



## Department of Defense Education Activity

# NOTICE

11-DMEO-002

May 18, 2011

---

---

Diversity Management Equal Opportunity Office

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

References: See Attachment

Purpose. This Notice outlines the requirements of the "Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002," Public Law 107-174, signed by President George W. Bush on May 15, 2002, which is known as the NoFEAR Act. The purpose of this Act is to require Federal agencies to be more accountable for violations of antidiscrimination and whistleblower protection laws.

Applicability. This Notice applies to the Office of the Director, Department of Defense Education Activity (DoDEA); the Director, Domestic Dependent Elementary and Secondary Schools, and Department of Defense Dependents Schools, Cuba; the Director, Department of Defense Dependents Schools, Europe; the Director, Department of Defense Dependents Schools, Pacific, and Domestic Dependent Elementary and Secondary Schools, Guam; and all DoDEA Area and District Superintendents, School Principals, Teachers, and Support Staff, former DoDEA employees, and applicants for employment.

Policy. It is the policy of DoDEA that discrimination against an employee or applicant with respect to a term, condition, or privilege of employment on the basis of race, color, religion, sex, national origin, age, disability, or genetic information, is unacceptable and will not be tolerated. DoDEA prohibits discrimination for making a protected disclosure. DoDEA will not retaliate against an employee or applicant because that individual exercises his or her rights under any of the antidiscrimination or whistleblower protection laws. Disciplinary actions will be taken when an employee has engaged in discriminatory or retaliatory conduct, up to and including removal from federal service.

### 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, reprisal for prior Equal Employment Opportunity (EEO) activity, genetic information, pregnancy, marital status, sexual orientation, status as a parent, political affiliation, or other non-merit factors which violates the standards of conduct and the merit system principles listed in References (b) through (o).

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, reprisal for prior EEO activity, disability, genetic information, pregnancy, marital status, sexual orientation, status as a parent, or political affiliation, you must contact an 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 subpart 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. 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 (n). 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, as 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 (n), 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 (n). Antidiscrimination laws not only include those under the purview of the DMEO office, but also include discrimination based on genetic information, pregnancy, marital status, sexual orientation, status as a parent, and political affiliation, or other non-merit factors which violates the standards of conduct and the merit system principles prohibited by References (b) through (o).

#### 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 [http://hq-w5a.hq.ds.dodea.edu/intranet/eo/no\\_fear\\_act.cfm](http://hq-w5a.hq.ds.dodea.edu/intranet/eo/no_fear_act.cfm). 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 you have any questions regarding this Notice, contact the DoDEA Chief, DMEO, or a DMEO Program Manager, at (703) 588-3232.

This Notice is effective January 1, 2011.



Marilee Fitzgerald  
Acting Director

ATTACHMENT

REFERENCES

- (a) Director, Department of Defense Education Activity Memorandum, "Notification and Federal Employee Antidiscrimination and Retaliation Act (No Fear Act)", November 4, 2009 (hereby canceled)
- (b) Sections 101-303 of Public Law 107-174, "Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002," May 15, 2002
- (c) Part 1614 of title 29, Code of Federal Regulations
- (d) DoD Instruction 102.02, "Diversity Management and Equal Opportunity in the Department of Defense," February 5, 2009
- (e) Sections 206(d), 621 through 634, and 791 through 794d of title 29, United States Code,
- (f) Public Law 102-166, "The Civil Rights Act of 1991," November 21, 1991
- (g) Public Law 95-454, "The Civil Service Reform Act of 1978, as amended," October 13, 1978
- (h) Public Law 107-174, "Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002, (No FEAR Act)," May 15, 2002
- (i) Executive Order 11478, "Equal Employment Opportunity in the Federal Government," August 8, 1969 (as amended by Executive Orders 11590, 12106, 13087 and 13152)
- (j) Executive Order 13145, "To Prohibit Discrimination in Federal Employment Based on Genetic Information," February 8, 2000
- (k) Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," August 11, 2000
- (l) Sections 1681 through 1688 of title 20, United States Code
- (m) Sections 2000d, 2000e through 2000e-17, and 6101 through 6107 of title 42, United States Code
- (n) Sections 1214 and 2302 of title 5, United States Code
- (o) Part 1800 of title 5, Code of Federal Regulations