



**DEPARTMENT OF DEFENSE  
EDUCATION ACTIVITY**

4040 NORTH FAIRFAX DRIVE  
ARLINGTON, VIRGINIA 22203-1635

Diversity Management & Equal Opportunity Office

09-DMEO-004

Date: November 18, 2008

**DEPARTMENT OF DEFENSE EDUCATION ACTIVITY  
NOTICE**

**SUBJECT: Notification and Federal Employee Antidiscrimination and Retaliation Act  
(NoFEAR Act)**

- References:
- (a) Director, Department of Defense Education Activity Memorandum, "Notification and Federal Employee Antidiscrimination and Retaliation Act (No Fear Act)", March 17, 2008 (hereby canceled)
  - (b) Public Law 107-174, "Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002," May 15, 2002
  - (c) Title 29, Code of Federal Regulations, Part 1614, "Federal Sector Equal Employment Opportunity," current edition
  - (d) Sections 1214, 2302 of title 5, United States Code
  - (e) Title 5, Code of Federal Regulations, VIII, Part 1800, "Filing of Complaints and Allegations," current edition
  - (f) Sections 206, 631, 633, 791, of title 29, United States Code
  - (g) Sections 200-2016 of title 42, United States Code

On May 15, 2002, Congress enacted the "Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002," Public Law 107-174, which is now known as the NoFEAR Act. One purpose of the Act is to "require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws," (Reference (b) Summary). In support of this purpose, Congress found that, "agencies cannot be run effectively if those agencies practice or tolerate discrimination." (See section 101(1) of Reference (b))

The Act also requires the Department of Defense Education Activity (DoDEA) to provide this notice to Federal employees, former Federal employees, and applicants for Federal employment regarding the rights and protections available under Federal antidiscrimination and whistleblower protection laws.

## ANTIDISCRIMINATION LAWS

A Federal Agency cannot discriminate against an employee or applicant with respect to the terms, conditions, or privileges of employment on the basis of race, color, religion, sex, national origin, age, disability, marital status, or political affiliation. Discrimination on these bases is prohibited by one or more of the statutes listed in References (d), (f), and (g).

If you believe that you have been the victim of unlawful discrimination on the basis of race, color, religion, sex (including sexual harassment), national origin or disability; you must contact an Equal Employment Opportunity (EEO) counselor within 45 calendar days of the alleged discriminatory action, or, in the case of a personnel action, within 45 calendar days of the effective date of the action, before you can file a formal complaint of discrimination with your agency. (See 1614.105(a) of Reference (c)) If you believe that you have been the victim of unlawful discrimination on the basis of age, you must either contact an EEO counselor as noted above or give notice of intent to sue to the Equal Employment Opportunity Commission within 180 calendar days of the alleged discriminatory action. If you are alleging discrimination based on marital status or political affiliation, you may file a written complaint with the U.S. Office of Special Counsel (OSC). See the contact information below. (See Reference (e)) In the alternative (or in some cases, in addition), you may pursue a discrimination complaint by filing a grievance through your agency's administrative or negotiated grievance procedures, if such procedures apply and are available.

## WHISTLEBLOWER PROTECTION LAWS

A Federal employee with authority to take, direct others to take, recommend, or approve any personnel action must not use that authority to take or fail to take, or threaten to take or fail to take, a personnel action against an employee or applicant because of disclosure of information by that individual that is reasonably believed to evidence violations of law, rule or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety, unless disclosure of such information is specifically prohibited by law and such information is specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

Retaliation against an employee or applicant for making a protected disclosure is prohibited by section 2302(b)(8) of Reference (d). If you believe that you have been the victim of whistleblower retaliation, you may file a written complaint with the OSC, Form OSC-11, at 1730 M Street NW, Suite 218, Washington, DC 20036-4505 or online through the OSC Web site <http://www.osc.gov>.

## RETALIATION FOR ENGAGING IN PROTECTED ACTIVITY

A Federal agency cannot retaliate against an employee or applicant because that individual exercises his or her rights under any of the Federal antidiscrimination or whistleblower protection laws listed above. If you believe that you are the victim of retaliation for engaging in protected activity, you must follow, as appropriate, the procedures described in the Antidiscrimination Laws and Whistleblower Protection Laws sections or, if applicable, the administrative or negotiated grievance procedures in order to pursue any legal remedy.

## DISCIPLINARY ACTIONS

Under the existing laws, each agency retains the right, where appropriate, to discipline a Federal employee for conduct that is inconsistent with Federal Antidiscrimination and Whistleblower Protection Laws up to and including removal. If OSC has initiated an investigation under section 1214 of Reference (d); however, according to section 1214(f) of Reference (d), agencies must seek approval from the Special Counsel to discipline employees for, among other activities, engaging in prohibited retaliation. Nothing in the NoFEAR Act alters existing laws or permits an agency to take unfounded disciplinary action against a Federal employee or to violate the procedural rights of a Federal employee who has been accused of discrimination.

## EXISTING RIGHTS UNCHANGED

Pursuant to section 205 of the NoFEAR Act, neither the Act nor this notice creates, expands, or reduces any rights otherwise available to any employee, former employee, or applicant under the laws of the United States, including the provisions of the law specified in section 2302(d) of Reference (d). Antidiscrimination laws not only include those under the purview of the DMEQ office, but also include discrimination based on genetic information, sexual orientation, and status as a parent.

## TRAINING

According to the FINAL RULE published on July 20, 2006, by the Office of Personnel Management, Federal agencies must train all employees on their rights, responsibilities, and remedies under the Federal discrimination, retaliation, and whistleblower laws. This training is mandatory for all employees, managers, and supervisors. Current employees must receive refresher training at least once every 2 years. New employees must be trained WITHIN 90 DAYS OF HIRE, then refresher training at least once every 2 years. Training may be taken at each employee's

workstation by accessing the DoDEA DMEO Intranet site at <https://intranet.dodea.edu/intranet/eeo/index.cfm> and then clicking on the NoFEAR training slides at [https://intranet.dodea.edu/intranet/eeo/documents/DoDEA\\_NoFEAR\\_Training\\_06.pdf](https://intranet.dodea.edu/intranet/eeo/documents/DoDEA_NoFEAR_Training_06.pdf). When complete, employees should fill out the certificate at the end of the slide show, print it out for their records, and provide a copy of the certificate to their supervisor.

### POSTING

This notice is to be distributed at the end of each fiscal year and posted on all official bulletin boards.

If any manager, supervisor, or employee has any questions regarding this notice, please contact the DoDEA Chief, DMEO, or a DMEO Program Manager, via telephone at (703) 588-3232.

This Notice is effective January 1, 2009.

  
Dr. Shirley A. Miles  
Director