

POLICY

SUBJECT: Equal Employment Opportunity

NUMBER: MGT-05-12

APPLICABLE TO: All DJS Staff

APPROVED: _____ /s/ signature on original

Sam Abed, Secretary

DATE: _____ 1/11/12

I. POLICY

The Department of Juvenile Services (DJS) is an equal opportunity employer and shall not discriminate based on **age, ancestry, color, creed, genetic information, gender identity and expression, marital status, mental or physical disability, national origin, race, religious affiliation, belief or opinion, sex, or sexual orientation**. This policy underscores the importance of adherence to Federal and State laws and DJS policies of zero tolerance for employment discrimination. It is DJS' policy that DJS staff shall:

- a. Act in accordance with Federal and State laws, and the Governor's Executive Order (01.01.2007.16, Code of Fair Employment Practices) to prohibit and eliminate discrimination in the workplace;
- b. Honor and respect the value and dignity of every employee of DJS to work in an environment that is free of discrimination or harassment on any basis; and
- c. Adhere to State law and DJS policy of zero tolerance for employment discrimination, and continue to emphasize our collective obligation to comply with Federal and State discrimination law.

II. AUTHORITY.

- a. Md. Code Ann., Hum. Srvs., §9-203 and §9-204
- b. Md. Code Ann., State Personnel and Pensions, §2-302 and §5-201 et. seq.
- c. Title VII of the Civil Rights Act of 1964, as amended
- d. Pregnancy Discrimination Act of 1978
- e. Age Discrimination in Employment Act of 1967 (ADEA)
- f. Genetic Information Non-Discrimination Act of 2008 (GNA)

- i. Executive Order, 01.01.2007.16, Code of Fair Employment Practices
- j. DJS Standards of Conduct and Disciplinary Process
- k. American Correctional Association, 4-JCF-6C-02

III. DIRECTIVES/POLICIES RESCINDED

- a. Equal Employment Opportunity, MGT-02-10.

IV. FAILURE TO COMPLY

Failure to comply with a Secretary’s Policy and Procedure shall be grounds for disciplinary action up to and including termination of employment.

V. STANDARD OPERATING PROCEDURES

Failure to obey the Department’s policy or standard operating procedures issued with this document shall be grounds for disciplinary action up to and including termination of employment.

VI. REVISION HISTORY

DESCRIPTION OF REVISION	DATE OF REVISION
New policy issued.	1/11/12
Procedures revised: <ul style="list-style-type: none"> • Added procedures for requesting a reasonable accommodation 	December 2017



PROCEDURES

SUBJECT: Equal Employment Opportunity
NUMBER: MGT-05-12
APPLICABLE TO: All DJS Staff

APPROVED: _____ /s/ signature on original
Lynette Holmes, Deputy Secretary
DATE: _____ 12/20/17

I. PURPOSE

To provide procedures to ensure an equal opportunity for employment and to prohibit discrimination of all staff; and ensure a reasonable accommodation for employees with a disability.

II. DEFINITIONS

Administration means any unit, office, program, or facility within the DJS structure.

Complainant means any person who files a complaint of discrimination.

Discrimination means unfair treatment or denial of normal privileges to persons because of age, ancestry, color, creed, genetic information, gender identity and expression, marital status, mental or physical disability, national origin, race, religious affiliation, belief or opinion, sex, or sexual orientation.

Essential Job Function means a fundamental job duty of a position, as opposed to a marginal function of that position. The reason the position exists is to perform the essential functions of that position.

Hostile Work Environment means conduct and directives of a harassing nature that a reasonable person would find has the effect of unreasonably interfering with an individual's work performance; or creates an intimidating, hostile, or offensive working environment which is perceived by the victim to be abusive or hostile.

Mediation Process means a process that attempts to resolve differences by an objective individual acting as an intermediary between the opposing parties.

Reasonable Accommodation means any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities.

Release Time means time away from assigned duties without loss of pay and without charge to earned leave.

