SUMMARY of REVISION/ REVIEW

Title Change. Added FOP reference throughout. Changed Employee to Team Member throughout. Major revisions to format/order of items as well as numerous revisions to the investigation, review, reporting process of complaints as well as in investigations and final disposition. POLICY STATEMENT I. RIGHTS - Moved Definitions to own section, added new language including genetics. PURPOSE - Changed workplace discrimination to discrimination. GENERAL – Added “NDCS Investigations Coordinator” sentence. PROCEDURE - I.C – Removed section. II.A – Title change and significant language change. II.B.1. - significant language change to section and subsections. II.B.2 – Removed second paragraph. II.B.3. –Deleted section. II.B.4. –Deleted section. II.C.1- Title change and change to language of section and subsections. II.C.2 - Completely rewritten and removed b. II.D.1 – Language added. II.D.4 – Section added. II.D.5 – Section added. II.D.6 – Section added. II.D.7 – Section added. II.D.8 – Section added. Section II.E– Deleted. Section II.F – Deleted. Section II.G – Deleted. Section II.H – Deleted. Sections I./J. moved to E./F. Changes to Attachments B, D, E, and F. Deleted Attachments G and H. Reformatted to match Policy 001.01.

APPROVED:

Scott R. Frakes, Director
Nebraska Department of Correctional Services
PURPOSE

To provide guidance on the enforcement of equal opportunity within the Nebraska Department of Correctional Services (NDCS). This policy complies with the Nebraska Fair Employment Practice Act (Neb. Rev. Stat. §§48-1101 to 48-1125), the governing State Personnel Rules and Regulations and applicable union contracts and defines discrimination and workplace harassment (WPH) terms, all team member’s responsibilities, supervisory responsibilities, investigation procedures, complaint rights, and corrective actions.

GENERAL

NDCS policy subscribes to the principles of the Federal Civil Rights Act of 1964, the Nebraska Fair Employment Practice Act, all federal and state regulations promulgated thereunder and the State of Nebraska Equal Employment Opportunity (EEO) Policy and to create a work environment free from discrimination and harassment.

The NDCS Investigations Coordinator is designated by the Director to serve as the Agency Discrimination and Workplace Harassment contact.

POLICY STATEMENTS

I. RIGHTS

Equal Employment Opportunity is the right of all persons to work and to advance on the basis of merit and ability without regard to race, color, religion, sex, pregnancy, age, natural origin, disability, marital status or genetics. These rights include, but are not limited to, recruitment, hiring, training, promotion in all job classifications at all levels, discipline, transfers, benefits, and educational opportunities. (Attachment A) (4-4053, 4-4429-1)

A. Pregnancy includes an individual who is pregnant, who has given birth, or who has a related medical condition.

B. Disability includes a qualified individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that the individual holds or desires. (4-4054, 4-4429-1)

No team member will be subjected to discrimination on the basis race, color, religion, sex, pregnancy, age, natural origin, disability, marital status, or genetics. (4-4429, 4-4429-1)

DEFINITIONS

I. WORKPLACE HARASSMENT - Sexual harassment or any inflammatory comments, jokes, printed material and/or innuendo, based in whole or in part, on race, color, sex, religion, age, disability or national origin, when:

A. A reasonable person could conclude such conduct has the purpose or effect of creating an intimidating, hostile, or offensive working environment.

B. Such conduct interferes unreasonably with a person’s work or employment opportunities.

II. SEXUAL HARASSMENT - Any unwelcome sexual advances, requests for sexual favors, and either verbal or physical conduct or a sexual nature, when:
A. Submission to such conduct is made, either explicitly or implicitly, a term of an individual’s employment or a condition to receipt of services by a recipient of the agency’s services.

B. Submission to or rejection of such conduct by an individual is used as the basis for employment or agency decisions affecting a team member or a recipient of the agency’s services.

