

Nondiscrimination in Education & Training Programs

EQUAL EMPLOYMENT PROGRAMS (1600)

1. **MATERIAL TRANSMITTED**: This Order promulgates the Merit Systems Protection Board's policy and procedures regarding enforcement of non-discrimination in the MSPB's education and training programs and activities. The Order establishes procedures for MSPB employees, employees of other Federal agencies, and members of the general public to follow when alleging discrimination based on race, sex, color, national origin, disability, religion, age, sexual orientation, status as a parent, and/or retaliation for an individual's having raised concerns, reported claims, or filed complaints alleging discrimination in any of the education and training programs and activities conducted, operated, or undertaken by the MSPB.
2. **MATERIAL SUPERSEDED**: None.
3. **FILING INSTRUCTIONS**: After review by appropriate staff, file a copy of this Order in numerical sequence with the office collection of MSPB orders and manuals.

/s/ _____
Susanne T. Marshall
Acting Chairman

**ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF RACE, SEX,
COLOR, NATIONAL ORIGIN, DISABILITY, RELIGION, AGE, SEXUAL
ORIENTATION, AND STATUS AS A PARENT IN THE MERIT SYSTEMS
PROTECTION BOARD'S EDUCATION AND TRAINING PROGRAMS**

1. **PURPOSE.** This Order establishes procedures for MSPB employees, employees of other Federal agencies, and members of the general public to follow when alleging discrimination based on race, sex, color, national origin, disability, religion, age, sexual orientation, status as a parent and/or retaliation for an individual's having raised concerns, reported claims, or filed complaints alleging discrimination in any of the education and training programs and activities conducted, operated, or undertaken by the MSPB.
2. **EFFECTIVE DATE.** April 24, 2002.
3. **AUTHORITY.** Executive Order (EO) 13160 – Ensuring Equal Opportunity in Federally Conducted Education and Training Programs, June 23, 2000; and, Department of Justice Guidance Document, Federal Register/Vol. 66, No. 12/Thursday, January 18, 2001.
4. **POLICY.** It is the MSPB's policy to conduct, offer, and undertake education or training programs or activities in compliance with Federal and State non-discrimination laws, rules and regulations. The MSPB: 1) selects program participants without regard to race, color, sex, age, national origin, religion, sexual orientation, disability, status as a parent, or whether the applicant raised concerns, reported claims, or filed complaints alleging discrimination; 2) makes its education or training programs or activities available to only those entities that select program participants in compliance with Federal and/or State non-discrimination laws; and 3) ensures that program participants are not subjected to discriminatory treatment because of their protected status.
5. **COVERAGE.** The policy and procedures detailed in this Order apply to all of the education and training programs and activities conducted, operated or undertaken by the MSPB.
6. **NOTICE.** The agency shall make available to MSPB employees, employees of other Federal agencies, and members of the general public such information regarding the provisions of this Order, and its applicability to the education or training programs or activities conducted, operated or undertaken by the MSPB in such a manner as the head

of the agency finds necessary to apprise such persons of the protections against discrimination.

7. **ADMINISTRATIVE ENFORCEMENT.** In order to promote the consistent and effective enforcement of equal employment opportunity mandates for all Federal employees, and to preserve the integrity of statutorily protected equal employment opportunity rights, complaints filed under both this Order and existing equal employment opportunity laws will be consolidated and adjudicated under the relevant equal employment opportunity statutes (i.e., Title VII, sections 501/504, and/or the ADEA).

This means that a Federal employee seeking to file a complaint under this Order must indicate whether the complaint is related to his or her employment and, if so, whether he or she has filed any other EEO claims arising out of the same circumstances. If so, the complaint filed under this Order will be consolidated with the related claim and the enforcement procedures set forth below will be inapplicable. If, however, a Federal employee chooses to proceed solely under this Order, the enforcement procedures set forth below will govern the disposition of his or her complaint.

If a Federal employee indicates that he or she has not filed any other EEO claims at the time of filing a complaint under this Order, the employee may nevertheless subsequently elect to file a related claim under Title VII, section 504, the ADEA, or Executive Order 11478, provided the employee follows the appropriate EEO filing procedures and contacts an EEO counselor and files a complaint within the relevant statutory time limit.

- A. **DEFINITIONS.** For purposes of this Order, the term –

Agency means the Merit Systems Protection Board (MSPB).

Appropriate agency official means the officer or officers within the agency designated to determine what, if any, disciplinary action, remedial action, or corrective action should be taken as a result of a violation of this Order.

Complete complaint means a written statement that contains the complainant's name, address, and phone number, describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and approximate date of the alleged violation, and identifies whether the complainant is an employee of the agency alleged to have committed the discrimination and whether the complainant's involvement in the relevant education or training program was related to his or her employment. A

complete complaint must be signed by the complainant or by someone authorized by the complainant to sign on his or her behalf.

Education and training programs and activities include, but are not limited to:

- (1) formal schools;
- (2) extracurricular activities;
- (3) academic programs;
- (4) occupational training;
- (5) scholarships and fellowships;
- (6) student internships;
- (7) training for industry members;
- (8) summer enrichment camps;
- (9) teacher training programs; and
- (10) outreach.

Investigating office means the MSPB's Office of Equal Employment Opportunity (OEEEO), which is designated to investigate complaints regarding violations of this Order or its implementing rules, regulations, policies, or guidance.