Relevant Information includes, but is not limited to, statistical and other data reflecting personnel actions taken by an official, non-privileged information in personnel files of comparable employees, and any other information considered relevant by the Office of the Statewide Equal Employment Opportunity (EEO) Coordinator, DJS' Fair Practices Officer, or DJS' EEO Officer.

Respondent means the person or unit within the Department against whom the allegation of discrimination has been made.

Supervisor means any individual having authority, in the interest of the employer, to recommend tangible employment decisions such as, hiring, transfer, suspension, lay off, recall, promotion, discharge, assignments, reward, or discipline other employees, affecting the employee *or* if the individual has the authority to direct the employee's daily work activities.

Tangible Employment Action means an actual change that has an actual adverse effect on the job or working conditions, such as hiring, transfer, suspension, lay off, recall, promotion, discharge, reward, discipline, and a decision causing a significant change in benefits, compensation decisions, and work assignment. When an employee claims to have been discriminated against or harassed by a supervisor, a tangible employment action supports the employee's case and may be required to be proved.

Undue Hardship means an accommodation resulting in significant difficulty or expense to the employer.

III. PROCEDURES

A. General Procedures

1. **DJS shall ensure all personnel actions concerning any employee or applicant for employment are taken based on merit and fitness and without regard to: *age, ancestry, color, creed, genetic information, gender identity and expression, marital status, mental or physical disability, national origin, race, religious affiliation, belief or opinion, sex, or sexual orientation.***

- a. DJS shall ensure that Regional Directors, Superintendents or Facility Administrators, Managers and Supervisors of all DJS units and Program Administrators of privately operated programs or facilities

- are familiar with the provisions of this policy and the application of this policy to employment issues through training.
- b. DJS shall provide education, training, mediation of disputes, and the investigation of allegations of employment discrimination.
 - c. DJS shall prominently display posters at each DJS office and facility to inform employees about Maryland's prohibition against acts of employment discrimination in the workplace.
 - d. DJS managers and supervisors shall lead by example in their behavior and treatment of employees to create and maintain a discrimination-free workplace.
 - e. DJS shall require all employees to act in accordance with state and federal law and policy concerning discrimination.
 - f. The DJS Office of Fair Practices/EEO shall make it known to all staff that it is illegal to retaliate against a person who files a complaint or who comes forward as a witness and that such actions will not be tolerated and will result in disciplinary action(s).
 - g. DJS shall apply appropriate disciplinary actions against any employee found to be in violation of the law or this policy.
2. DJS shall ensure any employee with a disability who needs a change in their work environment or in the way in which their duties are customarily performed shall have the opportunity to request a **reasonable accommodation** that will allow the employee to accomplish their job duties.
- a. If an employee wants to request a reasonable accommodation, the employee shall make the request to their supervisor, manager, EEO Officer, or Human Resources Representative. All requests must be forwarded to the Office of Fair Practices within 5 business days of making the request.
 - b. A request may be made verbally or in writing. The adjustment or change must be for a disability and need not mention the ADA or use the term "reasonable accommodation".
 - c. The employee must provide medical documentation from a licensed physician or physician's assistant to the Office of Fair Practices to establish she has a disability and requires an accommodation. The medical documentation should explain the, the nature of the disability, the functional limitations, the duration of the disability and any suggested accommodations. All medical documentation is confidential and is subject to the provisions of the *DJS Confidentiality* and *HIPAA Policies*.
 - d. The Office of Fair Practices should promptly initiate the individualized assessment with the employee's supervisor and employee to determine the employee's needs and identify the appropriate accommodation.
 - e. The Office of Fair Practices shall review the employees request and documentation and determine if a reasonable accommodation should

be made. DJS is not required to provide the accommodation the employee wants. The Department may choose among reasonable accommodations as long as the accommodation selected is effective.

