

Irene Bueno

10/14/99 12:10:50 PM

Record Type: Record

To: See the distribution list at the bottom of this message  
cc: Anna Richter/OPD/EOP  
Subject: Clearance of Proposed EO "Nondiscrimination on the Basis of Race, Sex, Color, National Origin, Religion, Sexual Orientation, Disability, Marital Status, & Parental Status in Federally Conducted Education and Training Programs"

I received a copy of this EO to clear by COB tomorrow, 10/15. I have reviewed it and have no comments but I will send it you as well for your review. *(see attached)*.

Please let me know if you have any questions. Thanks.

Message Sent To:

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Nicole R. Rabner/WHO/EOP  
Andy Rotherham/OPD/EOP  
Thomas L. Freedman/OPD/EOP  
Mary L. Smith/OPD/EOP



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

GENERAL COUNSEL

October 8, 1999

MEMORANDUM FOR DESIGNATED AGENCY HEADS  
(SEE ATTACHED DISTRIBUTION LIST)

FROM: Robert G. Damus *RGD*  
General Counsel

SUBJECT: Proposed Executive Order Entitled "Nondiscrimination on the Basis of Race, Sex, Color, National Origin, Religion, Sexual Orientation, Disability, Marital Status, And Parental Status in Federally Conducted Education And Training Programs"

Attached is a revised proposed Executive order entitled "Nondiscrimination on the Basis of Race, Sex, Color, National Origin, Religion, Sexual Orientation, Disability, Marital Status, And Parental Status in Federally Conducted Education And Training Programs." that was prepared by White House Council's Office. It was revised based on agency comments received pursuant to the July 15, 1999 circulation of the draft order.

On behalf of the Director of the Office of Management and Budget, I would appreciate receiving any comments you may have concerning this proposal. If you have any comments or objections, they should be received no later than close of business Friday, October 15, 1999. Please be advised that agencies that do not respond by the deadline will be recorded as not objecting to the proposal.

Comments or inquiries may be submitted by telephone to Mr. Mac Reed (202-395-3563) or Carla Stone (202-395-9177) of this office or fax to 202-395-7294.

Thank you.

Attachments - Distribution List  
Proposed Executive Order

|     |                |                |                 |
|-----|----------------|----------------|-----------------|
| cc: | Jack Lew       | Michael Deich  | Danny Mendelson |
|     | Sylvia Mathews | Elgie Holstein | Dick Emery      |
|     | Josh Gotbaum   | Joe Minarik    | Bill Halter     |
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National Security Affairs

Honorable Bruce Reed  
Assistant to the President for  
Domestic Policy Council

## Executive Order

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### NONDISCRIMINATION ON THE BASIS OF RACE, SEX, COLOR, NATIONAL ORIGIN, RELIGION, SEXUAL ORIENTATION, DISABILITY, MARITAL STATUS, AND PARENTAL STATUS IN FEDERALLY CONDUCTED EDUCATION AND TRAINING PROGRAMS

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 921-932 of title 20, United States Code; section 2164 of title 10, United States Code; section 2001 et seq. of title 25, United States Code; section 7301 of title 5, United States Code; and section 301 of title 3, United States Code, and to achieve equal opportunity in Federally conducted education and training programs and activities, it is hereby ordered as follows:

#### Section 1. Statement of policy on education programs and activities conducted by executive departments and agencies.

1-101. The Federal Government must hold itself to at least the same principles of nondiscrimination in educational opportunities that it applies to the education programs and activities of State and local governments, and to private institutions receiving Federal financial assistance. Existing laws and regulations prohibit certain forms of discrimination in Federally conducted education and training programs and activities -- including discrimination against people with disabilities, prohibited by the Rehabilitation Act of 1973, 29 U.S.C. 701 et seq., as amended, employment discrimination on the basis of race, color, national origin, sex, or religion, prohibited by Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e-2800e-17, as amended, discrimination on the basis of race, color, national origin or religion in educational programs receiving Federal assistance, under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, and sex-based discrimination in educational programs receiving Federal assistance under Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq. Through this Executive order, discrimination on the basis of race, sex, color, national origin, religion, sexual orientation, disability, marital status, and parental status will be prohibited in Federally conducted education and training programs and activities.

1-102. No individual, on the basis of race, sex, color, national origin, religion, sexual orientation, disability, marital status or parental status, 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.

Sec. 2. Definitions.

2-201. "Federally conducted education and training programs and activities" includes programs and activities conducted, operated, or undertaken by an executive department or agency.

2-202. "Education and training programs and activities" include, but is not limited to, formal schools, extracurricular activities, academic programs, occupational training, scholarships and fellowships, student internships, training for industry members, summer enrichment camps, and programs to train teachers.

2-203. The Attorney General is authorized to make final determination as to whether a program falls within the scope of education and training programs and activities covered by this order, under subsection 2-202, or is excluded from coverage, under section 3.

2-204. "Military education or training programs" are those education and training programs conducted by the Department of Defense or, where the Coast Guard is concerned, the Department of Transportation, for the primary purpose of educating or training members of the armed forces or meeting a statutory requirement to educate or train Federal, State, or local civilian law enforcement officials pursuant to 10 U.S.C. Chapter 18.

2-205. "Armed forces" means the Armed Forces of the United States.

Sec. 3. Exemptions from coverage.

3-301. This order does not apply to members of the armed forces, military education or training programs, or authorized intelligence activities. Members of the armed forces, including students at military academies, will continue to be covered by regulations that currently bar specified forms of discrimination which are now enforced by the Department of Defense and the individual service branches. The Department of Defense shall develop procedures to protect the rights of and to provide redress to civilians not otherwise protected by existing Federal law from discrimination on the basis of race, sex, color, national origin, religion, sexual orientation, disability, marital status, or parental status and who participate in military education or training programs or activities conducted by the Department of Defense.

3-302. This order does not apply to, affect, interfere with, or modify the operation of any

otherwise lawful affirmative action plan or program.

3-303. An individual shall not be deemed subjected to discrimination by reason of his or her exclusion from the benefits of a program limited by federal law, or a program established consistently with Federal law, to individuals of a particular race, sex, color, national origin, religion, sexual orientation, disability, marital status, or parental status different from his or her own.

3-304. This order does not apply to education or training programs or activities of schools conducted by the Department of Interior, Bureau of Indian Affairs, that are culturally relevant to the children represented in the school. "Culturally relevant" refers to any class, program, or activity that is fundamental to a tribe's culture, customs, traditions, heritage, or religion.

3-305. This order does not apply to (a) selections based on national origin of foreign nationals to participate in covered programs, if such programs primarily concern national security or foreign policy matters; or (b) selections or other decisions regarding participation in covered programs made by entities outside the Executive Branch. It shall be the policy of the Executive Branch that education or training programs or activities shall not be available to entities that select persons for participation in violation of Federal or State law.

#### Sec. 4. Administrative enforcement.

4-401. Any person who believes himself or herself to be aggrieved by a violation of this order or its implementing regulations, rules, policies, or guidance may, personally or through a representative, file a written complaint with the agency that such person believes is in violation of this order or its implementing regulations, rules, policies, or guidance. Pursuant to procedures established by the Attorney General, each executive department or agency shall conduct an investigation of any complaint by one of its employees alleging a violation of this Executive order.

4-402. (a) If the office within an executive department or agency that is designated to investigate complaints for violations of this order or its implementing rules, regulations, policies, or guidance concludes that an employee has not complied with this order or any of its implementing rules, regulations, policies, or guidance, such office shall complete a report and refer a copy of the report and any relevant findings or supporting evidence to an appropriate



agency official. The appropriate agency official shall review such material and determine what, if any, disciplinary action is appropriate.

(b) In addition, the designated investigating office may provide appropriate agency officials with a recommendation for any corrective and/or remedial action. The appropriate officials shall consider such recommendation and implement corrective and/or remedial action by the agency, when appropriate. Nothing in this order authorizes monetary relief to the complainant as a form of remedial or corrective action by an executive department or agency.

4-403. Any action to discipline an employee who violates this order or its implementing rules, regulations, policies, or guidance, including removal from employment, where appropriate, shall be taken in compliance with otherwise applicable procedures, including the Civil Service Reform Act of 1978, Pub. L. No. 95-454, 92 Stat. 1111.

Sec. 5. Implementation and Agency Responsibilities.

5-501. The Attorney General shall publish in the Federal Register such rules, regulations, policies, or guidance, as the Attorney General deems appropriate, to be followed by all executive departments and agencies. The Attorney General shall address:

- a. which programs and activities fall within the scope of education and training programs and activities covered by this order, under subsection 2-202, or excluded from coverage, under section 3 of this order;
- b. examples of discriminatory conduct;
- c. applicable legal principles;
- d. enforcement procedures with respect to complaints against employees;
- e. remedies;
- f. requirements for agency annual reports as set forth in section 6 of this order; and
- g. such other matters as deemed appropriate.

5-502. Within 90 days of the publication of final rules, regulations, policies, or guidance by the Attorney General, each executive department and agency shall establish a procedure to receive and address complaints regarding its Federally conducted education and training programs and activities. Each executive department and agency shall take all necessary steps to effectuate any subsequent rules, regulations, policies, or guidance issued by the Attorney General within 90

days of issuance.

5-503. The head of each executive department and agency shall be responsible for ensuring compliance with this order.

5-504. Each executive department and agency shall cooperate with the Attorney General and provide such information and assistance as the Attorney General may require in the performance of the Attorney General's functions under this order.

5-505. Upon request and to the extent practicable, the Attorney General shall provide technical advice and assistance to executive departments and agencies to assist in full compliance with this order.

Sec. 6. Annual Report.

6-601. Consistent with the regulations, rules, policies, or guidance issued by the Attorney General, each executive department and agency shall submit to the Attorney General a report that summarizes the number and nature of complaints filed with the agency and the disposition of such complaints. For the first three years after the date of this order, such reports shall be submitted annually within 90 days of the end of the preceding year's activities. Subsequent reports shall be submitted every three years and within 90 days of the end of each three-year period.

