appeal, unless evidence shows the need to extend the issues.

b. 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 evidence deemed to be credible, in consultation with the DoDEA HQ CRPM and DoDEA OGC, as needed.

c. Confidentiality. Confidentiality will be preserved consistent with applicable laws in concert with DoDEA I&IR's responsibility to investigate and address allegations raised under this Issuance.

d. Collecting Data and Document Discovery. The types of data collected during the processing of an appeal will vary from case-to-case depending on the issue(s) in question, the availability of the information, and the investigative strategy.

e. Requesting and Accessing Information. DoDEA I&IR may exercise its authority to seek the cooperation of students, employees, volunteers, contractor personnel, and other agents of DoDEA to the fullest extent possible, in providing DoDEA I&IR with access to records and other information needed to conduct a full, fair, and equitable review in accordance with this Issuance.

f. Interviews. During the fact-finding process, the Appellant and Respondent DoDEA AAO(s), and any named or potential witnesses should be interviewed in accordance with DoDEA I&IR's standard investigative procedures.

5.13. INVESTIGATIVE REPORT. Upon completion of a formal compliance review, the DoDEA I&IR investigator must prepare a written report setting forth the results of the investigation, referred to as the Investigative Report, which shall contain the following:

- a. A statement of each alleged issue and the applicable guiding legal principles applied.
- b. A determination as to whether there is either insufficient evidence to substantiate a finding of EO 13160 noncompliance ("unsubstantiated") or a preponderance of evidence to substantiate a finding of EO 13160 noncompliance ("substantiated").

c. An explanation of the status of any issues that were investigated, but not included in the closure action, or any issues that were raised, but not investigated.

5.14. CLOSING AN APPEAL. To close an appeal, one of three primary types of letters shall be sent by the DoDEA I&IR Chief to the Appellant and Respondent(s): Letter of Unsubstantiated Findings, Letter of Voluntary Resolution, and, when there is sufficient evidence to support a finding of noncompliance and attempts to obtain early voluntarily resolution have failed, a Letter of Substantiated Findings. A copy of all appeal closures shall be provided to the DoDEA HQ CRPM for trend analysis and reporting purposes.

a. Required Information for a Closure Letter. Different types of closure letters will be issued depending upon the outcome of the appeal. All closure letters, however, should contain the following:

(1) A statement on the prohibition of retaliation against the Appellant or anyone who has participated in the investigation of the appeal or its underlying claims.

(2) Notification of rights under Section 552 of Title 5, United States Code, also known as “The Freedom of Information Act” and referred to in this Issuance as “FOIA,” and Section 552a of Title 5, United States Code, also known and referred to in this Issuance as “The Privacy Act of 1974, as amended.”

(3) Any recommendations or lessons learned as a result of the opportunity for review (e.g., from the DoDEA HQ CRPM), provided at the discretion of the DoDEA I&IR Chief.

(4) The name and telephone number of the DoDEA I&IR staff person to contact for additional information.

b. Letter of Unsubstantiated Findings. If the Investigative Report determines that the evidence does not substantiate the allegation(s) that there has been violation of EO 13160 or any of its implementing rules, regulations, policies, or guidance, including this Issuance, or it is clear DoDEA is in compliance, the DoDEA I&IR Chief shall send a Letter of Unsubstantiated Findings, to include the following:

(1) A copy of the Investigative Report, subject to modifications as may be required under “The Privacy Act of 1974, as amended.”

(2) A brief explanation of the results of the investigation that support why DoDEA was found in compliance.

(3) All of the items required, generally, under Section 5.14.a. of this Issuance.

c. Letter of Voluntary Resolution. A Letter of Voluntary Resolution may be issued when the Respondent(s) has/have voluntarily taken actions to resolve the underlying complaint or has/have agreed to take requested action to satisfy the Appellant prior to completion of a final determination on the merits of the appeal by DoDEA I&IR. It can be issued before any violation of EO 13160 has been conclusively identified, or after an investigation finds noncompliance, but

before a Letter of Substantiated Findings is prepared. The DoDEA I&IR Chief shall send a Letter of Voluntary Resolution, to include the following:

(1) A copy of the signed written acknowledgement of resolution obtained in accordance with Section 5.11.b.(4) of this Issuance.

(2) A brief explanation of how the steps taken to resolve the Appellant's concerns will work to ensure EO 13160 compliance.