- f. The Office of Fair Practices shall provide the employee with a decision in writing to approve or deny the request for a reasonable accommodation.
- g. If an accommodation request is denied and an alternative accommodation is offered, the Department's notice should explain why it believes the chosen accommodation is effective and that the employee has a right to file an Equal Employment Opportunity complaint.

B. The Office of the Secretary will provide guidance to Unit Managers within the Department and inform all staff of the following:

- 1. That staff may contact the Director of the Office of Fair Practices/Equal Employment Opportunity or an EEO Officer, for additional information, to file an official complaint, or to inquire about an issue of discrimination;
- 2. That all employees shall cooperate with the Office of Fair Practices/EEO in the investigation of allegations of employment discrimination, and in this regard, complaint investigation documentation, as well as all records, policies, and any other information shall be made available to the EEO Officer during an investigation; and
- 3. That DJS shall apply appropriate disciplinary actions against any employee found to be in violation of the law or this policy.

C. The Director of the Office of Fair Practices/Equal Employment Opportunity shall:

- 1. Investigate and address all issues once he/she becomes aware of the complaint or issues;
- 2. Where a complainant does not want to file a complaint, yet the agency/EEO Officer is aware of an EEO violation, the EEO Officer shall address the issue while protecting the complainant and effectively addressing the issue to avoid replication and further harm;
- 3. The DJS EEO Office shall be authorized to provide supervisory training to the staff;
- 4. The DJS Office of Fair Practices/EEO shall make all attempts to mediate and address complaints informally and at the lowest possible level that provides redress and fairness; and
- 5. The DJS Office of Fair Practices/EEO shall inform all staff that they can file their complaint informally or formally with external agencies and shall

provide the staff person with contact information for these external agencies.

D. All staff have the right to file complaints free from all forms of retaliation and adverse tangible employment actions.

Employees may file an informal complaint with the Office of Fair Practices/EEO or a formal complaint with the Maryland Commission on Civil Rights (MCCR) or the U.S. Equal Employment Opportunity Commission (EEOC) without any retaliation or adverse tangible employment action.

E. Release Time from Duties/Work

1. An employee who initiates a discrimination complaint shall be granted a reasonable amount of release time by their supervisor for processing, participating in, and/or providing information in any step of the complaint process.
2. An employee who has been designated as a witness shall be granted a reasonable amount of release time to participate, or provide information, in any step of the complaint process.
3. An employee shall get prior supervisory approval for release time.
4. An employee shall request release time at least twenty-four (24) hours in advance.

F. Filing a Complaint

1. For discrimination complaints based on **age, ancestry, color, creed, genetic information, gender identity and expression, marital status, mental or physical disability, national origin, race, religious affiliation, belief or opinion, sex, or sexual orientation**, an employee must complete a Discrimination Complaint Form (Appendix 1.)
 - a. An employee may file a complaint based on discrimination with the MCCR or the EEOC; both external agencies investigate discrimination complaints based on **age, ancestry, color, creed, genetic information, marital status, mental or physical disability, national origin, race, religious affiliation, belief or opinion, sex, or sexual orientation**. The EEOC does not accept discrimination complaints based on **gender identity and expression**; however, the MCCR will accept this type of complaint.
2. For complaints based on **unfair management practices, harassment, or the creation of a hostile work environment**, an employee must complete an **Unfair Management Practices/Harassment Complaint Form (Appendix 2)** and a **Hostile Work Environment Questionnaire (Appendix 3)**.