C. Such conduct has the purpose or effect of unreasonably interfering with a team member’s work performance or the receipt of services by the recipients of the agency’s services, or of creating an intimidating, hostile or offensive environment. (Attachment C and D)

PROCEDURE

I. EQUAL EMPLOYMENT OPPORTUNITY

A. The Department establishes a policy statement that clearly communicates a definitive position of equal opportunity. This policy statement is signed and reissued by the agency Director on an annual basis. Each Facility/Program posts copies of the Agency’s EEO Policy Statement in a prominent area (Attachment B).

B. All Programs ensure equal opportunity exists for all NDCS positions. Bona Fide Occupational Qualifications (BFOQ) may be requested by writing to the Director’s office through the Human Resources office. BFOQ includes bids on post/job assignments, vacancies and days off as provided for in the applicable labor contract.

C. Nebraska or Federal Equal Employment Opportunity complaints of disparate equal opportunity shall be immediately reported to the NDCS legal division by the Warden/Program Administrator. The legal division, with assistance from the Warden/Program Administrator and Human Resource, staff, shall submit the agency response.

D. Any team member whose action(s) cause non-compliance is subject to disciplinary action.

II. DISCRIMINATION AND WORKPLACE HARASSMENT

A. Team Member Responsibilities

Any team member witnessing or hearing any type of possible discrimination and/or workplace harassment/Sexual harassment has the responsibility to report it in writing to their supervisor, Warden/Program Administrator or Agency Discrimination and Workplace Harassment contact (402-479-5890). A team member still has the responsibility to report in cases where the parties involved have indicated they are not offended, have resolved the matter informally between themselves or there is no complainant. (4-4056)

B. Supervisor/Manager Responsibilities

Discrimination and/or workplace harassment creates a negative work environment, which will affect productivity, efficiency, work attendance and turnover of staff. In addition, allegations of discrimination and/or workplace harassment, which are not appropriately responded to by the agency, may place NDCS and the State of Nebraska in a position of potential liability to the victim of such discrimination and/or workplace harassment. It is
essential that supervisory/management personnel take all discrimination and/or workplace harassment complaints or situations seriously.

1. Receipt of Complaint

Any supervisor/manager who receives a complaint alleging discrimination and/or workplace harassment, who is aware of a situation involving a potential discrimination and/or workplace harassment, or in the event the complainant doesn’t allege WPH but there are allegations relating to race, color, religion, sex, pregnancy, age, national origin or disability, the supervisor/manager is required to:

a. Follow and complete the Discrimination/Workplace Harassment/Internal Complaint Allegations Supervisor’s Checklist (Attachment E).

1) Notification of Policy: Any supervisor/manager receiving a complaint alleging discrimination and/or workplace harassment shall immediately give the complainant a copy of the Policy 112.07, Equal Employment Opportunity and Policies Against Discrimination and Workplace Harassment. The complainant and respondent to the complaint will sign a receipt for the policy (Attachment F).

2) Confidentiality: Any supervisor/manager receiving a complaint or report of discrimination and/or workplace harassment or where there are allegations relating to race, color, religion, sex, pregnancy, age, national origin or disability shall protect the identity of the complainant(s) and of the accused party(ies) and shall hold the allegations of discrimination and/or workplace harassment in confidence pending appropriate action by the agency.

b. Report the complaint or situation to the Warden/Program Administrator, by submitting all related documentation and the completed Supervisor’s Checklist.

1.) The Completed Supervisor’s Checklist and all related documentation shall be submitted to the Warden/Program Administrator prior to the supervisor’s end of duty on the day the complaint/situation was reported. In the event it is not possible to complete the Supervisor’s Checklist in its entirety, the complaint/situation must be reported to the Warden/Program Administrator via email prior to the supervisor’s end of duty, to include all available applicable reports, a brief summary of the complaint/situation and a brief explanation of why the Supervisor’s Checklist could not be completed.

c. Upon receipt of the completed Supervisor’s Checklist and all applicable documentation, the Warden/Program Administrator shall immediately forward this documentation via email to the Agency Discrimination and Workplace Harassment contact and include a recommendation for necessary follow-up action.
d. For a situation involving a disability, refer also to Policy 004.01, ADA Policy.