(3) All of the items required, generally, under Section 5.14.a. of this Issuance.

d. Letter of Substantiated Findings. If the Investigative Report determines that the evidence does substantiate the allegation(s) that there has been violation of EO 13160 or any of its implementing rules, regulations, policies, or guidance, including this Issuance, and the matter has not been voluntarily resolved, the DoDEA I&IR Chief shall send a Letter of Substantiated Findings, to include the following.

(1) A copy of the Investigative Report, subject to modifications as may be required under "The Privacy Act of 1974, as amended."

(2) A brief explanation or analysis of the evidence on which the findings are based.

(3) All of the items required, generally, under Section 5.14.a. of this Issuance.

(4) Notice that the Letter of Substantiated Findings and Investigative Report are not intended and should not be construed to cover any other issues regarding DoDEA's EO 13160 compliance and do not, and should not be construed to, create any right or benefit, substantive or procedural, for the Appellant or anyone else that is enforceable at law by a party against the United States, its agencies, its officers, or its employees.

5.15. REFERRAL TO DIRECTOR UPON SUBSTANTIATED APPEAL. The DoDEA I&IR Chief shall refer the Investigative Report on any substantiated findings of EO 13160 noncompliance to the DoDEA Director, along with appropriate supporting documentation, for action necessary to ensure appropriate corrective measures are taken to restore compliance and a discrimination-free learning and work environment.

5.16. DISCRETION TO REOPEN. The DoDEA Director has discretion to conduct a review of complaint administration files or direct the reopening of an investigation. DoDEA may at times receive requests from the U.S. Department of Justice, members of the U.S. Congress, or others to review DoDEA I&IR's findings or a DoDEA AAO's decision in a particular case or otherwise examine or review DoDEA's handling of a discrimination complaint and/or EO 13160 appeal, in which case the Director shall cooperate as required by law and DoD/DoDEA regulations and/or policy.

SECTION 6. FINAL RECORD KEEPING AND REPORTING

6.1. DODEA DCP RECORDS. Copies of lower-level DoDEA AAO Notifications of Closure and Final Decisions on a Request for Reconsideration shall be provided to the respective DoDEA DCP District Coordinator for independent record keeping and monitoring. Final Decisions on a Request for Reconsideration also shall be provided to the DoDEA DCP Lead Coordinator for independent record keeping, monitoring, and trend analysis. All records shall be accessible to the DoDEA HQ CRPM upon request for tracking, reporting, and trend analysis.

6.2. DODEA APPROPRIATE ACTIVITY OFFICIAL RECORDS. Each DoDEA AAO shall be independently responsible for maintaining all correspondence and documentary evidence related to a discrimination complaint in a manner consistent with DoDEA record-keeping policy, from initial notice through to final resolution. Such documentation shall be made available, upon request, to a next-higher-level DoDEA reviewing official pursuant to a Request for Reconsideration, to DoDEA I&IR in the event of an EO 13160 appeal or other lawful investigative purpose, and to the DoDEA HQ CRPM for consulting, tracking, reporting, and trend analysis purposes.

6.3. DODEA STUDENT RECORDS. Prior to closing a DoDEA discrimination complaint, incidents of discriminatory misconduct involving a DoDEA student as the substantiated offender shall be entered into the student's records within the electronic DoDEA Student Information System, to include: the allegation; the student's involvement; the protected class(es) involved; the findings made after appropriate investigation; and any corrective, remedial, and/or disciplinary action taken that directly involved the DoDEA student. All student disciplinary records regarding incidents of discrimination shall be accessible to the DoDEA DCP District and Lead Coordinators for confidential tracking, reporting, and trend analysis purposes.

6.4. DODEA EO 13160 APPEALS REPORTING. Pursuant to Section 6-601 of EO 13160, every three (3) years DoDEA I&IR shall prepare a report in coordination with the DoDEA HQ CRPM summarizing the number and nature of DoDEA DCP EO 13160 appeals filed and the disposition of such appeals. The report shall be submitted within ninety (90) days of the end of the preceding year's activities and delivered through the Office of the Secretary of the Department of Defense, or its designee, to the Assistant Attorney General for Civil Rights of the Department of Justice.