Sec. 7. General Provisions.

7-701. Nothing in this order shall limit the authority of the Attorney General to provide for the coordinated enforcement of nondiscrimination requirements in Federal assistance programs under Executive Order 12250.

Sec. 8. Judicial Review.

8-801. This order is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or its employees. This order is not intended, however, to preclude judicial review of final decisions in accordance with the Administrative Procedure Act, 5 U.S.C. 701, et seq.

THE WHITE HOUSE,

THE WHITE HOUSE  
WASHINGTON

November 18, 1998

Jacob J. Lew  
Director  
Office of Management and Budget  
252 OEOB  
Washington, D.C. 20502

Dear Mr. Lew:

I am forwarding to you a proposed executive order dealing with federally conducted education programs and ask that you process it under the terms of Executive Order 11030, as amended. As the President stated in June 1997, this order is necessary to ensure that prohibitions against discrimination on the basis of race, color, national origin or sex apply to courses and other educational programs offered by the federal government itself. The proposed order would apply essentially the same standards to these programs that apply now to educational programs conducted by recipients of federal funds.

I would also appreciate your expediting the review to the extent possible. There has already been considerable consultation among the various agencies responsible for drafting the order. In addition, the views of the principal agencies that conduct educational programs were solicited early in the process of drafting.

Please let me know if you need additional information. Thank you for your assistance.

Sincerely,

Charles F.C. Ruff  
Counsel to the President

cc: Bruce Reed  
McGavock D. Reed

DRAFT, 11/17/98

Executive Order \_\_\_\_\_

Nondiscrimination on the Basis of Race, Color, National Origin, and Sex in Federally Conducted Education and Training Programs

Numerous civil rights laws, including Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, et seq., and Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681, et seq., prohibit discrimination on the basis of race, color, national origin, and sex, in educational programs and activities that receive Federal financial assistance. In addition, other Federal laws, including Title VII of the Civil Rights Act of 1964, as amended (Title VII), prohibit discrimination against employees by employers on the basis of race, color, national origin, sex, and other grounds with respect to, among other things, opportunities for and participation in education and training programs. The Federal government has acted, and will continue to act, aggressively through litigation, policy guidance, outreach, and other means to expand and ensure equal opportunities for minorities and women that participate in State, local, and private education programs that receive Federal financial assistance.

In addition to providing Federal assistance to various education and training programs, the Federal government *itself conducts* numerous education and training programs. For example, the Department of Defense operates schools for grades kindergarten through high school to educate the dependents of service members and others in the United States and around the world. The Department of Interior also operates schools, kindergarten through the undergraduate level, to educate Native Americans. Many agencies also provide training on Federal laws and regulations to a variety of audiences in a variety of settings: formal academies teach state and local personnel principles, laws, techniques, and strategies relating to effective law enforcement;

seminars instruct members of select industries on Federal requirements for licensing and operation; programs in prisons train Federal inmates on trade skills; and members of the public are educated about the environment and natural resources.

I believe it is essential that the Federal Government hold itself to the same principles of nondiscrimination in educational opportunities that we now apply to education programs and activities of State and local governments and private institutions receiving Federal financial assistance. Existing laws and regulations prohibit certain forms of discrimination in Federally conducted education and training programs -- including discrimination against people with disabilities (prohibited by the Rehabilitation Act of 1973, as amended), and discrimination based on race, color, national origin, sex, or religion against Federal employees (prohibited by Title VII). Through this Executive order, we are now expanding prohibitions of discrimination on the basis of race, color, national origin, and sex to certain other Federally conducted education and training programs and activities.

NOW, THEREFORE, to enforce the Constitution and laws of the United States, and to achieve equal opportunity in federally conducted education and training programs, and by the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 921-932, title 20, United States Code; section 2164, title 10, United States Code; section 2001 et seq, title 25, United States Code; section 7301, title 5, United States Code; and section 301, title 3, United States Code, it is hereby ordered as follows:

Section 1. Statement of policy on education programs and activities conducted by executive departments and agencies.

1-101. No individual shall, on the basis of race, color, national origin or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in an education or training program or activity of any Executive department or agency conducted in the United States, the territories, the possessions, the Commonwealths of Puerto Rico and of the Mariana Islands, and as set forth in Subsection 1-102.

1-102. The provisions of this Order shall apply to education programs and activities that are operated by the Department of Defense under 10 U.S.C. § 2164 and 20 U.S.C. §§ 921-932.

Section 2. Definitions.

2-201. "Program or activity" includes programs or activities conducted, operated, administered, or undertaken by an executive department or agency.

2-202. "Education and training programs" include, but are not limited to, formal schools, extracurricular activities, academic programs, occupational training, scholarships and fellowships, student internships, training for industry members, summer enrichment camps, and programs to train teachers.

2-203. The Attorney General is delegated authority to determine the scope of education and training programs, in addition to those identified in subsection 2-202 and section 3, that are subject to and exempt from coverage by this order, respectively.

2-204. "Military training or education programs" are those training and education programs conducted by the Department of Defense for the primary purpose of training or educating members of the armed forces or to meet a statutory requirement to train Federal, State or local civilian law enforcement officials pursuant to 10 U.S.C. Chapter 18.

2-205. "Armed forces" includes, for purposes of this order, the Armed Forces of the United States, as well as the armed forces of a foreign government recognized by the United States or attached to an international organization.

Section 3. Exemptions from coverage.

3-301. This order does not apply to members of the armed forces or to military training or education programs. Members of the armed forces, including students at military academies, will continue to be covered by regulations that bar discrimination based on race, color, national origin, or sex, which are enforced by the Department of Defense and individual service branches. The Department of Defense shall develop procedures to protect the rights of, and to provide redress to, civilians not otherwise protected from discrimination based on race, sex, national origin, or color by existing Federal law, and who participate in military training or education programs conducted by the Department of Defense.

3-302. This Order does not apply to, affect, interfere, or modify in any way the operation of any otherwise lawful affirmative action plan.

3-303. An individual shall not be deemed subjected to discrimination by reason of his or her exclusion from the benefits of a program limited by federal law to individuals of a particular sex, race, color, or national origin, including Native American or Alaska native, different from his or hers.

3-304. This Order does not apply to programs and activities conducted by the Department of Interior, Bureau of Indian Affairs, that are in conformance with tribal customs or otherwise culturally appropriate. For example, classes that require separation of students on the basis of

gender in order to conform to tribal customs that require such separation would not be in violation of this order.

3-305. This Order does not apply to (1) selections based on national origin of foreign nationals to participate in covered programs, if such programs concern primarily national security or foreign policy; or 2) selections or other decisions regarding participation in covered programs made by entities outside the Executive Branch, provided that it shall be the policy of the Executive Branch that education and training programs and activities shall not be available to entities that select persons for participation in violation of Federal or State law.

Section 4. *Administrative enforcement.*

4-401. Any person who believes him or herself, or any specific class of individuals, to be aggrieved by a violation of this order or implementing regulations, rules, policies, or guidance, may, by him or herself or a representative, file a written complaint with the agency that such person believes is in violation of this order or implementing regulations, rules, policies, or guidance. Pursuant to procedures established by the Attorney General, each executive department or agency shall conduct an investigation of a complete complaint alleging a violation by one of its employees.

4-402. (a) If the office within an executive department or agency that is designated to investigate complaints for violations of this order or its implementing rules, regulations, policies, or guidance concludes that an employee has not complied with this order or any implementing rules, regulations, policies, or guidance, such office shall refer a copy of the report and findings, and supporting evidence to an appropriate agency official. The appropriate agency official shall review such material and determine what, if any, disciplinary action is appropriate.



(b) In addition, the designated investigating office may provide appropriate agency officials a recommendation for any corrective and/or remedial action. The appropriate officials shall consider such recommendation and implement corrective and/or remedial action by the agency, when appropriate. Nothing in this order authorizes monetary relief to the complainant as a form of remedial or corrective action by an executive department or agency.

4-403. Any action to discipline an employee who violates this order or its implementing rules, regulations, policies, or guidance (including removal from employment, if appropriate), shall be taken in compliance with otherwise applicable procedures, including the Civil Service Reform Act (Civil Service Reform Act of 1978, Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1111, see Tables for classification.)

Section 5. *Implementation and Agency Responsibilities.*

5-501. The Attorney General shall publish in the Federal Register such rules, regulations, policies, or guidance, as deemed appropriate by her, to be followed by all executive departments and agencies. The Attorney General shall address:

- a. the scope of education programs and activities subject to and exempt from coverage by this order, in addition to those identified in Sections 2 and 3;
- b. examples of discriminatory conduct;
- c. applicable legal principles;
- d. enforcement procedures with respect to complaints against employees;
- e. remedies;
- f. requirements of an agency's annual report as set forth in Section 7;
- g. and such other matters as deemed appropriate.

5-502. Within 60 days of the publication of final rules, regulations, policies, or guidance by the Attorney General, each executive department and agency shall establish a procedure to receive and address complaints regarding its federally conducted education and training programs activities. Each executive department and agency shall take all necessary steps to effectuate any subsequent rules, regulations, policies, or guidance issued by the Attorney General within 60 days of issuance.

5-503. The head of each executive department and agency shall be responsible for ensuring compliance with this order.

5-504. Each executive department and agency shall cooperate with the Attorney General and provide such information and assistance as the Attorney General may require in the performance of the Attorney General's functions under this order.

5-505. Upon request and to the extent practicable, the Attorney General shall provide technical advice and assistance to executive departments and agencies to assist in full compliance with this order.

Section 6. *Annual Report.*

6-601. Consistent with the regulations, rules, policies, or guidance issued by the Attorney General, each executive department and agency shall submit to the Attorney General a report that summarizes the number and nature of complaints filed with the agency and the disposition of such complaints. Such reports shall be submitted annually for the first three years after the effective date of this order, and submitted within 60 days of the end of the preceding year's activities. Subsequently, reports shall be submitted every three years, within 90 days of the end of each 3 year period.

