BERS | Board of Education Retirement System

Regulation of the Executive Director

Category: **EMPLOYEES** Number: **A-1**

Subject: ADDENDUM TO ANTI-DISCRIMINATION POLICY AND PROCEDURES FOR FILING INTERNAL COMPLAINTS OF DISCRIMINATION

Page: 1 of 4

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The Anti-Discrimination policy is hereby amended to include the protected class of "familial status". The protected classes in this policy include race, color, national origin, alienage or citizenship status, religion or creed, gender (including "gender identity – which refers to a person's actual or perceived sex, and includes self-image, appearance, behavior or expression, whether or not different from that traditionally associated with the legal sex assigned to the person at birth", disability, age (18 and over), military status, prior record of arrest or conviction, marital status, partnership status, familial status, caregiver status, genetic information or predisposing genetic characteristic, sexual orientation, status as a victim or witness of domestic violence, sex offenses or stalking, and unemployment status, and consumer credit history.

ABSTRACT

This Regulation sets forth the Board of Education Retirement System's (BERS) Anti-Discrimination Policy and establishes an internal review process for employees, applicants for employment, and others who do business with BERS, or otherwise interact with BERS who wish to file complaints of unlawful discrimination or harassment, or retaliation based on such complaints. Any such complaints may be filed in accordance with the Executive Director's Regulation A-1.

I. POLICY

A. It is the policy of the Board of Education Retirement System (BERS) to provide equal employment opportunities without regard to actual or perceived race, color, national origin, alienage or citizenship status, religion or creed, gender (including "gender identity" -- which refers to a person's actual or perceived sex, and includes self-image, appearance, behavior or expression, whether or not different from that traditionally associated with the legal sex assigned to the person at birth), disability, age (18 and over), military status, prior record of arrest or conviction, marital status, partnership status, familial status, caregiver status, genetic information or predisposing genetic characteristic, sexual orientation, status as a victim or witness of domestic violence, sex offenses or stalking, and unemployment status, and consumer credit history. It is also the policy of BERS to maintain an environment free of harassment on any of the above-noted grounds, including sexual harassment, and to comply with all laws, Federal, State and Local, which may apply.

Accordingly, it is a violation of this policy for BERS employees to engage in behavior that subjects any employee or applicant for employment to discrimination and/or harassment at a worksite location or during a work-related function on the basis of any of the above-noted grounds where such conduct: (1) adversely affects any aspect of an employee's/applicant's employment or the compensation, terms, conditions or privileges of employment; or (2) creates a hostile, offensive, or intimidating work environment which relates or refers to conduct that is so severe or pervasive as to alter the conditions of employment.

It is also a violation of this policy for BERS employees to engage in discriminatory behavior and/or harassment with respect to applicants for employment and other individuals who do business with BERS, or otherwise interact with BERS.

B. It is the policy of BERS to prohibit retaliation against any individual who objects to discriminatory practices in the workplace, who complains of discrimination or harassment as described in Section I (A) or who files or participates in the investigation of an internal or external complaint of discrimination. Any adverse act against individuals due to their participation in a protected activity is considered retaliatory.

C. In order to develop and maintain a positive and supportive working environment that is free of discrimination, harassment, retaliation and intimidation, the full cooperation of every staff member is necessary. Employees are expected to be exemplary role models in the departments and offices in which they serve.

D. Supervisors are required to maintain an environment free of unlawful discrimination or discriminatory harassment.

E. Behavior which violates this policy may serve as a basis for discipline, even if it does not rise to the level of a violation of federal, state or local discrimination laws.

F. This policy applies to conduct and comments, whether or not intentionally offensive or directed at a particular person or group, which constitute a violation of this policy.

G. Any employee found to be in violation of this policy may be subject to legal sanctions and appropriate disciplinary action.

H. All BERS employees are expected to cooperate with the Equal Employment Opportunity ("EEO") Office investigations and are required to report if summoned to appear by EEO. Tampering with or impeding an EEO investigation constitutes a violation.

II. REPORTING

A. Any staff member who witnesses an employee discriminate or harass another employee on the basis of the employee's actual or perceived race, color, creed, ethnicity, national origin, citizenship/immigration status, religion, gender, gender identity, gender expression, sexual orientation, disability, or weight or who have knowledge or information or receive notice that an employee may have been the victim of such behavior by a staff member are required to orally report the alleged incident to the Equal Employment Opportunity (EEO) Office within one business day and complete and file a written A-1 complaint report with the EEO officer/designee no later than two days after making the oral report.

B. Supervisors are required to immediately report instances of any oral or written complaints of discrimination or discriminatory harassment committed by employees to EEO. Supervisors can make the report by calling EEO, e-mailing EEO or filing a copy of the A-1 complaint form. Advice and assistance on how to proceed will be provided as needed. A supervisor's failure to report complaints or instances of discrimination to EEO may constitute a violation of this policy.

III. COMPLAINT PROCEDURES

Employees, applicants for employment and others who do business with BERS, or otherwise interacts with BERS may file complaints of discrimination, harassment, or retaliation as set

forth below. Such complaints may be filed in writing or orally by contacting EEO at the phone number/address found at the end of this Regulation.

A. Deadline for Filing a Complaint

In order to facilitate the prompt, thorough and fair resolution of complaints of unlawful discrimination, all complaints must be filed with EEO **as soon as possible. EEO will not accept complaints by employees, applicants for employment, and persons who do business with BERS, or otherwise interacts with BERS filed more than one year after the event that is the subject of the complaint.**

B. Procedure for Filing Complaints

1. Complainants should use the complaint form attached to the regulation to file a complaint (see Attachment No. 1). Complaint forms can be obtained directly from the EEO office upon request. Upon receipt of a complaint, EEO will determine whether the complaint alleges a violation of this regulation and, if so, will assign the complaint to an EEO investigator. If EEO believes that irreparable harm will occur before the complaint can be fully investigated and resolved, EEO may recommend interim relief pending completion of the investigation of the complaint.

