



DEFENSE NUCLEAR FACILITIES SAFETY BOARD Washington, D.C. 20004

DIRECTIVE

Subject: EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

Number: D-111.1

Approved: xx/xx/2016

Review: xx/xx/2016

Certified:

Responsible Office: Office of the General Manager

1. **PURPOSE.** This Directive establishes the policy, requirements, and responsibilities for the Defense Nuclear Facilities Safety Board’s (DNFSB) equal employment opportunity¹ (EEO) program, including the processing of complaints and appeals of employment discrimination filed by DNFSB employees and applicants for employment in accordance with regulations at 29 C.F.R. Part 1614.
2. **CANCELLATION.** This Directive replaces Administrative Directive (AD) 111.1, *Equal Employment Opportunity Program*, dated October 5, 2007.
3. **APPLICABILITY.** This Directive applies to all DNFSB employees² and applicants for DNFSB employment.
4. **EXEMPTIONS.** None.
5. **POLICY.**
 - A. DNFSB shall provide equal employment opportunities for all persons and prohibit discrimination in employment because of race, color, religion, sex (including gender identity, sexual orientation and pregnancy), national origin, age, disability, genetic information, or status as a parent.³
 - B. DNFSB shall maintain a work environment free from harassment, taking all necessary steps to prevent incidents of harassing conduct that create a hostile work environment in the workplace, and to correct harassing conduct as soon as

¹ Defined terms (see Section 10) are underlined when first used.

² Contractor employees may qualify as a DNFSB employee for purposes of anti-discrimination statutes when an employer-employee relationship is considered to exist between DNFSB and the employee. The question of whether an employer-employee relationship exists depends on whether DNFSB is considered to control the means and manner of the employee's work performance. That determination is fact-specific depending on a number of factors. Should such a relationship be determined to exist, contractor employees would be considered employees of DNFSB for purposes of this Directive and the accompanying Operating Procedure. Contractor employees may also pursue resolution of a complaint through their employer's complaint process/procedures and/or the Equal Employment Opportunity Commission.⁵

³ See the DNFSB [EEO Policy Statement](#) for further information on EEO policies

possible.

- C. An employee who engages in discriminatory or harassing conduct or practices will be subject to appropriate disciplinary action. Supervisors who either condone such conduct or fail to act promptly or correct inappropriate conduct brought to their attention will be subject to disciplinary action.⁴
- D. A person who files a EEO complaint or charge, reports harassing conduct, participates in an investigation, inquiry, or charge, or opposes an employment practice made illegal by any of the statutes in paragraph 9 shall be protected from retaliation.
- E. In order to avoid potential conflicts of interest, EEO complaints shall be referred to a third party who is separate from the EEO office and/or the agency in cases wherein the responsible management official alleged to have engaged in discriminatory conduct is the head of the agency, a Board member, the EEO Director, or other EEO program personnel, as necessary.

6. **REQUIREMENTS.**

- A. An Operating Procedure (OP) that implements this Directive and the referenced laws, Executive Order (EO), and regulations shall be developed.
- B. In accordance with 29 C.F.R. 1614.102(b)(2), a fair Alternative Dispute Resolution (ADR) program that facilitates the early, effective, and efficient informal resolution of disputes shall be established and its use encouraged.
- C. In accordance with 29 C.F.R. 1614.102(b)(4), DNFSB's EEO Director shall be under the immediate supervision of the Chairman.

7. **RESPONSIBILITIES.**

- A. Chairman.
 - i. Retains the ultimate responsibility for establishing and directing the EEO program at the DNFSB. Provides leadership and personal commitment to promote DNFSB's organizational values and an open, collaborative, and discrimination-free work environment in support of EEO;
 - ii. Approves the final disposition of (including settlements), and issues the final agency decision on, employment discrimination complaints, notifies Board Members whether there was a finding of discrimination, and orders

⁴ See the DNFSB [Anti-Harrassment Policy Statement](#) for further information on Anti-Harrassment policies

associated corrective actions as necessary (this authority may be delegated).

- B. Board Members. Provides leadership and personal commitment to promote DNFSB's organizational values and an open, collaborative, and discrimination-free work environment in support of EEO.
- C. General Manager. Serves as the Director of EEO and as such:
- i. Increases awareness and understanding of DNFSB's EEO Program;
 - ii. Enforces, manages, and evaluates the effectiveness of DNFSB's EEO program, including an annual self-assessment to monitor progress and identify areas where barriers may operate to exclude certain groups;
 - iii. Identifies and eliminates discriminatory employment practices and policies;
 - iv. Reports to the Chairman on EEO plans, reports, policy changes, recommendations for needed improvements, and other matters;
 - v. Selects DNFSB's EEO Counselors⁵ and makes their contact information known to DNFSB employees;
 - vi. Receives formal complaints of discrimination filed by employees, former employees, and applicants for employment with DNFSB, issues determinations on the acceptance and dismissal of complaints in accordance with 29 CFR Part 1614, and informs the Chairman when a formal complaint is accepted;
 - vii. Ensures the prompt, fair and impartial processing of complaints;
 - viii. Forwards the complaint and the complaint file to the Chairman (or to the deciding official if delegated) for agency decisions;
 - ix. Ensures compliance with training and reporting requirements of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act);
 - x. Ensures preparation of required reports to the Equal Employment Opportunity Commission (EEOC)⁶ and to Congress, and briefs Board

⁵ See the accompanying Operating Procedure for the EEO Counselor responsibilities.