Section 7. *General Provisions.*

7-701. Nothing in this order shall limit the authority of the Attorney General to provide for the , coordinated enforcement of nondiscrimination requirements in Federal assistance programs under Executive Order No. 12250.

7-702. Nothing in this order amends, supplements, or subtracts from an employee's protections and remedies under Title VII of the Civil Rights Act of 1964, as amended.

Section 8. *Judicial Review.*

8-801. This order is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or its employees. This order is not intended, however, to preclude judicial review of final decisions in accordance with the Administrative Procedure Act, 5 U.S.C. 701, et seq.

## SUMMARY: DRAFT EXECUTIVE ORDER ON EDUCATIONAL PROGRAMS

Nov. 2, 1998

The purpose of the executive order is to extend the protections of Title IX and Title VI, which now apply to educational programs that received federal funds, to educational programs conducted by the federal government itself. In general, this is a straightforward matter of simply applying the same standards to courses and other educational programs offered by federal agencies. In a few cases, special provisions are included in the draft, which are described below.

### **1. Members of the Armed Forces and Students at Military Academies**

Members of the armed forces will be covered by DOD and service regulations that are comparable to Title IX and Title VI rather than the executive order. Students at military academies are treated as members of the armed forces.

### **2. Civilians and Federal Employees**

In general, all educational programs offered by federal agencies, including DOD, are covered. However, courses primarily designed for members of the military will be covered by equivalent DOD regulations. In the few cases where these courses include civilians, DOD regulations will be revised to extend the same protections to these persons. Federal employees are protected under Title VII, which covers discrimination under all the circumstances included in Title IX and Title VI.

### **3. National Origin**

As you know, Title VI bars discrimination based on race, color and national origin. In general, this bar is extended to all federal educational programs under the executive order. However, DOD and other agencies involved in national security occasionally sponsor educational programs that for legitimate purposes focus on persons of particular national origin. For example, a course may be designed for foreign nationals from Latin America or the Middle East. The draft order creates an exemption for these situations.

### **4. Decisions by Other Entities .**

We cannot reach the actions of entities other than federal agencies through an executive order. Thus, a private entity could theoretically discriminate in selecting persons to participate in a federal educational program. The draft order establishes a federal policy that an entity that violates state or federal law in selecting participants could not participate in a federal educational program.

Marcia Greenberges

① military training section  
(refer to regs)

Sec. 3305

national origin of foreign nationals

Concerned

compare to

Qs

§ 504 Rehab Act

2 entities outside Exec. branch

military training or education programs conducted by the Department of Defense.

3-302. This Order does not apply to, affect, interfere, or modify in any way the operation of any otherwise lawful affirmative action plan.

3-303. An individual shall not be deemed subjected to discrimination by reason of his or her exclusion from the benefits of a program limited by federal law to individuals of a particular sex, race, color, or national origin, including Native American or Alaska native, different from his or hers.

3-304. This Order does not apply to programs and activities conducted by the Department of Interior, Bureau of Indian Affairs, that are in conformance with tribal customs or otherwise culturally appropriate. For example, classes that require separation of students on the basis of gender in order to conform to tribal customs that require such separation would not be in violation of this order.

3-305. This Order does not apply to (1) selections based on national origin of foreign nationals to participate in covered programs, if such programs concern primarily national security or foreign policy; or 2) selections or other decisions regarding participation in covered programs made by entities outside the Executive Branch, provided that it shall be the policy of the Executive Branch that education and training programs and activities shall not be available to entities that select persons for participation in violation of Federal or State law.

Section 4. Administrative enforcement.

4-401. Any person who believes him or herself, or any specific class of individuals, to be aggrieved by a violation of this order or implementing regulations, rules, policies, or guidance, may, by him or herself or a representative, file a written complaint with the agency that such person believes is in violation of this order or implementing regulations, rules, policies, or guidance. Pursuant to procedures established by the Attorney General, each executive department or agency shall conduct an investigation of a complete complaint alleging a violation by one of its employees.

4-402. (a) If the office within an executive department or agency that is designated to investigate complaints for violations of this order or its implementing rules, regulations, policies, or guidance concludes that an employee has not complied with this order or any implementing rules, regulations, policies, or guidance, such office shall refer a copy of the report and findings, and supporting evidence to an appropriate agency official. The appropriate agency official shall review such material and determine what, if any, disciplinary action is appropriate.

(b) In addition, the designated investigating office may provide appropriate agency officials a recommendation for any corrective and/or remedial action. The appropriate officials shall consider such recommendation and implement corrective and/or remedial action by the agency, when appropriate. Nothing

in this order authorizes monetary relief to the complainant as a form of remedial or corrective action by an executive department or agency.

4-403. Any action to discipline an employee who violates this order or its implementing rules, regulations, policies, or guidance (including removal from employment, if appropriate), shall be taken in compliance with otherwise applicable procedures, including the Civil Service Reform Act (Civil Service Reform Act of 1978, Pub. L. '95-454, Oct. 13, 1978, 92 Stat. 1111, see Tables for classification.)

Section 5. Implementation and Agency Responsibilities.

5-501. The Attorney General shall publish in the Federal Register such rules, regulations, policies, or guidance, as deemed appropriate by her, to be followed by all executive departments and agencies. The Attorney General shall address:

- a. the scope of education programs and activities subject to and exempt from coverage by this order, in addition to those identified in Sections 2 and 3;
- b. examples of discriminatory conduct;
- c. applicable legal principles;
- d. enforcement procedures with respect to complaints against employees;
- e. remedies;
- f. requirements of an agency's annual report as set forth in Section 7;
- g. and such other matters as deemed appropriate.



5-502. Within 60 days of the publication of final rules, regulations, policies, or guidance by the Attorney General, each executive department and agency shall establish a procedure to receive and address complaints regarding its federally conducted education and training programs activities. Each executive department and agency shall take all necessary steps to effectuate any subsequent rules, regulations, policies, or guidance issued by the Attorney General within 60 days of issuance.

5-503. The head of each executive department and agency shall be responsible for ensuring compliance with this order.

5-504. Each executive department and agency shall cooperate with the Attorney General and provide such information and assistance as the Attorney General may require in the performance of the Attorney General's functions under this order.

5-505. Upon request and to the extent practicable, the Attorney General shall provide technical advice and assistance to executive departments and agencies to assist in full compliance with this order.

#### Section 6. *Annual Report.*

6-601. Consistent with the regulations, rules, policies, or guidance issued by the Attorney General, each executive department and agency shall submit to the Attorney General a report that summarizes the number and nature of complaints filed with the agency and the disposition of such complaints. Such reports shall be submitted annually for the first three years

after the effective date of this order, and submitted within 60 days of the end of the preceding year's activities.

Subsequently, reports shall be submitted every three years, within 90 days of the end of each 3 year period.

Section 7. *General Provisions.*

7-701. Nothing in this order shall limit the authority of the Attorney General to provide for the coordinated enforcement of nondiscrimination requirements in Federal assistance programs under Executive Order No. 12250.

7-702. Nothing in this order amends, supplements, or subtracts from an employee's protections and remedies under Title VII of the Civil Rights Act of 1964, as amended.

Section 8. *Judicial Review.*

8-801. This order is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or its employees. This order is not intended, however, to preclude judicial review of final decisions in accordance with the Administrative Procedure Act, 5 U.S.C. 701, et seq.

2-202. "Education and training programs" include, but are not

THE WHITE HOUSE  
WASHINGTON

OFFICE OF THE FIRST LADY

TO Julie Fernandes

FROM \_\_\_\_\_

FAX # 6-7028

PHONE # \_\_\_\_\_

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COMMENTS \_\_\_\_\_  
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October 15, 1998

Jennifer Levin @ DOJ: 305-0025

MEMORANDUM

To: Helen Sullivan, Office of General Counsel DOD — 703/695-1078  
From: Eddie Correia, Office of Counsel to the President  
Re: Draft Executive Order on Educational Programs

I have sent you by fax the draft text of the executive order as proposed by DOJ. It also includes some alternative language proposed by DOD. As we have discussed, we are anxious to resolve any outstanding issues and to finalize an order for the President's review and signature. I would appreciate your reviewing the comments below and discussing them with the appropriate persons at DOD.

**1. Coverage of Students at Military Academies**

We understand DOD's position to be that students in the military academies are already covered by civil rights protections that are comparable to, or perhaps more protective than, Title VI and Title IX. Since your proposed section 3-301 exempts the "armed forces," I assume your position is that students would be exempt from the order since they fall within this category. I appreciate your sending me DOD and branch regulations that include civil rights protections. However, based on our review, we were only able to identify one specific textual reference to the academies (midshipmen at the Naval Academy). Are you certain that existing regulations cover these students? Can you refer me to the provisions that cover them?

**2. Civilians**

I understand that DOD has no objection to an executive order that extends to civilians (e.g., state and local officials) if they participate in a DOD-sponsored educational program that does not have primarily a military purpose. However, we understand DOD to have some concerns about covering civilians who participate in DOD-sponsored educational programs in two situations -- courses that are primarily intended for military personnel and courses that are in the nature of training exercises in the event of an emergency such as a terrorist attack.

Military personnel are already protected under DOD and/or individual branch regulations. Thus, there may be no need to cover them under the order. As I understand it, both DOJ and DOD have concluded that Title VII protects civilian federal employees from discrimination in the setting of a DOD-sponsored educational program, regardless of the federal agency that is the employer. For that reason, an exemption for federal employees who participate in these courses may also be appropriate.

The remaining issue regarding these programs appears to be limited to non-federal employee civilians who participate in a course that has primarily a military purpose. You have

indicated that DOD has some concerns about overlapping and inconsistent regulations and potential administrative difficulties. However, we believe it is important that there be no gaps in civil rights protections. If there are simply no existing regulatory protections for these persons, then it is important to address this situation. One possible solution is to limit an exemption for any DOD-sponsored military training program to military personnel and federal employees. That has the advantage of ensuring that non-federal employee civilians are covered by the same protections and it avoids carving out particular categories of courses that are excluded. For example, section 3-302 could be revised to read:

**This order does not apply to claims by federal employees who participate in military training or education programs conducted by the Department of Defense if such claims can be based on Title VII of the Civil Rights Act of 1964.**

However, I am interested in whatever suggestions you have consistent with the overall purpose of the order.