    - Upon receipt of a complaint, the EEO office will also serve the respondent with a notice of the complaint that includes the respondent's right to respond to the allegations and right to be accompanied by a representative of his/her choice.
    - The EEO office will also maintain documentation in the complaint file regarding the service of notice on the respondent.
    - The EEO office will take thorough notes, of words spoken and facts provided, during each interview and include the notes in each complaint file; ensure each internal discrimination complaint file contains a written determination of its outcome and corrective action(s) taken as a result; and notify the complainant and respondent in writing when the investigation by the EEO professional has been transferred because of the filing of an external complaint.

2. Following the investigation, EEO will submit written recommended findings as to whether there has been a violation of this Regulation of the Executive Director/designee. The Executive Director/designee will issue a written determination within 90 working days of receipt of the complaint, unless circumstances warrant extension of the time period. Complainant(s) and Respondent(s) will be informed in writing of the determination.

    - In rare circumstances where a complaint investigation cannot commence immediately, or where a conclusive report cannot be issued within 90 days, the EEO investigator will specify in the complaint file the reason for the delay and project a time frame for completion of the report. The EEO investigator will also notify the complainant and respondent of the delay.
    - The EEO office will also issue/maintain written confirmation when an internal complaint/mediation is terminated, withdrawn or resolved by agreement of the parties or EEO Office.

3. If a violation of this regulation is substantiated, the respondent's supervisor will confer with EEO to determine if any disciplinary or corrective action is required.

4. EEO will ensure that any corrective action required by the decision is implemented.

5. At the end of each complaint investigation, a conclusive confidential report will be generated, which will include a summary of the allegations and responses, a summary of the procedural history of the investigation, a statement of the relevant facts gathered, a determination, a recommendation, and documentation of the Agency Head's Review.
6. Once a conclusive report has been developed, the Executive Director or Deputy Executive Director (or an approved direct report other than the General Counsel) will review the principal investigator's conclusive report; issue a written/electronic determination adopting, rejecting, or modifying the recommended action; and sign each determination, via writing or electronically, to indicate it has been reviewed and adopted.
7. At the conclusion of the investigation, the EEO or principal investigator will inform each complainant and respondent of the conclusion and outcome of their complaint investigation in writing as part of the agency's complaint procedure.
8. The EEO Office will also maintain a complaint log to track and monitor all discrimination and sexual harassment complaints received.

C. Anonymous Complaints

A complainant may file an anonymous complaint with EEO alleging that a particular practice or policy is discriminatory. EEO will review such complaints in order to determine how they should be processed in light of the information provided by the anonymous complainant.

D. Confidentiality

It is the Board of Education Retirement System's policy to respect the privacy of all parties and witnesses regarding complaints brought under this regulation. However, the need for confidentiality must be balanced against the obligation to cooperate with lawful investigations, to provide due process to the accused, and/or to take necessary action to conciliate, investigate, or resolve the complaint. Therefore, information regarding the complaint may need to be disclosed in certain appropriate circumstances.

E. False Accusations of Discrimination

A complainant or witness, who knowingly makes a false accusation of discrimination or knowingly provides false information in the course of an investigation of a complaint, may be subject to discipline. A complaint made in good faith, even if found to be unsubstantiated, will not be considered a false accusation.

IV. DISSEMINATION OF THESE PROCEDURES

Notice of the Board of Education Retirement System's Anti-Discrimination Policy and internal complaint procedures must be given to employees annually. In addition, each department must prominently post the Organization's Anti-Discrimination Policy (which provides contact information for EEO, and indicates where a copy of this regulation may be obtained.

V. ALTERNATIVE COMPLAINT PROCEDURES

These internal procedures do not deny the right of any individual to pursue other avenues of recourse that may include filing charges with any of the external agencies noted below. However, where a complaint is filed with an external agency, EEO will not conduct an internal investigation, and will transfer the matter to the General Counsel of BERS.

The General Counsel will also inform the principal EEO Professional when external complaints or litigation involving sexual harassment is brought against the agency and works with the principal EEO Professional in the implementation of the City's policies and procedures pertaining to sexual harassment and is available to consult on internal sexual harassment complaint investigations.

- New York City Commission on Human Rights

  https://www1.nyc.gov/site/cchr/about/inside-cchr.page

  Main Office (Manhattan)
  22 Reade Street
  New York, NY 10007
  212-306-7450
- U.S. Department of Education, Office for Civil Rights

  https://www2.ed.gov/about/offices/list/ocr/index.html

  U.S. Department of Education
  400 Maryland Avenue, SW
  Washington, D.C. 20202
- U.S. Equal Employment Opportunity Commission

  https://www.eeoc.gov/

  EEOC Headquarters

  131 M Street, NE
  Washington, DC 20507
  202-663-4900 / (TTY) 202-663-4494

  New York District Office

  33 Whitehall Street, 5th Floor
  New York, NY 10004
  1-800-669-4000
- New York State Division of Human Rights

  https://dhr.ny.gov/

  Central Headquarters

  One Fordham Plaza

  4th Floor

  Bronx, NY 10458

  1-888-392-3644
- The time frames for filing with these agencies may vary.

VI. INQUIRIES

Inquiries pertaining to this regulation should be addressed to:

Michael Sohn
EEO Professional
50th Floor
New York, NY 10041
msohn2@bers.nyc.gov
929-305-3810