Respondent means the MSPB organizational unit in which the alleged discrimination occurred.

B. **FILING A COMPLAINT.** Any individual who believes he or she is aggrieved by a violation of this Order may, personally or through a representative, file a written complaint with the MSPB's Office of Equal Employment Opportunity, 1615 M Street, NW, Washington, DC 20419.

1. **Complete Complaints.** In order to be accepted for investigation, all written complaints must be "complete complaints." As defined above, a complete complaint must include the name, address, and telephone number of the complainant, must identify whether the complainant is a Federal employee and whether the complainant's involvement in the relevant education program was related to his or her employment, and must describe the alleged discriminatory conduct in sufficient detail to inform the agency as to the nature and approximate date of the alleged violation. A complete complaint also must be signed by the complainant or by someone authorized by the complainant to sign on his or her behalf.

2. **Time limits for filing complaints.** All complaints to be processed under this Order must be filed, i.e., either postmarked or received, within 180 calendar days of the alleged discrimination. However, the Director, OEEO may extend this time limit:
 - a. If the complainant can demonstrate that he or she had no notice of the time limit and was not otherwise aware of it; or
 - b. If the complainant can demonstrate that he or she was prevented by circumstances beyond his or her control from submitting the complaint in a timely fashion; or
 - c. For other reasons, or under other circumstances, considered sufficient by the Director, OEEO.
3. **Class Complaints.** Any individual who believes that any specific class of persons has been subjected to discrimination prohibited by this Order may file a class complaint with the MSPB's Director, OEEO, provided that individual is either a member of the allegedly aggrieved class of persons or a representative of a member of the allegedly aggrieved class of persons.
4. **Representation.** Any individual filing a complaint under this Order may be represented and assisted in all stages of these proceedings by an attorney or other representative of his or her own choosing. An individual has a responsibility to promptly inform the MSPB's Director, OEEO, if legal counsel is retained, and/or if he or she wishes to have any other representative included in these proceedings.

C. **THE PROCESS.**

1. **Acceptance.** If the complaint is complete, filed in a timely manner, and filed in the appropriate forum, the complaint will be investigated to determine whether the alleged discrimination occurred.
2. **Dismissal.** A complaint of alleged discrimination under this Order, may be dismissed:
 - a. When a complainant fails to provide additional information, or otherwise respond to the investigating office's request, within 30 days, without good cause shown; or

- b. When the investigating office determines that the alleged discriminatory conduct did not occur in an education or training program conducted by the MSPB. If the complaint is dismissed, the investigating office will issue a brief written determination explaining the basis for the dismissal and advising the complainant of his/her right to appeal this decision to the Attorney General for a final determination regarding coverage pursuant to Section 2-203 of Executive Order 13160.
3. **Informal Resolution.** Before undertaking a formal investigation, the MSPB will attempt to resolve complaints filed pursuant to this Order through Alternative Dispute Resolution procedures, whenever appropriate. If informal resolution of a complaint cannot be reached within 45 days, or if efforts to achieve an informal resolution become futile, the MSPB's Office of EEO will initiate a formal investigation, if applicable.
4. **Formal Investigation.**
 - a. **Notification.** If the complaint is accepted for investigation, MSPB's Director, OEEO, will notify the complainant in writing of this fact.
 - b. **Time Frame.** The investigating office will attempt to complete the investigation within 180 days of the MSPB's receipt of a complete complaint.
 - c. **Investigative File.** The investigation will include a thorough review of the circumstances under which the alleged discrimination occurred and any other circumstances which may constitute, or appear to constitute, discrimination against the complainant.
 - d. **Witness Participation.** MSPB employees who are required to participate in any investigation concerning violations of this Order will do so as part of their official duties and during the course of regular working hours.
 - e. **Findings.**
 1. Upon receipt of a report which indicates there has been a violation of the EO or its implementing rules, regulations, policies, or guidance, the appropriate agency official shall determine:
 - a) what, if any, disciplinary action is appropriate; and

- b) whether any corrective or remedial action should be initiated.
2. If the official determines that the complainant is entitled to some form of remedial or corrective action, the agency official shall:
 - a) notify the complainant in writing; and
 - b) take all necessary steps to ensure that the corrective or remedial action is implemented.
3. If a determination is made that the complainant is not entitled to any corrective or remedial action, the complainant will be so notified and advised of the reasons for this finding.

D. AVAILABLE REMEDIES.

1. If an investigation finds that there was a violation of the EO, the complainant shall be entitled to all appropriate, non-monetary, equitable relief; i.e., that the complainant is placed in the same or equivalent position he or she would have occupied absent discrimination. (**PLEASE NOTE:** Nothing in the EO authorizes monetary relief to the complainant as a form of remedial or corrective action.)
2. Complainants may request judicial review of final decisions in accordance with the Administrative Procedures Act, 5 U.S.C. 701, *et seq.*

- E. REPORTING REQUIREMENTS.** For the first three years after issuance of this Order, the MSPB shall file annual reports with the Attorney General that summarize the number, nature, and disposition of complaints filed under this Order. Reports are to be submitted to the Assistant Attorney General for Civil Rights within 90 days of the end of the preceding year's activities. Subsequent reports are submitted every three (3) years and within 90 days of the end of the 3-year period.