### **3. National Origin**

As we discussed, DOD and other agencies occasionally sponsor educational programs that for legitimate purposes focus on persons of particular national origin. For example, a course may be designed for foreign nationals from Latin America or the Middle East. The draft order did not address this situation. On the other hand, the draft did include a complete exemption for decisions made by entities other than federal agencies. That is probably appropriate where the entity making the decision is a foreign government, but it may not be appropriate for decisions made by other entities, such as domestic companies or state and local governments. On the other hand, it may not be possible to cover by executive order entities other than federal executive branch agencies. If you have any thoughts on that issue, please let me know.

As for the first issue, one possible solution is to amend the proposed section 3-306 to read as follows:

**This order does not apply to: 1) selection of foreign citizens to participate in covered programs based on national origin if such programs concern primarily national security or foreign policy; or 2) the selection process utilized and/or decisions made by any entity other than the executive department or agency, regarding who may attend or participate in an education or training program conducted by an executive department or agency.**

I would appreciate receiving your comments and suggestions on these matters as soon as possible. I will be out of the office next week. In the event that you need to reach White House staff next week, please contact Jennifer Klein, 456-6266 or Julie Fernandes, 456-2216.

THE WHITE HOUSE  
WASHINGTON

10/26

Julia,

I'll call

you on this.

Eddie



**DEPARTMENT OF DEFENSE  
OFFICE OF GENERAL COUNSEL  
1600 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1600**

October 26, 1998

To: Eddie Correia, Office of Counsel to the President  
From: Helen Sullivan, Office of General Counsel, DoD  
Re: Draft Executive Order on Education Programs

I received your fax of the draft text of the executive order proposed by DOJ, as well as your memorandum. Thank you.

We have looked at and discussed the comments in your memorandum. In response, here are our views and recommendations for proposed revisions to the draft text.

1. Coverage of Students at Service Academies

The cadets, air cadets and midshipmen at the Academies (United States Military Academy, United States Naval Academy, United States Air Force Academy) are members of the armed forces, as evidenced by the fact that they are appointed by the President (10 U.S.C. §§ 4341a, 6953, and 9341a) and subject to the Uniform Code of Military Justice (10 U.S.C. § 802(a)(2)), and would be covered by an exclusion that applies to the armed forces.

We will get copies of any applicable academy regulations for you. However, since the Academies are subordinate organizational elements of the Military Departments (United States Military Academy (10 U.S.C. Ch 403); United States Naval Academy (10 U.S.C. Ch 603); United States Air Force Academy (10 U.S.C. Ch 903)), they are covered by, and subject to, the overall Department of Defense and Military Department regulations on nondiscrimination and equal opportunity applicable to military members. For example, Section B, "Applicability," of Department of Defense Directive 1350.2, "Department of Defense Military Equal Opportunity (MEO) Program," states that it applies to the Military Departments. As members of the armed forces, the cadets, air cadets, and midshipmen at the Military Academies are covered by this regulation and this Program. (In this context, the Air Force regulation sent to you does not cover discrimination complaints by military members, including air cadets. I will provide that regulation (Air Force Instruction 36-2706) to you as well.)

To clarify our position, DoD fully supports the President's initiative and the goals of the proposed executive order. However, it has always been our understanding that the President's initiative is intended to expand the scope of protection against discrimination based on sex, race, color and national origin to include civilian education programs and activities conducted by the Federal Government which are currently not covered by existing laws prohibiting such discrimination. Training and education programs conducted by this Department for military personnel, including training and education programs conducted by the Military Services, do not fall within this category.



In the context of military training and education programs, the issue is not the status of the civilian attendees, that is whether they are Federal employees, foreign nationals, or others. It is the nature and the purpose of military training and education, itself. Continued maintenance of the good order and discipline among the armed forces dictates that they continue to have the exclusive authority and responsibility, through the military command structure, to enforce prohibitions against discrimination in all aspects of the military environment, to include military training and education programs. You can see evidence of this focus in the emphasis placed on enforcement through the chain of command, contained in the Military Service regulations we sent to you. DoD believes that superimposing external structures on the armed forces and the chain of command, through the proposed executive order, is unnecessary and could significantly damage the military command structure and, thus, the ability of the armed forces to assure the nation's defense. In particular, we believe that an official outside the military chain of command (such as the Attorney General) should not establish enforcement procedures or remedies that must be adopted within the command structure.

However, because we support the goal of prohibiting discrimination based on race, sex, color, and national origin in all training and education programs conducted by DoD, including in military training and education programs, we would propose including in the executive order a provision that would require DoD to establish procedures to provide protections and a means of redress for civilians participating in military training and education programs who are not otherwise protected by existing laws. Coupled with the exclusion for military training and education programs, section 3-301 could be revised to read:

**3-301. This order does not apply to members of the armed forces or to military training or education programs. However, the Department of Defense shall develop procedures to protect the rights of, and to provide redress to, civilian personnel not otherwise protected from discrimination based on race, sex, national origin, or color by existing Federal law, who participate in military training or education programs conducted by the Department of Defense.**

Instead of the section 3-302 language we had proposed, we would propose adding the following definitions to section 2:

**2-204. "Military training or education programs" are those training and education programs conducted by the Department of Defense for the primary purpose of training or educating members of the armed forces or to meet a statutory requirement to train Federal, State or local civilian law enforcement officials pursuant to 10 U.S.C. Chapter 18.**

**2-205. "Armed forces" includes, for purposes of this order, the Armed Forces of the United States, as well as the armed forces of a foreign government recognized by the United States or attached to an international organization.**



This approach would both meet the goals of the proposed executive order and address DoD's concerns.

### 3. National Origin

We appreciate the opportunity to comment and provide input on this issue. Our primary concerns would be alleviated by the proposed changes above, since they address military training and education programs as a whole. However, we agree that the executive order should include the exclusion for programs based on national origin for national security or foreign policy reasons, as you have proposed. We also share your concerns that it may not be appropriate or practical to cover by executive order the decisions of entities, including foreign governments, other than Executive Branch agencies regarding their participation in covered programs. We would propose a slight variation to your amendment to section 3-306:

**This order does not apply to (1) selections based on national origin of foreign nationals to participate in covered programs, if such programs concern primarily national security or foreign policy; or (2) selections or other decisions regarding participation in covered programs made by entities outside the Executive Branch.**

### 4. Other

Finally, as an administrative matter, we suggest that the last sentence in section 1-101 be changed as follows:

**The provisions of this Order shall apply to education programs and activities that are operated by the Department of Defense under 10 U.S.C. § 2164 and 20 U.S.C. §§ 921-932.**

This change more accurately defines the activities in question and makes explicit that the order would apply to the Department's overseas and domestic school systems.

Again, thank you for the opportunity to give you our views on these matters. Please telephone (695-1078), fax (693-7616), or send e-mail (sullivan@osdgc.osd.mil), if I can be of further assistance.



# For Official Use Only

Department of Defense  
Office of General Counsel  
1600 Defense Pentagon  
Washington, D.C. 20301-1600

## FAX

**Date:** 22 October 1998

**Total Number of Pages** (including cover) See note below

**To:** Ms. Jennifer Klein or Ms. Julie Fernandes

**Phone:** (202) 456-6266; (202) 456-2216

**FROM:** Helen St. Arrets-Sullivan, Associate Deputy General Counsel  
phone: (703) 695-1078; Fax: (703) 693-7616  
mail: su.sullivan@osdgc.osd.mil

### Comments:

Ms. Klein/Ms. Fernandes:

Eddie Correia had asked that we provide copies of regulations specifically indicating that the cadets, air cadets and midshipmen of the military academies were covered by Department of Defense and applicable Military Department implementing regulations prohibiting discrimination based on race, color, national origin, and sex. I am faxing to you in two separate transmissions applicable United States Military Academy (4 pages); United States Naval Academy (18 pages), and United States Air Force Academy (27 pages) regulations. These regulations implement Military Department and Department of Defense regulations prohibiting discrimination. By a third transmission, I will send you the Department of Air Force Regulation covering discrimination complaints by military members, including air cadets. That regulation (Air Force Instruction 36-2706 (47 pages)) also is available on-line at "<http://afpubs.hq.af.mil/elect-products/series.stm>".

We are still working on response to Eddie's memo to me.

J. Helen Sullivan

If all of the pages are not received, or if they are not legible, please contact the action officer.

W B: Fax machines produce copies on thermal paper. The image produced is highly unstable and will deteriorate significantly in a few days. It should be copied on a plain paper copier prior to filing as a record.

# West Point



OFFICE OF THE  
STAFF JUDGE ADVOCATE

UNITED STATES  
MILITARY ACADEMY  
West Point, New York 10996

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## FACSIMILE HEADER SHEET

Please deliver this FAX to:

Name: Helen Sullivan

Organization: DOD - General Counsel

FAX Phone: 703 693-7616

Office Phone: 717

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Sender Information:

Name: MAJ Lisa Schenck

Organization: Staff Judge Advocate

FAX Phone: \_\_\_\_\_

Office Phone: 914-938-6377

Date: 21 Oct 98

ADDITIONAL REMARKS:

AUTHORIZED SIGNATURE

"To provide the nation with leaders of character who serve the common defense."

## CHAPTER 2, ANNEX A, USCC SOP

## CHAPTER 2

## STANDARDS OF BEHAVIOR

201. **General.** This chapter describes the standards of behavior expected of each cadet. These standards apply to all cadets both here and away from West Point.

202. **Regulations Governing Cadet Discipline.** The cadet discipline system is both developmental and correctional in nature. The technical and administrative details of the system are explained in Section Three of this regulation and in USCC Regulation 3-1.1. In addition cadets are subject to the Uniform Code of Military Justice and the provisions of Regulations for the United States Military Academy (*Regulations, USMA*).