SECTION 7: OUTREACH

7.1. PROMOTIONAL MATERIALS. EO 13160 promotional outreach materials shall be disseminated throughout the Activity to ensure that all participants involved in DoDEA-conducted education and training programs are aware of their rights under EO13160, Volume 2 of DoDEA Administrative Instruction 1443.01, and this Issuance and advised as to the proper procedures for reporting complaints and filing EO 13160 appeals.

a. Outreach materials should use simple language, be easy to understand and age-appropriate, and provide individuals with specific information, including, but not limited to:

(1) The general antidiscrimination mandate of EO13160.

(2) Details on how to obtain a copy of Volume 2 of DoDEA Administrative Instruction 1443.01 and this Issuance.

(3) How to access the Department of Justice Guidance “Executive Order 13160 Guidance Document: Ensuring Equal Opportunity in Federally Conducted Education and Training Programs” published on pages 5398-5410 of Volume 66 of the Federal Register.

(4) The POCs and offices to which inquires, complaints, and appeals should be sent.

b. Outreach materials should also provide clear instructions to federal employees regarding their respective rights under EEO in accordance with Part 1614 of Title 29, Code of Federal Regulations, as compared to EO 13160, to include clearly stating the differing timelines for filing claims under EEO (i.e., forty-five (45) days) versus EO 13160 (i.e., one-hundred-eighty (180) days) and the different remedies available under EEO (monetary, equitable, compensatory damages, attorney fees) versus EO 13160 (equitable only). Employee outreach materials should clearly advise that claims timely filed under both EO 13160 and EEO will be consolidated and adjudicated only under the EEO complaints process.

c. A copy of this Issuance shall be posted on the DoDEA Policy and Legislation webpage and made available by link located on the DoDEA I&IR Civil Rights Program, the DoDEA Sexual Harassment Awareness and Prevention, and the DoDEA DMEO webpages.

d. Outreach information should be disseminated in brochures and informational flyers posted on bulletin boards at learning and work locations, in guidance counselor offices, and made available via links on the regional, district, and local school DoDEA websites.

e. Information on EO 13160 rights and responsibilities should be provided in DoDEA student/parent and employee printed and online handbooks and included as part of any orientation program conducted for new DoDEA students and their parents/legal guardians, employees, volunteers, and private contractors.

7.2. TRAINING AND EDUCATION. DoDEA shall provide professional development training to all levels of staff, age-appropriate education to all enrolled students, and outreach information to the general public regarding:

- a. What actions, policies, practices, and conduct constitutes unlawful discrimination within DoDEA-conducted education and training programs and activities.
- b. The various participant rights and responsibilities enforced under EO 13160 as it applies to DoDEA.
- c. How to respond and obtain help when being targeted, witnessing, or made aware of incidents of discrimination against a DoDEA student, employee, or other beneficiary.

7.3. TREND ANALYSIS. Periodically throughout the fiscal year, the DoDEA CRPM shall monitor the effectiveness of the DoDEA EO 13160 discrimination complaints and appeals programs by obtaining from each DoDEA DCP District Coordinator a summary report of the number, nature, and resolution of complaints administered by the DoDEA DCP programs at the schools in their district and working with the DoDEA I&IR Chief to track and monitor EO 13160 appeals. At a minimum, the DoDEA HQ CRPM shall present a trend analysis report to the DoDEA executive leadership within thirty (30) days of the end of each fiscal year, highlighting any identifiable trends, strengths, and deficiencies, along with recommendations for improvements.

7.4. PUBLIC AFFAIRS.

a. Media Inquiries and Public Disclosures. All media queries regarding discrimination issues or DoDEA's EO 13160 compliance, generally, or any incidents of alleged discrimination, specifically, should be referred to DoDEA HQ Public Affairs at (571) 372-0614/0613. No public statements, verbal or written, or release of information regarding discrimination issues shall be made or released without prior consultation with an appropriate representative of DoDEA HQ Public Affairs.

b. Freedom of Information Act. "FOIA" gives the public a right of access to certain information in the records of federal agencies, including DoDEA. In responding to requests for information, DoDEA may be required to make available to the public any information concerning a discrimination report/complaint the release of which is not explicitly exempted under "FOIA" or otherwise prohibited by federal law.

c. The Privacy Act. "The Privacy Act of 1974, as amended" regulates the collection, maintenance, use, and dissemination of certain personal information in federal agency files. It is the policy of DoDEA to comply with "The Privacy Act of 1974, as amended" and redact information accordingly. Therefore, personal data contained in each system of records is afforded adequate protection against unauthorized access, is as accurate as is feasible, and is limited to that necessary to accomplish the stated use of the system. Third parties may not gain access to records about individuals within a system of records without the consent of the subject

individual except as required by “FOIA” or pursuant to other statutory exceptions contained in “The Privacy Act of 1974, as amended.”