2. Failure to Report

Any failure by a supervisor/manager to report such discrimination and/or workplace harassment complaints or situations shall be considered to be a violation of this policy and shall subject the supervisor/manager to appropriate corrective or disciplinary action.

C. Complainant Reporting Options

1. Agency Reporting

In the event that any team member of this agency believes that he/she has been or is being subjected to discrimination and/or workplace harassment, that person is encouraged, but not required, to report such alleged discrimination and/or workplace harassment to any supervisor/manager or the Agency Discrimination and Workplace Harassment contact.

a. Any team member who believes he/she is being subjected to discrimination and/or workplace harassment is encouraged, but not required, to directly inform the offending person(s) that such conduct is offensive and must stop.

b. If the aggrieved person does not wish to communicate directly with the offending person(s), or if direct communication has been ineffective, the aggrieved person is encouraged, but not required, to immediately report the alleged discrimination and/or workplace harassment to any supervisor/manager or the Agency Discrimination and Workplace Harassment contact.

c. In reporting allegations of discrimination and/or workplace harassment, complainants should take care to state specific facts including, wherever practical, the identity of the person(s) who committed such workplace harassment, the date, time and place of the alleged discrimination and/or harassment, what was specifically done or said and the identity of any witnesses who were present.

d. All complaints will be processed in a timely and confidential manner.

2. Other Reporting Options

a. Persons who wish to report allegations of discrimination and/or workplace harassment also may file a complaint with the Nebraska Equal Opportunity Commission (NEOC) and/or the Federal Equal Employment Opportunity Commission (EEOC) and/or the Department of Administrative Services (DAS) and/or the Office of the Public Counsel. It is neither necessary nor required that a team member of the agency file a charge of discrimination and/or workplace harassment with the agency before filing a formal complaint with any of these agencies. There is nothing to prevent a team member from filing formal charges with the NEOC, the Federal EEOC,
DAS and/or the Office of the Public Counsel while at the same time reporting the allegation of discrimination and/or workplace harassment within the agency.

D. Investigation of Discrimination and/or Workplace Harassment Complaints

1. Initiation of Investigation

Once an allegation of discrimination and/or workplace harassment policy violation exists, the Agency Discrimination and Workplace Harassment contact shall immediately take all necessary steps to ensure the report is promptly and thoroughly investigated, if needed. The Agency Discrimination and Workplace Harassment contact will collaborate with the Warden/Program Administrator to appoint an investigating officer within 3 business days of determining a possible discrimination and/or workplace harassment policy violation exists. If the reports contain sufficient information, the Agency Discrimination and Workplace Harassment contact has the discretion to determine further investigation is not needed and make specific recommendations to the Warden/Program Administrator (see Procedure II.D.6.).

2. Complaint Notification of Policy

The investigating officer shall be obligated to make certain the complainant has been advised of the agency policy concerning discrimination and/or workplace harassment.

3. Confidentiality

Since investigations of alleged discrimination and/or workplace harassment are personnel matters, persons involved shall maintain confidentiality. Information concerning a complaint shall not be released to anyone who is not a party to or involved in the investigation.

4. Investigation Timeframes

The investigating officer shall complete the investigation within 30 days of the date the Supervisor’s Checklist was completed. In the event this is not possible, requests for an extension must be submitted in writing to the Agency Discrimination and Workplace Harassment contact to include the specific reasons an extension is needed. Approved extensions shall not exceed 14 days. The Agency Discrimination and Workplace Harassment contact shall maintain a log of all investigations and establish a process for ensuring the timely completion of investigations, include regularly updating the agency Administrative Team on the status of all investigations.