203. **Regulations, USMA Violations.** Violations of *Regulations, USMA*, may result in separation from the Corps of Cadets. Those violations include, but are not limited to: undesirable habits or traits of character; possession, use, sale, manufacture, or transfer of drugs, narcotics; possession, use, or trafficking of intoxicating beverages except as authorized in this regulation; sexual misconduct; ungentlemanly or unladylike conduct; hazing; conspiracy among cadets; indebtedness; criminal conviction; violation of the Cadet Honor Code; and conduct deficiency.

204. **Color, Gender, National Origin, Religious Discrimination, and Sexual Harassment**

a. Leaders have a responsibility to practice the highest standards of fairness and impartiality in the conduct of their duties. Cadets are urged to be actively sensitive to proper leader-subordinate and peer relationships, including issues related to differences in ages, gender, race, and religious beliefs. Cadets will not discriminate based upon color, gender, national origin, or religion.

b. The Department of Defense has defined sexual harassment as:

(1) A form of discrimination that involves unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

(a) Submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of a person's job, pay, or career; or

(b) Submission to or rejection of such conduct by a person is used as a basis for career or employment decision affecting that person; or

(c) Such conduct interferes with an individual's performance or creates an intimidating, hostile, or offensive environment.

(2) Any person in a supervisory or command position using or condoning implicit or explicit sexual behavior to control, influence, or affect the career, pay, or job of a military or civilian employee. Similarly, any military member or civilian employee making deliberate or repeated unwelcome verbal comments, gestures, or physical contact of a sexual nature.

c. Harassment in any form and for any reason is unacceptable behavior and is not tolerated. Harassment exists if the receiver of the behavior determines that it is unwanted or inappropriate. Individuals observing such behavior or being victimized by harassment should report it to correct the situation and prevent future incidents. Appropriate actions may include directly confronting the individual responsible for the harassment; reporting the incident through the chain of command; and, if necessary, filing a complaint with the tactical officer. Complaints may also be filed with the Office of the Inspector General, legal assistance officers, chaplain, Center for Personal Development (CPD), or the USCC Equal Opportunity Office.

## CHAPTER 2, ANNEX A, USCC SOP

d. Because the Army and the Military Academy are microcosms of the society which we train to defend, cadets learn through student involvement and classroom discussion to be aware of their own possible prejudices and how to deal with them appropriately.

## 206. Improper Cadet Leader-Subordinate Relationships.

a. **General.** West Point is unique in its demands upon cadets to work and live together. Conflicts between professional and personal relationships inevitably arise and cadets must resolve such issues with maturity, respect for rank, and concern for the good order and discipline of the unit.

b. **Definition.** Improper leader-subordinate relationships are those relationships that could result in actual or perceived favoritism, unfairness, or partiality that are detrimental to good order and discipline within the company or the direct chain of command, or that result in demonstrated improper use of rank or position for personal gain. Improper leader-subordinate relationships can stem from either overly familiar treatment as well from excessively harsh or abusive treatment. Both types of improper relationships threaten the good order and discipline of the unit involved.

c. **Fraternization.** Fraternization is an improper relationship among officers, NCOs, or enlisted soldiers. It is a criminal offense under Article 134, UCMJ. In the context of USCC, fraternization includes improper relationships between fourth class and upperclass cadets. It also includes improper relationships between upper-class cadets that hinder the execution of their official duties. It is imperative that cadets ensure no conflicts of interest arise. Should two cadets realize that their relationship threatens the impartial execution of their duties, they need only to explain the conflict and request its assignment. Otherwise authorized relationships may continue once the chain of command conflict is resolved.

d. **Personal Relationships.** Personal relationships, sometimes called "fraternal relationships", unlike fraternization, have a positive side. Close relationships which foster mutual respect are desired and required to build cohesive units. Positive professional relationships between cadets of all classes are necessary to build the vertical bonds that tie leaders to those they lead.

(1) An improper cadet leader-subordinate relationship can be an upperclass-fourth class relationship that is outside one's official duties unless it is expressly authorized.

(2) Friendships that existed prior to the fourth class cadet's entering West Point and social relationships derived from being on a corps/club/squad team or DCA club activities may be formally recognized and permitted if both cadets are not assigned to the same company. The senior cadet will, in these instances, forward a request for recognition through his or her cadet company commander to the First Captain.

(3) The decision to allow such a relationship to exist will be forwarded, in writing, to both cadets. The recognition of such a previous or team relationship does not authorize dating between them. Further, recognition does not eliminate the responsibility of both cadets to interact such that the expression of friendship will not cause the perception of improper bias, favoritism, or a lack of professionalism. This special relationship will be avoided in the barracks.

e. **Sanctions.** Cadets involved in inappropriate leader-subordinate relationships may be disciplined under Section Three of this regulation, USCC Reg. 351-1, or Regulations, USMA, as appropriate.

f. **Dating.**

(1) **Dating Among Upperclasses.** Dating among cadets of the upper classes is permissible. However, dating will be conducted with the same high standards of discretion and good judgment expected of all cadets. Cadets should have the opportunity to enjoy informal social conduct with each other. Such class interaction must preserve the separation between the classes. Cadets must avoid both personal relationships which interfere with proper exercise of their duties within the cadet chain of command or good order and discipline of the Corps.



## CHAPTER 1, ANNEX A, USCC SOP

(2) Behavior: Cadets are expected to exercise moderation in all things and must not engage in any activities which violate the provisions of the Uniform Code of Military Justice, state or federal laws. Cadets will abstain from vicious, immoral, imprudent conduct prejudicial to good order and discipline within the Corps of Cadets. A cadet's behavior must at all times, at West Point or away, reflect credit upon the individual, the Corps of Cadets, the Military Academy, and the Army.

(3) Familiarity with Regulations: Cadets will become familiar and comply with this regulation and all other written or oral directives issued. Cadets who are on duty or who are senior in class or rank and who become aware of breaches of cadet regulations are expected to take appropriate action. Cadets have the same moral and ethical responsibility to report offenses affecting good order and discipline. Such reports will be made at the time of the offense or as soon as possible thereafter to an officer or member of the violator's cadet chain of command.

(4) Spirit of the Regulations: A cadet is expected to act in accordance with the intent or spirit of regulations, directives and orders. A cadet who is reported for a valid delinquency is expected to acknowledge and accept disciplinary consequences in an unemotional and professional manner. When reported for a delinquency, a cadet may be required to explain his or her actions. The only exception is when the provisions of Article 31 Uniform Code of Military Justice apply. When there is reasonable cause indicating other persons were also involved in the delinquency, a cadet will respond to inquiries regarding these persons. The cadet will: 1) respond fully, 2) request to address only their individual participation, or 3) request a delay to prepare an answer. If a delay in answering is granted, the cadet will normally be given 24 hours to provide a response to the questions in writing.

(5) Sanctions for Misconduct: Cadets who disobey regulations, directives, policies, or orders are subject to disciplinary actions under the following systems: The Uniform Code of Military Justice; Regulations for the United States Military Academy (Regulations USMA); Section Three of this regulation; and Conduct Investigations Under the Cadet Disciplinary System. USGC Regulation 351-1.

(6) Compounding Misconduct through Disobedience or Insubordination: Compounding of a misconduct by failure to follow a legal order to halt or stop or by actively resisting apprehension or correction (i.e., failure to halt when so ordered) or subsequent insubordination to an officer, a noncommissioned officer, an appropriate civilian authority, or a cadet in the conflict of official duties will not be tolerated and will generally result in a higher level of disciplinary action with major effect than the original misconduct would normally warrant.

(7) Recommendations to Change the Regulations: A cadet who believes that a specific policy or regulation does not support the purpose or mission of the Military Academy is encouraged to present views and recommendations to the cadet chain of command or company tactical officer. In the interim, a cadet is expected to comply with the policy or regulation presently in effect.

### c. Authority.

(1) Any cadet in a position of authority (for example, a member of the chain of command, cadet staff member, team captain, guard, charge-of-quarters (CCQ) or a barracks inspector) has the following general duties:

(a) Discharge responsibilities of the position to the best of his or her ability and enforce these regulations.

(b) Set a good example for subordinates in appearance, bearing, performance of duty, and personal conduct.

(c) Account for the whereabouts of all cadets and/or equipment assigned to the unit, section, team, or detail.

(d) Do not permit his or her performance of duty to be compromised through over-familiarity or other improper relationship with subordinates, superiors, or contemporaries.



DEPARTMENT OF THE NAVY  
UNITED STATES NAVAL ACADEMY  
ANNAPOLIS, MARYLAND 21402-5000

USNAINST 5354.1  
1st Batt  
22 APR 1991

USNA INSTRUCTION 5354

From: Superintendent

Subj: COMMAND MANAGED EQUAL OPPORTUNITY (CMEO) PROGRAM

Ref: (a) OPNAV INST 5354-1C  
(b) NAVS AINST 5354.1  
(c) NMCI INST 5354.2B (NOTAL)  
(d) NAVPERS 15518 Command Training Team Manual (NOTAL)  
(e) NAVPERS 15517 Command Assessor Team Manual (NOTAL)

Encl: (1) Command Managed Equal Opportunity, Brigade of Midshipmen, Midshipmen Data Collection  
(2) Command Managed Equal Opportunity, Brigade Officers, Officer Data Collection  
(3) USN Midshipmen Command Managed Equal Opportunity Sample Survey  
(4) USN Officer Command Managed Equal Opportunity Sample Survey  
(5) Midshipmen Command Assessment Team Sample Interview  
(6) Officer Command Assessment Team Sample Interview  
(7) Midshipmen Chain of Command  
(8) Officer Chain of Command

1. Purpose To carry out reference (a), this instruction establishes the Command Managed Equal Opportunity Program (CMEO) at the Naval Academy for the Brigade of Midshipmen, civilian faculty and staff, and officer faculty and staff.

