GENERAL ADMINISTRATION
NON-DISCRIMINATION

050 NON-DISCRIMINATION

050.1 Non-Discrimination in Employment Practices Policy

050.1.1 Purpose

The Human Services Department (HSD) is fully committed to providing equal opportunity for all persons. HSD complies with all state and federal laws prohibiting discrimination through employment practices on the basis of race, age, religion, color, national origin, ancestry, sex, genetic information, physical or mental handicap or serious medical condition, spousal affiliation, sexual orientation, or gender identity.

050.1.2 Definitions

A. "Bona fide occupational qualification" means those instances where the attribute is reasonably necessary to the normal operation of that particular business.

B. "Discrimination" means an adverse employment practice taken against an otherwise qualified person because of race, age, religion, color, national origin, ancestry, sex, genetic information, physical or mental handicap or serious medical condition, spousal affiliation, sexual orientation, or gender identity.

C. "Employment practices" means actions that affect terms and conditions of employment including, but not limited to, recruitment, selection, promotion, transfer, salary changes, training and development, demotion, and separation.

050.1.3 Policy

Decisions in employment practice are made without regard to race, age, religion, color, national origin, ancestry, sex, genetic information, physical or mental handicap or serious medical condition, spousal affiliation, sexual orientation, or gender identity, except when one of these criteria is a bona fide occupational qualification.

050.1.4 Responsibility to Report Discrimination

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

B. Every employee who perceives that they are a subject of discrimination or has knowledge of any instance of discrimination in the workplace should report it immediately.

050.1.5 How to Report Discrimination

A. Supervisors report incidents of discrimination to their supervisors and to the Office of Human Resources (OHR) Employee Relations Section.

B. An employee is encouraged to report discrimination to his/her immediate supervisor. If the immediate supervisor is the discriminator, 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.

050.1.6 Investigation of Complaints

A. OHR's Employee Relations Section either investigates or refers the investigation to the appropriate manager. 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 discrimination, unless there are extenuating circumstances. A summary of the findings and recommendations is given 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.

050.1.7 Discipline

A. Discrimination may subject the employee to disciplinary action.

B. If an investigation finds that a complainant, knowingly or in a malicious manner, has falsely accused another of discrimination 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 discrimination are also subject to discipline.

050.1.8 Confidentiality

A. Discrimination 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.

050.1.9 Retaliation

Retaliation against an employee alleging discrimination or an employee participating in the investigative process is strictly prohibited and will subject the employee engaging in retaliation to disciplinary action. 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 discrimination or retaliation. Employees who believe they are being retaliated against should report such retaliation to OHR's Employee Relations Section immediately.

050.1.10 References

HSD Recruitment, Interviewing, and Selection Policy
HSD Harassment Policy
HSD ADA Reasonable Accommodation Policy
Americans with Disabilities Act of 1990 (42 U.S.C.§§ 12101 et seq.)
Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794)
Civil Rights Act of 1964) 42 U.S.C. Chapter 21
NM Human Rights Act (28-1-1, NMSA, 1978)

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PAMELA S. HYDE, J.D., Secretary 2/25/09

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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

DATE: 6/26/09

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050.3 ADA Reasonable Accommodation Policy

050.3.1 Purpose

To provide reasonable accommodation to a qualified Human Services Department (HSD) employee with a known disability under described conditions.

050.3.2 Definitions

A. "Life activities" means fundamental behavior such as walking, standing, seeing, hearing, speaking, breathing, or learning.

B. "Qualified" means an HSD employee or applicant with a disability who meets at least one of the following criteria:

1. Has a physical or mental impairment that substantially limits one or more of his/her major life activities;
2. Has a record of such an impairment;
3. Is regarded as having such an impairment.

C. "Reasonable Accommodation" means any change in the work environment or in the way things are usually done that reasonably accommodates the known physical or mental limitations of a qualified employee with a disability, unless it can be shown that the accommodation would cause an undue hardship on the operation of the business.