5. Investigation

The investigating officer shall thoroughly investigate the allegations to include interviewing all parties with relevant knowledge. Upon completion of the investigation, the investigating officer shall prepare a written report to include a narrative of the investigative process, the specific findings of the investigation and specific recommended resolution for the findings.
Findings shall be determined to be unfounded, unsubstantiated or substantiated.

6. Warden/Program Administrator Review

Upon completion of the investigation, the investigating officer shall submit the completed investigation to the Warden/Program Administrator. The Warden/Program Administrator shall review the report and supporting documentation and make a recommendation for further action to the Agency Discrimination and Workplace Harassment contact for administrative review and approval. The administrative review must be completed prior to taking any action.

The Warden/Program Administrator’s recommendations may include:

a. No Further Action if the investigation determines the allegations to be unfounded and/or unsubstantiated

b. Conflict Resolution

c. Corrective Counseling Log

d. Formal Resolution/Disciplinary Action

7. Disposition of Investigation

Upon completion of the administrative review, the Agency Discrimination and Workplace Harassment contact shall advise the Warden/Program Administrator of the approved disposition of the complaint. This may consist of dismissal of the complaint, informal corrective action, or formal disciplinary action.

If formal disciplinary action is taken, the applicable Labor Contract or State Personnel Rules and Regulations will be followed. Disciplinary due process shall be consistent with policy 112.06, Management of Team Member Performance. All disciplinary actions involving discrimination and/or workplace harassment shall be reviewed and approved by the Director/designee.

Once disciplinary action is imposed, the Warden/Program Administrator shall provide a copy of the disciplinary letter to the Agency Discrimination and Workplace Harassment contact.

8. Notice to the Complainant

The Warden/Program Administrator or a designee shall meet with the complainant within 15 days of the disposition of the complaint and advise the complainant of the findings of the investigation. The Warden/Program Administrator shall advise the Agency Discrimination and Workplace Harassment contact once notice to the complainant is completed.

If the complainant is dissatisfied with the agency’s action in response to a complaint of discrimination and/or workplace harassment, the complainant may contact the any of the entities identified in Procedure II.C.2, to request an independent investigation of the allegation.
E. Retention of Documentation

Documentation pertaining to the complaint and investigation, including the report of the investigating officer, shall be maintained by the agency in a separate investigative file.

F. Retaliation Prohibited

Complainants and other persons involved in the investigation of an allegation of discrimination and/or workplace harassment shall not be subjected to retaliation, coercion, intimidation or fear of reprisal.

REFERENCE

I. STATUTORY REFERENCE

A. Federal Civil Rights Act of 1964
B. Nebraska Classified Systems Personnel Rules and Regulations, Chapter 14
C. Nebraska Fair Employment Practice Act (Nebraska Revised Statute §§48-1101 to 48-1125)
D. Nebraska Association of Public Employees and State of Nebraska Labor Contract, Article 10. and FOP, Article 15
E. Nebraska Equal Employment Opportunity (EEO)

II. NDCS POLICIES

A. Policy 004.01, ADA Policy
B. Policy 112.06, Management of Team Member Performance

III. ATTACHMENTS

A. State of Nebraska Equal Employment Opportunity Policy
B. Nebraska Department of Correctional Services Equal Employment Opportunity Policy
C. State of Nebraska Workplace Harassment Policy
D. Nebraska Department of Correctional Services – Workplace Harassment Statement of Policy
E. Discrimination/Workplace Harassment/Internal Complaint/Allegations Supervisor’s Checklist
F. Receipt of Policy 112.07

IV. AMERICAN CORRECTIONAL ASSOCIATION (ACA) STANDARDS
A. Standards for Adult Correctional Institutions (ACA) (4th edition): 4-4053, 4-4054, 4-4056, 4-4429, 4-4429-1

B. Performance Based Standards for Adult Community Residential Services (ACRS) (4th edition): 4-ACRS-7E-05