2. Background The Superintendent is fully committed to actively promoting equal opportunity and treatment for all personnel. The CMEO program totally supports the principles of equal opportunity and provides specific guidelines for creating and maintaining a positive command climate. CMEO reasserts the chain of command as the medium for identifying and resolving command equal opportunity issues. The CMEO Program is to be actively promoted at the Naval Academy per reference (a) in order to:

- a. Create and maintain a positive equal opportunity climate within the command.
- b. Identify and resolve equal opportunity/sexual harassment problems or concerns.
- c. Provide the mechanism for monitoring the Naval Academy's equal opportunity climate.
- d. Make sure merit, ability, performance and potential are the factors which affect individual promotion, training, subsequent duty assignments and any other action.

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USNAINST 5354.1

22 APR 1991

3. Objectives. The specific objectives of the CMEO Program are as follows:

a. Make sure a positive environment of equal opportunity is established and maintained within the command. This is essential in promoting and maintaining a high state of morale, discipline and overall mission effectiveness.

b. Monitor the Academy environment including but not limited to administrative practices, job performance, military performance, conduct and overall attitude in addition to the general health of the equal opportunity climate.

c. Further command personnel knowledge and compliance of the command's Affirmative Action Plan.

d. Provide an environment in which all personnel can truly perform to their maximum potential.

e. Indoctrinate and reinforce command personnel knowledge of equal opportunity policies and issues and the necessity for prevention of all forms of discrimination as defined as damaging to the health of the command.

4. Organization. The Superintendent is responsible for the achievement of the objectives of the CMEO program at the Naval Academy. The Commandant and Academic Dean and Provost will share responsibility for implementation of the CMEO Program. The Naval Academy's CMEO Program will be comprised of a Command Training Team (CTT) and a Command Assessment Team (CAT). An officer representative (O-5 or O-6) will be assigned by the Commandant to oversee and monitor the program for the Brigade of Midshipmen and the officers assigned to the Commandant's staff and the Professional Development, Physical Education, and the Supply Divisions. The Associate Dean of Administration will oversee and monitor the program for the civilian and officer faculty and staff and the Deputy for Operations will be responsible for those officers not assigned directly to either the Commandant or faculty. The officer assigned by the Commandant will be designated as the CMEO Coordinator. The Naval Station, Dental, Naval Academy Preparatory School and Naval Medical Clinic will conduct their CMEO programs per references (b) and (c), respectively. CBU-403 and the Navy Band will fall under the purview of Naval Station, Annapolis for CMEO purposes.

a. CMEO Coordinator. The CMEO coordinator will be responsible to the Commandant of Midshipmen for the implementation and management of the Naval Academy Command Managed Equal Opportunity Program. He will preside over all scheduled CTT and CAT organizational meetings as liaison among the respective Academy divisions. The CMEO coordinator will make sure all CTT and CAT team members are qualified in all respects per references (d) and (e). Additionally, the coordinator will assist all personnel in the processing of grievances.

b. Command Training Team (CTT). The CTT is charged with conducting annual Navy Rights and Responsibilities (NR&R) workshops, NR&R updates, NR&R workshops for newly reported personnel. The CTT will include at least 80 members, a minimum of 37 midshipmen, 13 civilian faculty, and 30 commissioned officers. The CMEO Coordinator will coordinate training and scheduling of annual CTT events along with assignment of divisional quotas for CTT membership and CMEO training. The commissioned officers will be assigned from the various yardside divisions; the civilian faculty will be assigned from the Academic Dean's and Provost's staffs; and the midshipmen will be assigned as follows:



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22 APR 1991

1) The midshipman leader will be the midshipman lieutenant assigned as Midshipman Training Liaison Officer;

2) The remaining members will be the academic year first set midshipman lieutenant-junior grades assigned as Company Executive Officers or Company Training Officers.

The CTT is charged with conducting annual Navy Rights and Responsibilities (NR&R) workshops, NR&R updates, as well as NR&R workshops for newly reported personnel.

c. Command Assessment Team (CAT). The CAT is a group of representative individuals from the command tasked to plan and conduct an annual command assessment which includes data gathering, analysis, data reduction, identification of equal opportunity issues, and formulation of positive recommendations. Mandatory membership will include one Battalion Officer, Associate Dean of Administration, Personnel Officer, Legal Officer, academic year first set Deputy Brigade Commander, academic year first set Third Battalion Commander, academic year first set Battalion Subcommanders, academic year first set Battalion Supply and Administrative Officers, and the Command Master Chief. The remaining 35 members (25 commissioned officers and 10 civilian instructors) must include a cross-section of command personnel in terms of paygrade, gender, race, and department/division. All CAT members, including the mandatory memberships, must be formally trained. In no way is this intended to restrict the commander's prerogative of increasing the size or scope of the CAT. The CMEC coordinator may increase the size or scope. The CAT is tasked with conducting the annual command assessment.

d. CAT/CTT Assignment. Members of the CAT and the CTT will be assigned in an USNA notice published by 15 May each calendar year. The members will receive formal CAT/CTT training within 120 days of notification and participate in their respective teams for the following academic year.

e. Training. The CAT and CTT will undergo training per reference (a) modified by the Commandant of Midshipmen to suit the special environment of the Naval Academy. Prospective commissioned officer and civilian faculty CAT and CTT members will be formally trained by a mobile training unit (MTU), Chief of Naval Education and Training (CNET) activity, or an Equal Opportunity Program Specialist (EOPS). Within three months of assignment to CAT/CTT, members must complete the Navy Equal Opportunity correspondence course (NAVEDTRA 13099-C). Prospective midshipmen CAT and CTT members will receive formal training conducted during the week preceding Commissioning Week each calendar year. CAT/CTT members who have not actively performed team duties in over 24 months are required to repeat formal training. This training will be documented in the member's service record.

## 5. Action

### a. Navy Rights and Responsibilities Workshops

(1) All USNA personnel are required to attend a NR&R workshop within 90 days of reporting to the Naval Academy. All lesson topics will be taught per the NR&R workshop curriculum provided by CNET and modified by the CMEC Coordinator and Associate Dean for Administration to suit the needs of the various activities in the USNA community. Critique sheets will be used as a means of feedback on workshop effectiveness. NR&R workshops for the incoming midshipmen class will be conducted during Plebe Summer Training as scheduled by the Officer-in-Charge, Fourth Class Regiment.

2 APR 1991

(2) Annual all-hands NR&R update workshops will be held during the first semester of each academic year and must include sexual harassment prevention training, review of updated equal opportunity policies and the Navy equal opportunity climate, and a forum for discussing CNO and command-specific issues. This NR&R workshop should use the training guide provided by CNET but may be modified to meet the unique needs of the Naval Academy.

#### b. Annual Command Assessment

(1) A critical element to the ultimate effectiveness and success of a command's equal opportunity program is the ability of the command to accurately assess current equal opportunity status. The assessment should focus on the treatment and achievements of individuals, overall effectiveness of the equal opportunity program, and follow-up actions on previously identified equal opportunity issues. The Associate Dean of Administration; Deputy for Operations; Commanding Officer, Naval Station, Annapolis; and the Naval Medical Clinic shall complete the annual command assessment for those individuals under their cognizance.

(2) Raw data sources for the assessment of midshipmen and officers under the Command are found in enclosure (1) and (2) and must be compiled by 30 January of each calendar year.

(3) A survey conducted on a variety of topics selected by the CAT team and approved by the CMO Coordinator and Associate Dean for Administration will be used to help determine the EO climate of the command. This survey should be conducted in January of each calendar year. A sample of midshipmen and officer survey questions can be found in enclosures (3) and (4).

(4) Individual interviews must be conducted with a minimum of 60 commissioned officers, 40 civilian instructors, and 200 midshipmen in February of each calendar year. The actual number of interviews will be determined based on the demographics of Academy personnel. These interviews will provide valuable information on the perceptions of the command personnel towards equal opportunity. Sample interview questions are found in enclosures (5) and (6).

(5) The accumulated data will be reviewed and compiled in a formal brief to the Superintendent via the Commandant and Academic Dean and Provost. The report will be presented in two parts: (a) midshipmen; and (b) officers/faculty and staff which will include the Naval Station and Naval Medical Clinic. Presentation of the midshipmen CMO assessment to the Commandant and the Superintendent will occur no later than 1 March and 15 March, respectively. Similarly, the presentation of the officer/faculty and staff CMO assessment will occur no later than 29 March and 15 April, respectively.

#### c. Collection and Maintenance of Demographic Data

(1) Collection of demographic data is one of the primary functions required of the annual command assessment. The CTT should determine the most effective methods of data acquisition in the three areas of retention, advancement, and discipline. Collection of demographic data must be completed by 15 January of each calendar year.

(a) Attrition Data. Attrition and separation data (raw numbers and percentages) will be collected and analyzed. Separation data will be categorized to show the types of separations by race/ethnic group.

(b) Promotion Data. Promotion data must be collected and analyzed on officers in line for promotion and civilian faculty and staff eligible for promotion.

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**AFCWI 36-2706, 6 p 199****5****1.7. 10 ABW/SA**

1.7.1. Conducts and processes complaint and incident clarifications.

1.7.2. Documents cadet discrimination (informal and formal) complaints lodged with the SA Office, including those referred to other agencies.

1.7.3. Clarifies cadet discrimination complaints when the chain of command mechanism is not appropriate or cadet chooses to file a formal complaint.

1.7.4. Notifies and briefs appropriate commanders of discriminatory circumstances within the Cadet Wing, even when no formal complaint has been submitted.

1.7.5. Provides 34 TRW V/CWICR with data on issues or complaints filed by Cadet Wing members or impacting the Cadet Wing.

1.7.6. Consolidates EO/HR trends, studies, and statistical analyses throughout the Academy, to include the assessment of the Cadet Wing, provided by the HR Division.

1.7.7. Keeps 34 TRW V/C appraised of discriminatory circumstances within the Cadet Wing even when no formal complaint has been submitted.