- a. An employee **cannot** file a complaint based on unfair management practices, harassment, or the creation of a hostile work environment with the MCCR or the EEOC since neither external agency investigates complaints based on **unfair management practices, harassment, or the creation of a hostile work environment.**
3. The complainant and the Director of the Office of Fair Practices, or a designee must sign and date a **Complaint Procedure Acknowledgement Form (Appendix 4).**
4. The complaint must be filed within the following time limits:
 - a. To qualify for appeal rights within the Maryland Department of Budget and Management (DBM), the complaint must be filed within 30 days from the time the alleged act of discrimination took place or 30 days from the time the complainant had knowledge of the alleged act.
5. All complaints must contain the following:
 - a. The full name, address and telephone number of the complainant;
 - b. The full name and address of the Department and if applicable, the full name and address of the person (s) against whom the complaint is made;
 - c. For discrimination complaints, a clear and concise statement of the facts constituting the alleged act(s) of discrimination, including when and where the alleged discriminatory behavior took place; to include a statement of how **age, ancestry, color, creed, genetic information, gender identity and expression, marital status, mental or physical disability, national origin, race, religious affiliation, belief or opinion, sex, or sexual orientation** is believed to be the basis for the alleged discrimination, documentation, name and contact information of witnesses, and any other materials deemed relevant to the complaint;
 - d. For unfair management practices, harassment, and/or the creation of a hostile work environment complaint, a clear and concise statement of the facts constituting the alleged act(s) of unfair management practices, harassment, and/or the creation of a hostile work environment, including when and where the alleged act(s) took place, documentation, name and contact information of witnesses, and any other materials deemed relevant to the complaint; and

- e. The signature of the complainant and the date the complaint was filed.

G. Acceptance of Complaint

1. The Fair Practices/EEO Officer shall accept all complaints and shall counsel the complainant regarding:
 - a. The right to file a complaint with the Office of Fair Practices/EEO and to seek a remedy through the investigative, mediation, or grievance procedure;
 - b. The right to file a complaint with other external administrative bodies (i.e., MCCR and the EEOC);
 - c. The right to amend the complaint to clarify and amplify allegations or to correct technical defects or omissions; and
 - d. Instructions for completing the **Discrimination Complaint Form (Appendix 1)**, **Unfair Management Practices/Harassment Complaint Form (Appendix 2)**, **Hostile Work Environment Questionnaire (Appendix 3)**, and/or the **Complaint Procedure Acknowledgement Form (Appendix 4)**.

H. The EEO Office shall attempt to schedule a Mediation

1. During the intake of a complaint, the EEO Officer shall explain the mediation process to the complainant. The complainant shall be given the option of having the complaint mediated or investigated.
2. If the complainant **and** respondent(s) agree to mediation, the EEO Officer will schedule and arrange the mediation conference with an objective mediator from the DBM Office of Personnel Services and Benefits, Shared Neutrals Mediation Program.
3. All information developed during the mediation conference is confidential.

I. Investigating the Complaint

An EEO Officer or Fair Practices Officer assigned to investigate a complaint of discrimination may conduct interviews and obtain relevant, information and documentation necessary to investigate and resolve issues presented by the complainant.

1. When a complaint is filed within the Department, the EEO Officer shall contact the complainant and the respondent(s) within thirty (30) days after the complaint has been filed. The EEO Officer also shall forward a copy of the complaint to the Director of the Office of Fair Practices/EEO.

2. The complainant may choose either an investigation or mediation.
3. The EEO Officer or designee shall conduct an impartial and thorough investigation under the direction of the Fair Practices Officer and prepare a written report within thirty (30) days of the receipt of the complaint. The EEO Officer may request that the parties waive the 30-day requirement if additional time is needed to complete the investigation and issue the report.
4. Through the investigation, the EEO Officer shall ascertain all facts surrounding the complaint. All records (including personnel records) policies, witnesses and any other information and documentation, shall be made available to the EEO Officer.
5. The EEO Officer shall advise the complainant that the Department shall ensure confidentiality.
6. The employees involved in the investigation, including the complainant, respondent and witness, shall be advised that employees are protected against retaliation for filing or aiding an investigation of a discrimination complaint.
7. Upon conclusion of the investigation, the EEO Officer, under the direction of the Director of Fair Practices/EEO, shall prepare an investigative report, which shall provide findings and make recommendations, under separate cover, if appropriate.
8. The investigative report shall be submitted to the DJS Chief of Staff, the appropriate Deputy Secretary and Assistant Secretary with authority over the complainant's unit, Residential Executive Director in complaints involving staff persons in residential services, Regional Directors responsible for staff in regional offices, Superintendents, direct supervisors and managers, for the implementation of the Office of Fair Practices/EEO recommendations of disciplinary action(s), if any.
9. The Office of Fair Practices/EEO shall send a determination notice to the complainant and the respondent(s). The notice shall include appeal rights and a warning regarding retaliation.
10. An employee who fails to cooperate during an investigation, provides false information, obstructs, or in any way impedes an investigation shall be subject to disciplinary action up to and including termination.