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
DSE	Director for Student Excellence
EEO	equal employment opportunity
EEOC	Equal Employment Opportunity Commission
EO	Executive Order
FOIA	Freedom of Information Act
HQ	headquarters
I&IR	Investigations and Internal Review
IEP	Individualized Education Program
IM	Instant messaging
LEP	limited English proficiency
LMER	Labor Management and Employee Relations
OGC	Office of General Counsel
POC	point of contact

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.

Appellant. A complainant, and/or alleged or substantiated offender, in a discrimination complaint that has gone through both the DoDEA AAO lower-level complaint process and a next-higher-level Request for Reconsideration in accordance with Volume 2 of DoDEA Administrative Instruction 1443.01, who submits an EO 13160 appeal to DoDEA I&IR.

complainant. An DoDEA participant who raises a claim of discrimination alleging that they are or have been aggrieved, or they know of a DoDEA participant who is being or has been aggrieved, by a policy, practice, or action in violation of DoDEA's responsibilities and/or obligations under EO 13160 or its implementing regulations, rules, policies, or guidance, including this Issuance.

discriminatory harassment. Conduct based on a protected class that is unwelcome and sufficiently serious, as evaluated under the reasonable person standard, that it denies or limits the ability of a DoDEA student, employee, or other beneficiary to participate in or benefit from DoDEA conducted or sponsored educational or training programs or activities.

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.

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, 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 credible evidence considered, it is more likely than not an allegation is true or not true.

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.

Respondent. The DoDEA AAO(s) and/or next-higher-level DoDEA official(s) alleged by an Appellant in an EO 13160 appeal to have acted improperly or inequitably in processing the underlying discrimination complaint and/or Request for Reconsideration.

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.

sexual orientation. An individual's enduring pattern of sexual attraction in relationship to the sex and/or gender to which they are attracted, including, but not limited to, heterosexuality, homosexuality, bisexuality, pansexuality, or asexuality.

status as a parent. As defined in Section 2-206 of EO 13160, "status as a parent" refers to the status of an individual who, with respect to an individual who is under the age of 18 or who is eighteen (18) or older but is incapable of self-care because of a physical or mental disability, is: (a) a biological parent; (b) an adoptive parent; (c) a foster parent; (d) a stepparent; (e) a custodian

of a legal ward; (f) *in loco parentis* over such an individual; or (g) actively seeking legal custody or adoption of such an individual.

REFERENCES

- Code of Federal Regulations, Title 29, Part 1614
- Department of Justice Guidance Document, “Executive Order 13160 Guidance Document: Ensuring Equal Opportunity in Federally Conducted Education and Training Programs,” January 18, 2001, located in Federal Register, Volume 66, No. 12, Pages 5398-5410
- 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 1443.01, Volume 2, “Executive Order 13160 Administration: Discrimination Complaints Processing,” February 21, 2019
- DoDEA Administrative Instruction 1443.02, “Prohibited Sexual Sex-Based, and Other Related 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 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
- Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency,” August 11, 2000
- United States Census Bureau website, “Race: About,”
<http://www.census.gov/topics/population/race/about.html>
- United States Code, Title 5, Section 552 (also known as “The Freedom of Information Act” and referred to in this Issuance as “FOIA”)
- United States Code, Title 5, Section 552a (also known and referred to in this Issuance as “The Privacy Act of 1974, as amended”)
- United States Code, Title 20, Section 1681, *et seq.* (also known and referred to in this Issuance as “Title IX of the Education Amendments of 1972, as amended”)
- United States Code, Title 29, Section 621 *et seq.* (also known as “The Age Discrimination in Employment Act of 1967, as amended”)
- United States Code, Title 29, Section 701 *et seq.* (also known as “The Rehabilitation Act of 1973, as amended”)

United States Code, Title 42, Section 2000d *et seq.* (also known as “Title VI of the Civil Rights Act of 1964”)

United States Code, Title 42, Section 2000e-2 (also known and referred to in this Issuance as “Title VII of the Civil Rights Act of 1964, as amended”)

United States Equal Employment Opportunity Commission Guidance Notice 915.002, “EEOC Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors,” June 18, 1999