1.7.8. Briefs the USA V/CC quarterly on base-wide EO/HR issues, to include the Cadet Wing.

**1.8. HQ USAFA/IG**

1.8.1. Documents complaints of unlawful discrimination and sexual harassment lodged with the IG office.

1.8.2. Except for Senior Official cases, SA is the Office of Primary Responsibility (OPR) for EO complaints. Other than Senior Official allegations, IG will only accept EO complaints when directed by higher headquarters or when the Appointing Authority directs the IG to look into the matter after consulting with the local legal office (normally when a SA complaint clarification cannot fully resolve the issues). When cases are referred to SA, EO personnel are responsible for responding to the complainant. After referring the complaint, the IG takes no further action (other than informing the complainant of the referral), unless otherwise directed by the Appointing Authority or higher headquarters.

1.8.3. Conducts inquiries and/or investigations of unlawful discrimination or sexual harassment complaints. If the complaint contains allegations of EO violations plus allegations under other complaint categories that can be separated, the IG will refer the EO issues to Social Actions then

AFCWI 36-2706, 6 Sep 1997

initiate an investigation into the other allegations as appropriate, unless otherwise directed by higher headquarters. The IG will notify the complainant and SA in writing.

1.8.4. When EO violation allegations cannot be separated from other complaint issues, IG will instruct the investigation/inquiry officer (IO) to receive a pre-brief from EO personnel and use EO personnel as the source of technical advice on the EO issues (attach an EO person as an IO assistant if required). After the Staff Judge Advocate (10 ABW/SJA) reviews and the Appointing Authority approves the report, provide EO personnel the case findings and commander action taken, as appropriate.

1.8.5. Briefs the USA, MCC quarterly on base-wide IG issues, to include HR concerns jointly with SA.

1.8.6. Provides 34 TRW/CWCX with information on EO complaints lodged in the IG office which impact the Cadet Wing.

## 2. Cadet Wing Equal Opportunity Program

2.1. **Program Objective:** The Cadet Wing EO program is designed to ensure compliance with the AF EO policy against discrimination and sexual harassment. The program is a function of Cadet Wing leadership and command, based on fairness, equity, and justice. The EO program addresses the total spectrum of cadet military life through the standards of EO, treatment, selection, and representation.

2.2. **Organizations that Discriminate:** Military personnel and cadets must be allowed access to on and off base facilities in the United States. Organizations that unlawfully deny Cadet Wing personnel access by their bylaws, rules, regulations, constitutions, and engage in discrimination will not use Cadet Wing facilities and/or base resources.

### 2.3. Human Relations Division Staff:

2.3.1. Develops lesson plans for the Cadet Professional Military Education (PME) and other training on various EO/HR issues impacting the Cadet Wing.

2.3.2. Provides Cadet Wing Human Relations Education Officers (HREOs) guidance and training on how to address and resolve concerns.

2.3.3. Conducts EO/HR education for the Cadet Wing (cadets, AOCs, MTAs).

2.3.4. Assists Cadet Wing commanders, AOCs, other 34 TRW staff and cadets in addressing and resolving EO/HR concerns impacting the Cadet Wing.

**AFCWI 36-2706, 6 S, 1997**

7

- 2.3.5. Conducts and/or facilitates focus group discussions concerning EO/HR topics.
- 2.3.6. Directs the assessment of the Cadet Wing social climate and makes recommendations regarding EO/HR issues.
- 2.3.7. Performs research for implementation into all EO/HR curriculum development.
- 2.3.8. Manages the Cadet Wing Diversity Management Program.
- 2.3.9. Provides AOCs with guidance and EO/HR indoctrination training on how to address and resolve concerns. Serves as their consultant and advisor on EO/HR issues.
- 2.3.10. Provides AOCs with a list of referral agencies.
- 2.4. Group/Squadron AOC:**
  - 2.4.1. Understands that equal opportunity and HR is a leadership issue.
  - 2.4.2. Ensures members of the organizations are free to present an EO/HR complaint and protect members who file an EO/HR complaint from reprisal or retaliation.
  - 2.4.3. Encourages members to discuss problems and complaints within the chain of command, including the appropriate cadet and officer chain of command, before seeking alternate channels. Use Attachment 1 as a guide in resolving issues.
  - 2.4.4. Ensures members know the procedures for filing a formal complaint when the chain of command procedures are not appropriate.
  - 2.4.5. Briefs members that unlawful discrimination and sexual harassment will not be tolerated, practiced, or condoned and will be met with administrative or judicial action.
  - 2.4.6. Informs members of their organization of their right to file an EO/HR complaint.
  - 2.4.7. Takes action to end discrimination. Investigates allegations of discrimination promptly and fairly through appropriate channels.
  - 2.4.8. Monitors and understands the EO/HR climate in the unit and takes appropriate actions to correct any deficiencies.
  - 2.4.9. Notifies their staff and chain of command of EO/HR concerns, issues, and trends. Consults with group consultant and CWCR's EO staff on EO/HR issues or situations with EO/HR implications.



2.4.10. Documents all EO/HR issues on AFCW Form 1587-1. (Attachment 2).

## **2.5. Cadet Chain of Command:**

2.5.1. Ensures the squadrons work toward accomplishing set HR goals and objectives, in all of areas: military, academic, athletic, and character development.

2.5.2. Supervises all squadron activities through delegation of authority to squadron staff while requiring necessary feedback to retain knowledge of squadron performance.

2.5.3. Ensures squadron compliance with standards outlined in AFCW directives, instructions, and policies.

2.5.4. Holds staff meetings and commander's call to keep the squadron informed of policies and squadron activities.

2.5.5. Ensures effective communication system is in place to pass information rapidly up and down the squadron chain of command.

2.5.6. Responsible for the morale, welfare, and safety of the cadets in his/her squadron.

2.5.7. Routinely advises the AOC and Group Commander on the activities and HR climate of the squadron.

2.5.8. Understands, identifies, and corrects, as needed, EO/HR issues in the squadron.

2.5.9. Encourages members to discuss problems with the individual(s) involved, the HREO, or the cadet chain of command before seeking alternate channels.

2.5.10. Ensures squadron members are briefed on the right to file a complaint without receiving retaliation or reprisal.

2.5.11. Briefs AOC and HREO on all EO/HR concerns, regardless of whether or not a complaint is filed. Document all EO/HR issues or situations with EO/HR implications on AFCW Form 1587-1 (Attachment 2).

## **2.6. Individual Responsibilities:**

2.6.1. Address concerns/issues with the individual(s) involved. This action shifts the

**AFCWI 36-2706, 6 Sept 1997****9**

responsibility to the individual(s) involved to resolve issues at their level.

2.6.2. If not comfortable discussing the issues with the individual, use the chain of command. The chain of command is the primary and preferred method of resolving concerns.

2.6.3. Consults with the squadron representatives for assistance in resolving concerns.

2.6.4. If concerns are not resolved, consults with the HR Division for assistance and/or referral to the appropriate agency.

2.6.5. If EO/HR issues are not resolved within the Cadet Wing, file formal complaints at the 10 ABW/SA office. If the complaint cannot be resolved, or is against a senior officer, file the complaint through the 10 US/FA/IG.

## **2.7. Wing HREO:**

2.7.1. Confers regularly with the Wing Commander to ensure policies and procedures are consistent with the HR Program.

2.7.2. Guards against practices in the Cadet Wing and the Academy environment that are inconsistent with the HR Program.

2.7.3. Supervises HR orientation and training courses during Basic Cadet Training.

2.7.4. Directs and supervises the four group HREOs.

2.7.5. Monitors the conduct of all HREOs. Should the ability of the HREO to perform his/her duty become suspect, the Wing HREO with the group HREO will direct an investigation to determine the individual's suitability to continue as a HREO.

2.7.6. Directs and supervises other members in developing training used by squadron representatives.

2.7.7. Supervises the R-training conducted in the Cadet Wing.

2.7.8. Obtains reports from SA office and disseminates throughout the Cadet Wing after consulting with 34 TR/CWCR.

2.7.9. Assists 34 TR/CWCR in the assessment of the Cadet Wing EO/HR Climate.

10

AFCWI 36-2706, 6 Sep 1997

2.7.10. Assists in the development of EO/HR training for the Cadet Wing, AOCs, and the 34 TRW staff.

2.7.11. Serves as a primary liaison between the Cadet Wing and CWCR to facilitate cadet EO/HR effort.

2.7.12. Chairs the Cadet HR Council (CHRC) and advises the Cadet Wing Commander on EO/HR issues impacting the Cadet Wing.

2.7.13. Assists in addressing EO/HR issues or concerns in the Cadet Wing. Documents all EO/HR issues on AFCW Form 1587-1. Names are not required on EO/HR issues resolved at HREOs level and not requiring an AF Form 10.

## **2.8. Group HREO:**

2.8.1. Confers regularly with the Wing HREO and Group Commander to ensure the group HR Program is consistent with the Wing HR Program.

2.8.2. Conducts training for respective squadron representatives on HR issues.

2.8.3. Provides a monthly report to the Wing HREO summarizing cadet counseling activities and observations concerning group climate.

2.8.4. Periodically updates the Group through the squadron representatives, concerning the activities of the 34 TRW/CWCR.

2.8.5. Documents all counseling, education, and activities in the Group and forwards the information to the Wing HREC and CWCR.

2.8.6. Serves as a liaison between the Group Commander and the Wing HREO.

2.8.7. Advises the Wing HREO on the status of HR issues within the group. Documents all EO/HR issues on AFCW Form 1587-1. Names are not required on EO/HR issues resolved at HREOs level and not resulting in an AFCW Form 10, Report of Conduct action.

2.8.8. Meets with the squadron representatives at least once a month.

2.8.9. Supports the Wing HREO on education efforts and advises the group level supervisors and the cadet chain of command on EO/HR issues.