D. "Undue Hardship" means any actions that would require significant difficulty or expense or that would fundamentally alter the nature of the employment.

050.3.3 Policy

HSD will provide reasonable accommodation to a qualified employee with a known disability upon the employee's request unless the accommodation would be an undue hardship to HSD.

050.3.4 Request for Accommodation

A request for a reasonable accommodation should be initiated by the employee and shall be made to the employee's immediate supervisor.

050.3.5 Appeal

If an employee's immediate supervisor denies or does not respond to the request for accommodation, the requesting employee may appeal in writing to HSD's ADA Coordinator. If the request is denied at this level, the requestor may make a final written appeal to the HSD Office of Human Resources Manager. Responses to request for accommodation and appeals shall be made within a reasonable time. A reasonable time is necessarily flexible, taking into consideration such factors as the complexity of the request, any need for medical information, examinations or opinions, cooperation of the employee in obtaining information, and so forth.

050.3.6 References

Americans With Disabilities Act of 1990 (42 U.S.C. 12101 et seq.)
28-7-7 NMSA (1978) Policy of state on employment of persons with a disability
28-10-11 NMSA (1978) State Policy

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050.4 Whistleblower Policy

050.4.1 Purpose

The purpose is to guarantee all Human Service Department (HSD) employees the right to present or make known their concerns about wrongdoing free from interference, restraint, discrimination, coercion, or reprisal.

050.4.2 Definitions

A. "Good Faith Effort" means in compliance with standards of decency and honesty, reasonable belief, and making a full declaration of all material facts.

B. "Complainant" means an HSD employee who reports internal wrongdoing (as defined in this policy) to HSD (i.e., whistleblower).

C. "Wrongdoing" means, for purposes of this policy, a violation of any state or federal law, HSD policy, NM Department of Finance and Administration rule, and any rule or regulation of state or federal authority; gross mismanagement or waste of funds; an abuse of authority; or a substantial and specific danger to public health or public safety.

050.4.3 Policy

When an allegation is not covered under other HSD policies or procedures (i.e., personnel, harassment, and discrimination), an HSD employee has the right to disclose truthful information evidencing wrongdoing by HSD employees and managers to HSD's Office of Human Resources (OHR). The primary point of contact is OHR's Employee Relations Section. If the wrongdoing involves an OHR employee, it should be reported to HSD's Office of the Inspector General (OIG).

050.4.4 Responsibility of Employee

A. Prior to making an allegation under the provisions of this policy, the employee must make a good faith effort to determine the accuracy or truthfulness of the information.

B. This policy does not protect any employee who makes or repeats reckless, spurious or defamatory allegations without a reasonable effort to determine the accuracy or truthfulness of the allegations. Employees making allegations under

the provisions of this policy who, either before or after their disclosures, violate provisions of state or federal laws, State Personnel Board Rules, or HSD policies and regulations or other governing agencies, are not afforded immunity from disciplinary action for such violations. Disciplinary action in such cases is not considered retaliation.

050.4.5 Responsibility of HSD

A. OHR's Employee Relations Section either investigates or refers the investigation to another appropriate unit (i.e., OIG). The Employee Relations Section monitors and reviews the results of investigations as appropriate. 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 90 days of receipt of a complaint of wrongdoing, unless there are extenuating circumstances. A summary of the findings and recommendations is given to the Cabinet Secretary or Designee. If an allegation is substantiated, steps are taken to remedy the situation.

050.4.6 Discipline

A. Wrongdoing may subject the employee to disciplinary action up to and including dismissal.

B. If an investigation finds that a complainant, knowingly or in a malicious manner, has falsely accused another of wrongdoing, 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 wrongdoing are also subject to discipline.

050.4.7 Retaliation

Retaliation against an employee alleging wrongdoing 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 wrongdoing or retaliation. Employees who believe they are being retaliated against should report such retaliation to OHR's Employee Relations Section immediately.

050.4.8 References

1.7.6.13 NMAC
HSD Collective Bargaining Agreement

APPROVED:

PAMELA S. HYDE, J.D., Secretary

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