GENERAL ADMINISTRATION
NON-DISCRIMINATION

050 NON DISCRIMINATION

050.2 Harassment Policy

050.2.1 Purpose

The purpose of this policy is to define and provide direction to address harassment in the workplace.

050.2.2 Definitions

A. "Harassment" means pursuing a pattern of conduct that disturbs, seriously alarms, or terrorizes another person on the basis of race, age, religion, color, national origin, ancestry, sex, physical or mental disability, serious medical condition, spousal affiliation, sexual orientation, or gender identity.

B. "Hostile work environment" means that the harassment is so severe and pervasive that it permeates the work atmosphere with ridicule and creates an abusive working environment. The claimed environment must be both subjectively and objectively hostile, one that a reasonable person would find hostile or abusive.

C. "Sexual harassment" in case of Human Services Department (HSD) employees, whether of the same or opposite sex, means unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when: 1) submission to such conduct is made explicitly or implicitly a term or condition of an individual's employment; 2) submission to or rejection of such conduct by an employee is used as the basis for employment decisions affecting that employee; 3) such conduct has the purpose or effect of unreasonably interfering with an employee's work performance or creates an intimidating, hostile or offensive work environment.

D. "Sexual harassment" in the case of HSD clients, whether of the same or opposite sex, means any sexual advance, requests for sexual favors, and/or other verbal or physical conduct of a sexual nature made by a HSD employee to a HSD client, whether or not such conduct is unwelcome to the client. This definition of sexual harassment of clients includes any HSD employee requesting or engaging in sexual conduct with:

- any client in an employee's caseload,
- if the employee is a supervisor, a client in the supervisor's workers' caseload, or
- a client otherwise affected by official actions of the employee.

050.2.3 Policy

A. HSD employees have the right to work in an environment free from harassment on the basis of race, age, religion, color, national origin, ancestry, sex, physical or mental disability, serious medical condition, spousal affiliation, sexual orientation, or gender identity whether engaged in by coworkers, supervisors, clients, or nonemployees who conduct business with HSD. Similarly, HSD clients have a right to apply for and receive services and benefits free from such harassment and HSD contractors have a right to perform their work free from harassment from HSD employees. Any claim must be both subjectively and objectively hostile, one that a reasonable person would find hostile or abusive.

B. The Harassment Policy is not for the enforcement of a general civility code. Some conduct (e.g., boorish, unprofessional behavior, expressions of animosity or juvenile provocation) may be undesirable and subject to discipline but is not necessarily harassment. When evaluating a claim of harassment, the following criteria are considered:

- the frequency of the conduct;
- its severity;
- whether it is humiliating or physically threatening;
- whether it unreasonably interferes with the targeted employee's work;
- whether a reasonable person would find the conduct hostile or abusive; and
- whether the complainant suffers an adverse employment action.

C. Performance feedback is not harassment or inappropriate behavior. Effective leadership requires that managers talk with their employees about their job performance. Such discussions may be difficult and should be done professionally and respectfully. However, constructive criticism and supervisory actions regarding legitimate performance deficiencies or other workplace issues are not harassment or retaliation.

D. Behaviors such as intimidating, coercing, threatening, discriminating against or taking reprisal against an employee or client for complaining about harassment or for assisting with an investigation of a complaint, are also prohibited.

E. HSD will take prompt corrective and/or disciplinary action for any act violating this policy or the rights it was designed to protect.

050.2.4 Examples of Sexual Harassment

A. Behavior toward HSD employees which may be interpreted as sexual harassment includes (but is not limited to):

1. Pattern of verbal or written (including electronic communication) sexual statements, comments, jokes, questions, or innuendos;

2. Display of sexually oriented visuals, such as calendars, cartoons, photos, or posters;

3. Assault, molestation, or unwelcome physical contact such as kissing, touching, patting, pinching, brushing against, or hugging;

4. Requests, demands, or subtle pressure for sexual activity;

5. Threats or retaliation against an employee who refuses unwelcome sexual attention or behavior;

6. Overt promises or any practice that implies preferential treatment for any employee in exchange for dates, sexual attention, or sexual behavior;

7. Pattern of sexual insult and innuendo, including lewd remarks, obscene gestures, sexually suggestive materials, or derogatory comments; or

8. Any conduct that denigrates, ridicules, or is abusive to an individual because of her or his gender, sexual orientation, or gender identity.

B. Sexual harassment of HSD clients includes (but is not limited to):

1. Verbal or written (including electronic communication) sexual statements, comments, or questions to clients other than statements, comments or questions required as part of an employee's normal job responsibilities (e.g., child support enforcement employee investigating a paternity case);

2. Requests, demands, or subtle pressure by an HSD employee for sexual activity as an expressed or implied condition for securing benefits or services for a client;

3. Overt promises or any practice that implies preferential treatment for a client in exchange for dates, sexual attention or sexual behavior;

4. Pattern of sexual insult and innuendo, including lewd remarks, obscene gestures, sexually suggestive materials, or derogatory comments made to clients;

5. Any physical sexual contact with clients, including kissing, touching, patting, pinching, brushing against or hugging;

6. Dating or otherwise engaging in a sexual relationship with a client who is in an employee's caseload or who is otherwise affected by official actions

of an employee; or

7. Any conduct that denigrates, ridicules, or is abusive to a client because of his/her gender, sexual orientation or gender identity.