2.8.10. Conducts EO/HR training for the squadron representatives in the group.

AFCWI 36-2706, 6 p 199

11

2.8.11. Assists in assessing the Cadet Wing EO/HR climate and makes recommendations on issues.

2.8.12. Supervises the overall direction and efforts of the squadron representatives in the group.

## **2.9. Squadron Human Relations Representative:**

2.9.1. Receives certification and training as prescribed by 34 TRW/CWCR.

2.9.2. Facilitates and educates squadron members on race, sex, color, religion, national origin, etc.

2.9.3. Counsels cadets to help resolve differences or personal problems, but **does not serve in an investigative role**. Consults with CWCR on all allegations of unlawful discrimination and/or sexual harassment and any other issues that appear to have EO/HR implications.

2.9.4. Educates the squadron in areas concerning EO/HR policies in the Air Force and Cadet Wing.

2.9.5. Provides a monthly report through the Squadron Commander and the Group HREO to the Wing HREO and 34 TRW/CWCR summarizing cadet counseling activities and observations concerning the squadron climate.

2.9.6. Periodically updates the squadron concerning the activities of the 34 TRW/CWCR.

2.9.7. Documents all counseling, education, etc., activities in the squadron on the USAFA Form 30. Document all EO/HR issues on AFCW Form 1587-1. Names are not required on EO/HR issues resolved at HREO's level and did not result in an AFCW Form 10 action. However, the chain of command must be briefed on issues resolved at your level.

2.9.8. Attends all Group and Wing HREO meetings and training.

## **2.10. Cadet Interaction Committee (CIC):**

2.10.1. Addresses issues impacting the successful integration, performance, and quality of life for all cadets.

2.10.2. Advises USAF senior leadership on relevant policy matters impacting the successful integration, performance, and quality of life for all cadets.

2.10.3. Members will include, but are not limited to, senior representatives (or designees at the O-5, O-6 level). Membership will include, as a minimum, the following organizations:

34 TRW/CV; 34 TRW/CWC (Chair); 34 TRG/CC (Alternate Chair); Dean of Faculty (DF); Director of Athletics (H); Quality and Institutional Research (QI); Director of Admissions (RR); Staff Chaplain (HC); and 10 ABW/SA. Additionally, the following will serve as advisors to the CIC: 34 TRW/CWC, Institutional Research (XPR), Cadet Human Relations Council (CHRC), Wing HREOS representative, CICs of Way of Life Committee, Los Padrinos, American Indian Sciences and Engineering Society, Corbin, Prior-Enlisted Committee, etc.

2.10.4. Meets quarterly as a minimum, or on as needed basis, to provide necessary emphasis on EO/HR issues.

## **2.11. Cadet Human Relations Council**

2.11.1. Facilitates equal opportunity and positive HR within the Cadet Wing, and advises the Academy staff, through the cadet chain of command and/or 34 TRW/CWCR, of EO/HR concerns.

2.11.2. Members will include all Group HREOS, all squadron representatives, a member from the Way of Life Committee, Los Padrinos, American Indian Sciences and Engineering Society, Corbin, Prior-Enlisted Committee, etc.

2.11.3. Meets monthly as a minimum, or on as needed basis, to provide necessary emphasis on EO/HR issues.

## **2.12. Cadet Interest Support Groups:**

2.12.1. Includes the Way of Life Committee, Los Padrinos, Corbin, and American Indian Sciences and Engineering Society.

2.12.2. Identifies and addresses to the CHRC contemporary EO/HR issues impacting their group and the Cadet Wing.

2.12.3. Executive officers or representative must attend the CHRC meetings and/or programs.

2.12.4. Attends the CHRC as needed to advise on issues relevant to their organization and the Cadet Wing.

**2.13. Informal Complaint Process:** is for individuals who elect not to file a formal complaint, but want resolution at the lowest level.



AFCWI 36-2706, 6 SEP 1997

13

2.13.2. Individuals may orally address or prepare written correspondence to the offending individual advising him/her that the behavior was inappropriate and continued behavior may or will result in possible complaint with the chain of command or formal complaint.

2.13.3. Individuals may request intervention through a peer or the squadron representative.

2.13.4. Individuals are encouraged to use the chain of command (i.e., request assistance from the cadet chain of command, AOC, Group AOC, squadron representative, etc.) to informally resolve unlawful discrimination and sexual harassment.

2.13.5. Individuals may use the mediation process to mutually resolve disputes.

2.13.6. Individuals may lodge and document informal complaints of unlawful discrimination and sexual harassment with the SA office.

**2.14. Mediation Process:** The prompt and fair resolution of EO/HR complaints enhances morale, combat readiness and mission accomplishment. With the consent of the individuals, mediation may be used to resolve certain complaints of discrimination in a fair, impartial, and timely manner. Mediation is intended to facilitate communications between the disputants, in an appropriate and private setting, and lead to the early resolution of informal EO complaints to the satisfaction of the individuals involved.

2.14.1. The Cadet Wing processes fairly, impartially, and in a timely manner all unlawful discrimination and sexual harassment complaints.

2.14.2. The Cadet Wing will resolve military EO/HR disputes as early as possible. Ensure mediations are conducted immediately to resolve unlawful discrimination and sexual harassment complaints and to reach an early resolution.

2.14.3. Alternative Dispute Resolution (ADR) (mediation) will be used to resolve complaints, whenever possible, with the consent of the individuals involved.

2.14.4. Mediation does not prohibit an individual from filing a formal complaint within the allotted time (60 days). If the mediation agreement is broken, the individual may file a formal complaint of unlawful discrimination with the SA office.

2.14.5. Mediation is an informal resolution process and mediated equal opportunity issues will be documented on AFCV Form 87-1 (Attachment 2)

**2.15. Allegations Other Than Unlawful Discrimination or Sexual Harassment.** If the individual does not allege unlawful discrimination, sexual harassment, or the issue does not have an equal opportunity application, HREOs, squadron commanders, and AOCs should use AFCW Form 10 or USAFA Form 30. Additionally, concerns outside the EO and HR purview do not have to be routed through CWCR.

**2.16. Documenting EO Concerns/Complaints.** EO complaints resolved within the Cadet Wing chain of command will be documented on AFCW Form 1587-1.

2.16.1. AOC, MTA, cadet squadron chain of command, and HREOs will consult with CWCR on allegations of unlawful discrimination and sexual harassment.

2.16.2. The CWCR Group Consultant and the SA staff assigned to CWCR will review documentation and help AOCs, MTAs, cadet squadron chain of command, and HREOs clarify and label the issues as sexual harassment, unlawful discrimination, etc. in accordance with AFI 36-2706 and AFCWI 36-06.

2.16.3. All EO and HR issues resolved within the chain of command will be documented in AFCW Form 1587-1. This includes issues that result in an AFCW Form 10 action. A copy of the completed AFCW Form 1587-1 and AFCW Form 10 will be forwarded to CWCR for data collection and trend analysis. Another copy will be forwarded to the Policy and Evaluation Office (34 TRG/PE).

2.16.4. EO issues that result in AF Form 10 action must include names of individuals involved. The names of individuals do not have to be included in AFCW Form 1587-1 on those EO/HR issues that do not result in AFCW Form 10 action.

**2.17. Reprisal.** Any taking or threatening to take an unfavorable action or withholding or threatening to withhold favorable personnel action, or any other act of retaliation against a cadet for making or preparing to make a protected communication cannot and will not be tolerated.

2.17.1. AOCs, MTAs, and the cadet squadron chain of command will take necessary precautions to ensure individuals who raise concerns do not receive any form of retaliation from the chain of command, peers, or other cadets.

2.17.2. Individuals who believe they are recipients of reprisal actions must immediately seek assistance from their cadet squadron chain of command, AOCs, or the IG.

**2.18 Religious Accommodation.** Based on the constitutional right of the free exercise of religion in accordance with DOD policy.

AFCWI 36-2706, 6 Oct 1997

15

2.18.1. Commanders should approve requests for accommodation of religious practices when accommodation will not have an adverse impact on military readiness, unit cohesion, standards, or discipline.

2.18.2. Commanders are expected to respect the religious beliefs and practices of all Air Force members in a manner consistent and fair to all.

2.18.3. Support of religious accommodation practices does not necessarily reflect agreement or belief in such practices by a commander, chaplain, unit, or the Air Force.

**2.19. General Guidelines of Accommodation** Nothing in these guidelines will be interpreted as requiring a specific form of accommodation in individual circumstances.

2.19.1. The lowest level of command should resolve conflicts of accommodating religious practices such as, but not limited to, worship opportunities, dietary practices, medical practices, Sabbath observance, and wearing of religious apparel.

2.19.2. Accommodation of religious practices of military members should not have an adverse impact on military readiness, individual or unit readiness, unit cohesion, health, safety standards, or discipline.

2.19.3. As a matter of command discretion, commanders will not usually schedule training exercises on major religious holy days. Commanders should consider such factors as the location of training, the threat, and the impact on individual or unit readiness, unit cohesion, discipline, health, and safety standards in scheduling training.

2.19.4. Accommodation of religious practices cannot be guaranteed and is subject to change if circumstances warrant.

**2.20. General Procedures** The member initiates the request for accommodation at the lowest level.

2.20.1. The requester may be required to submit the request for accommodation in writing.

2.20.2. The requester may seek the advice of a military chaplain.

2.20.3. The senior chaplain serves as advisor to the commander concerning requests for accommodation.



2.20.4. The unit commander [OC] should consider the following factors when considering a request for accommodation of religious practices:

2.20.4.1. The importance of military requirements in terms of individual and unit readiness, health and safety, discipline, morale, and cohesion.

2.20.4.2. The importance of the accommodation to the requester.

2.20.4.3. The cumulative impact of repeated accommodations of a similar nature.

2.20.4.4. Alternative means available to meet the requested accommodation.

2.20.4.5. Previous treatment of the same or similar requests.

2.20.5. When the accommodation of religious practices is not in the best interest of the unit and continued conflict between the unit's requirements and the individual's religious practices is apparent, other options may be considered. These include, but are not limited to, reassignment, reclassification, and separation.

2.20.6. Commanders may refer unusual or difficult questions about requested accommodations through the chain of command to AF/HC or AF/DP.

DAVID L. CONNORS, Colonel, USAF  
Commander, 34<sup>th</sup> Training Group

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