J. Complaint Withdrawal Procedure

1. An individual who files a complaint may withdraw it at any time by completing a **Complaint Withdrawal Form (Appendix 5)**.
2. The individual must certify that the withdrawal was made without threat, abuse, restraint, intimidation, harassment, interference, coercion or reprisal.
3. Within ten (10) business days after the complaint has been withdrawn, an Office of Fair Practices EEO Officer will notify the parties in writing of the withdrawal.

K. Appealing the Recommendation and Decision

1. If the complainant is dissatisfied with the determinations made by the Office of Fair Practices/EEO, the complainant may appeal within ten (10) business days to the DBM Office of the Statewide EEO Coordinator.
2. If the complainant is dissatisfied with the determinations made by the Office of Fair Practices/EEO, the complainant has the right to file a complaint of discrimination with the MCCR or the EEOC.
3. If the respondent is dissatisfied with the determinations made by the Office of Fair Practices/EEO, the respondent has the right to submit a written rebuttal to the DJS Office of Fair Practices/EEO. The Office of Fair Practices/EEO shall review this rebuttal, write, and submit an addendum to the initial findings to the appropriate parties, if warranted.

L. The Maintenance of Files

1. A file containing all documents pertinent to the complaint shall be established by the Office of Fair Practices/EEO.
2. The file shall include, but not be limited to, the following:
 - a. The original complaint form;
 - b. All correspondence relative to the complaint and the subsequent investigation;
 - c. Notes of all interviews conducted;
 - d. The Investigative Report;
 - e. Determination Notices;
 - f. Mediation Documentation, when applicable; and
 - g. Appeal Documentation, when applicable.

IV. RESPONSIBILITY

HQ Administrators, Facility Administrators and Regional Directors are responsible for implementation and compliance with this procedure.

V. INTERPRETATION

The Deputy Secretary for Support Services shall be responsible for interpreting and granting any exceptions to these procedures.

VI. LOCAL OPERATING PROCEDURES REQUIRED

No

VII. DIRECTIVES/POLICIES REFERENCED

No policies referenced.

VIII. APPENDICES

All forms can be found on the intranet under Forms/Office of Fair Practice Equal Employment/Complaint Forms.

1. Discrimination Complaint Form
2. Unfair Management Practices or Harassment Complaint Form
3. Hostile Work Environment Questionnaire
4. Complaint Procedure Acknowledgement Form
5. Complaint Withdrawal Form



DJS POLICY AND STANDARD OPERATING PROCEDURES

Statement of Receipt and Acknowledgment of Review and Understanding

SUBJECT: Equal Employment Opportunity
NUMBER: MGT-05-12
APPLICABLE TO: All DJS Staff
EFFECTIVE DATE: January 11, 2012
REVISION DATE: December 19, 2017

I have received and reviewed a copy (electronic or paper) of the above titled policy and procedures. I understand the contents of the policy and procedures.

I understand that failure to sign this acknowledgment form within five working days of receipt of the policy shall be grounds for disciplinary action up to and including termination of employment.

I understand that I will be held accountable for implementing this policy even if I fail to sign this acknowledgment form.

SIGNATURE

PRINT FULL NAME

DATE

WORK LOCATION

SEND THE ORIGINAL, SIGNED COPY TO VERNELL JAMES IN THE DJS OFFICE OF HUMAN RESOURCES FOR PLACEMENT IN YOUR PERSONNEL FILE.