050.2.5 Examples of Other Harassment

1. Pattern of verbal or written (including electronic communication) statements, comments, epithets, slurs, denigrating jokes, questions, or innuendos targeting race, age, religion, color, national origin, ancestry, physical or mental disability, serious medical condition, or spousal affiliation.

2. Display of offensive visuals, such as calendars, cartoons, photos, or posters that denigrates or shows hostility or aversion toward an individual or group on the basis of race, age, religion, color, national origin, ancestry, physical or mental disability, serious medical condition, or spousal affiliation, on HSD premises or is circulated in the workplace. This includes electronic communication.

3. Any conduct that denigrates, ridicules, threatens, intimidates or is abusive to an individual or group on the basis of race, age, religion, color, national origin, ancestry, physical or mental disability, serious medical condition, or spousal affiliation.

050.2.6 Responsibility to Report Harassment

A. Any supervisor who has knowledge of harassment within HSD must report it as soon as practically possible. Under no circumstances may a supervisor withhold any information about reported or observed harassment. Supervisors must report alleged harassment even if the employee reporting such harassment asks that no action be taken.

B. All employees must report instances of alleged harassment of clients to management.

C. Every employee who is a victim of harassment or has knowledge of any instance of harassment in the workplace is encouraged to report it immediately to OHR's Employee Relations Section.

050.2.7 How to Report Harassment

A. Usually an employee reporting harassment does so to his/her immediate supervisor. If the immediate supervisor is the alleged harasser, the next-in-line supervisor should be notified. At the employee's option, the employee may

directly contact OHR's Employee Relations Section without going through the chain-of-command.

B. Supervisors will report incidents of harassment to their supervisors and to the Office of Human Resources (OHR) Employee Relations Section.

050.2.8 Investigation of Complaints

A. OHR's Employee Relations Section either investigates or assigns the investigation to local managers. The Employee Relations Section monitors and reviews the results of investigations. All cases are promptly investigated in as confidential a manner as is practical and appropriate under the circumstances.

B. A written report is prepared within 60 days of receipt of a complaint of harassment, unless there are extenuating circumstances. A summary of the findings and recommendations is provided to the Cabinet Secretary or designee. A summary of the findings and recommendations is also provided to the complainant and the accused. If an allegation is substantiated, steps are taken to remedy the situation.

050.2.9 Discipline

A. Harassment may be cause for dismissal and not subject to progressive discipline.

B. If an investigation finds that a complainant, knowingly or in a malicious manner, has falsely accused another of harassment, the complainant is subject to discipline.

C. Supervisors and managers who fail to report or take prompt and appropriate action in response to actual or alleged incidents of harassment are also subject to discipline.

D. Employees who fail to report incidents of harassment of clients are also subject to discipline.

050.2.10 Responsibilities of Managers and Supervisors

Managers and supervisors have the following responsibilities:

1. Know the harassment policy;

2. Abstain from any statements or behavior which could be reasonably construed as harassment;

3. Be alert, in the course of providing supervision, to potential instances of harassment;

4. Notify OHR's Employee Relations Section immediately on receipt of an allegation of harassment or observation of unwelcome behavior and/or verbal exchanges that indicate harassment may be occurring or may have occurred;

5. Cooperate with OHR's Employee Relations Section in the investigation of harassment complaints;

6. Monitor the situation, after a complaint of harassment has been substantiated, to ensure the harassment has stopped;

7. Ensure anyone involved in a harassment complaint is not subjected to retaliation.

050.2.11 Confidentiality

A. Harassment allegations are investigated in as confidential a manner as is practical and appropriate under the circumstances. Absolute guarantees of confidentiality or anonymity cannot be given because of investigative requirements and the right of the accused to know his/her accusers.

B. During the investigation process, witnesses or potential witnesses who are interviewed have the responsibility to maintain confidentiality about their interviews. Breaches of confidentiality may subject an employee to disciplinary action.

050.2.12 Retaliation

A. Retaliation against an employee alleging harassment or an employee participating in the investigative process is strictly prohibited and will subject the employee engaging in retaliation to severe disciplinary action, up to and including dismissal. Retaliation may include disciplining, changing work assignments of, providing inaccurate work information to, denying benefits of employment, or refusing to cooperate or discuss work-related matters with any employee because that employee has complained about or resisted harassment or retaliation. Victims of retaliation are encouraged to report such retaliation to the Employee Relations Section immediately.

B. Retaliation against a client alleging harassment or a client participating in the investigative process is strictly prohibited and will subject the employee engaging in retaliation to severe disciplinary action, up to and including dismissal. Retaliation may include but is not limited to denying goods or services.

050.2.13 Training

Prevention is the best way to eliminate harassment. Training to increase knowledge about HSD's harassment policy, laws and issues, and the processes for enforcing this policy and applicable laws is provided by or coordinated through OHR. All HSD employees must attend HSD's harassment training.

050.2.14 References

New Mexico Human Rights Act (28-1-1 NMSA 1978)
Title VII of the Civil Rights Act of 1964
29 C.F.R. § 1604.11 [1980]

APPROVED:

PAMELA S. HYDE, J.D., Secretary

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