

September 7, 2011

**MEMORANDUM TO ALL DEPARTMENT EMPLOYEES**

**SUBJECT:** Policy Statement on the No FEAR Act

On May 15, 2002, the Notification and Federal Employee Antidiscrimination and Retaliation Act (No FEAR Act) was enacted. The purpose of the Act is to “require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws” (Public Law 107-174, Summary). In support of this purpose, Congress found that “agencies cannot be run effectively if those agencies practice or tolerate discrimination” (Public Law 107-174, Title I, General Provisions, Section 101(1)).

To ensure such accountability, I am reiterating my commitment to promoting and maintaining a work environment free from discrimination and retaliation. The U.S. Department of Education (ED) is committed to achieving a strong, effective, high-performing, and diverse workforce and ensuring that the workplace is free of discrimination and/or harassment in any form, is inclusive and fair, and encourages all employees to develop to their full potential.

ED prohibits discrimination against an employee or applicant with respect to the terms, conditions, or privileges of employment on the basis of race, color, age, national origin, sex, gender identity, religion, disability, genetic information, sexual orientation, marital status, political affiliation, or status as a parent, or in retaliation for opposing discriminatory practices and/or participating in the discrimination complaint process.<sup>1</sup>

If you believe that you have been the victim of unlawful discrimination on the basis of race, color, age, national origin, sex, gender identity, religion, disability, genetic information, sexual orientation, marital status, political affiliation, or status as a parent, or in retaliation for opposing discriminatory practices and/or participating in the discrimination complaint process, you must contact the Office of Management, Equal Employment Opportunity Services (EEOS) at [OM\\_EEOS@ED.GOV](mailto:OM_EEOS@ED.GOV), or by telephone at (202) 401-3560, within 45 calendar days of the alleged discriminatory action or, in the case of a personnel action, within 45 calendar days of the effective date of the action, before you can file a formal complaint of discrimination with ED.

Additionally, in accordance with the U.S. Equal Employment Opportunity Commission’s (EEOC’s) regulations and guidelines, and the Administrative Dispute Resolution Act of 1996, ED promotes the use of the alternative dispute resolution process to resolve workplace disputes or EEO complaints. For additional information on the alternative dispute resolution process,

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<sup>1</sup> Anti-discrimination laws enforced by the EEOC do not specifically prohibit discrimination based on sexual orientation, gender identity, status as a parent, marital status, or political affiliation. However, ED has an internal policy that permits employees to raise such complaints with EEOS.

please contact the Office of Management, Alternative Dispute Resolution Center by e-mail at [ADR\\_CENTER@ED.GOV](mailto:ADR_CENTER@ED.GOV), or by telephone at (202) 219-0955.

If you believe that you have been the victim of unlawful discrimination on the basis of age, you must either contact EEOC within 45 calendar days as noted above, or give EEOC notice of intent to sue within 180 days of the alleged discriminatory action.

If you are alleging discrimination based on marital status or political affiliation, you may also file a written complaint with the U.S. Office of Special Counsel.

As an alternative, you may pursue a discrimination complaint by filing a grievance through ED's administrative or negotiated grievance procedures.

Whistleblower protection laws and related statutes shield employees from retaliation for reporting the illegal acts of employers. An employee may seek corrective action from the Merit Systems Protection Board (MSPB) regarding any personnel action that is proposed or taken against the individual as a result of whistleblowing, as defined in 5 U.S.C. 2302(b)(8). Further information regarding filing whistleblower claims is available on the MSPB Web site at [www.mspb.gov](http://www.mspb.gov).

Section 301 of the No FEAR Act requires each Federal agency to post summary statistical data pertaining to complaints of employment discrimination filed against it by employees, former employees, and applicants for employment. The specific data to be posted is further described in section 301(b) of the Act and 29 CFR 1614.704. ED's summary data of complaints filed against the agency is located at <http://www.ed.gov/about/offices/list/om/reports.html>.

I know that I can count on all ED employees to play their part in effecting positive change in the culture and inclusiveness of ED. Responsibility for this belongs to all of us, and we are committed to eliminating all forms of discrimination in our workplace.

/s/

Arne Duncan