⁶ The Federal agency responsible for directing and furthering the implementation of the policy of the Government of the United States to provide equal opportunity in Federal employment and to prohibit discrimination in employment because of race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin,

Members on the statistical data annually reported to EEOC (e.g., complaints on hand at start of year, new complaints received during the year, findings of discrimination by category, complaints closed without finding of discrimination and any associated benefits); and

- xi. Fulfills the Office Director responsibilities listed in 7.F. below.

D. General Counsel.

- i. Provides legal and policy advice to DNFSB officials during the processing of complaints of discrimination;
- ii. Ensures that the final disposition of discrimination complaints comply with law, regulations, and Board policies;
- iii. Represents DNFSB in settlement discussions convened by an EEOC administrative law judge, and is delegated settlement authority during said discussions;
- iv. Represents DNFSB in administrative hearings and appeals before the EEOC, Merit Systems Protection Board (MSPB),⁷ and Office of Special Counsel⁸ involving discrimination complaints filed by employees, former employees, and applicants for employment, and represents DNFSB with the Department of Justice should a civil action be filed in Federal district court;
- v. Represents the agency in the ADR process or other stages of the discrimination complaint process when the complainant is represented by an attorney, and is delegated settlement authority during EEO ADR meetings;
- vi. Responsible for implementing DNFSB's ADR policy and ensuring that all requirements under the Administrative Dispute Resolution Act of 1996 are met;

age, disability, or genetic information. The EEOC enforces the principal Federal statutes prohibiting employment discrimination; it does not have jurisdiction over claims of discrimination based on status as a parent.

⁷ An independent agency that hears, among other things, appeals from certain agency personnel actions, which are set forth in regulations contained in 5 C.F.R. Pt. 1201 and cases brought by the Office of Special Counsel involving alleged prohibited personnel practices.

⁸ An independent investigative and prosecutorial agency within the executive branch that receives and investigates complaints alleging prohibited personnel practices, including those involving discrimination based upon sexual orientation or status as a parent.

- vii. Increases awareness and understanding of ADR as a problem-solving option; and
 - viii. Fulfills the Office Director responsibilities listed in 7.F. below.
- E. Deputy General Manager. Receives allegations of harassing conduct and advises supervisors and managers on the provision of interim relief to the alleged victims of harassing conduct pending the outcome of the inquiry or investigation to ensure further misconduct does not occur.
- F. Office Directors and Supervisors.
- i. Provide leadership and personal commitment to promote DNFSB's organizational values and an open, collaborative, and discrimination-free work environment in support of EEO;
 - ii. Provide equal opportunity in employment and eradicate any discriminatory practices within their organizational units;
 - iii. Act promptly and appropriately to prevent, handle, or report harassment in the workplace, and retaliation against those who complain of harassment;
 - iv. Provide, in consultation with the Deputy General Manager, interim relief to alleged victims of harassment pending the outcome of an investigation to ensure that further misconduct does not occur;
 - v. Support DNFSB's efforts to provide for prompt, fair, and impartial processing of employment discrimination complaints filed under applicable civil rights statutes and to eliminate or modify policies, procedures, and practices that give rise to valid discrimination complaints filed under these statutes;
 - vi. Fully cooperate in the adjudication and prompt resolution of complaints of discrimination or harassment;
 - vii. Assure that their employees cooperate with EEO Counselors and complaint investigators in the performance of their official duties in attempting to resolve discrimination or harassment complaints; and
 - viii. Implement disciplinary action against an employee under his/her supervision who is found to have engaged in a discriminatory or harassing conduct or practice.

G. Employees.

- i. Act professionally and treat fellow employees with respect and dignity;
- ii. Neither practice nor condone discriminatory behavior or harassing conduct in employment; and
- iii. Cooperate with any EEO investigation or inquiry.

8. **CONTROLS AND MEASURES.** Controls and measures shall be specified in the OP implementing this Directive.

9. **REFERENCES.**

- A. Civil Rights Act of 1964, Title VII, Pub. L. No. 88-352, 78 Stat. 241 (codified as amended in 42 U.S.C. § 2000e), as amended by the Equal Employment Opportunity Act of 1972, Pub. L. No. 92-261, 86 Stat. 103- 113 (codified as amended in 42 U.S.C. §§ 2000e-1 - 2000e-6, 2000e-8, 2000e-9, 2000e-13 - 2000e-17), which brings Federal agencies and employees under the coverage of the Civil Rights Act of 1964, making it illegal to discriminate based on race, color, religion, sex, or national origin.
- B. Exec. Order No. 11478, 3 C.F.R. 1966-1970 Comp., p. 803, as amended by Exec. Order No. 11590, 3 C.F.R. 1971-1975 Comp., p. 558, Exec. Order No. 12106, 3 C.F.R. 1978 Comp., p. 263, Exec. Order No. 13087, 3 C.F.R. 1998 Comp., p. 191, and Exec. Order. No. 13152, 65 Fed. Reg. 26, 115), which made equal employment opportunity an integral part of every aspect of personnel policy and practice in the employment, advancement, and treatment of civilian employees of the Federal Government, and added sexual orientation and status as a parent to the list of categories for which discrimination is prohibited for Executive Branch civilian employment.
- C. Equal Pay Act of 1963, Pub. L. No. 88-38, 77 Stat. 1088 (codified as amended in 29 U.S.C.A. § 201 note, 206), which prohibits employers from discriminating on the basis of sex in the payment of wages where substantially equal work is performed under similar working conditions.
- D. Age Discrimination in Employment Act of 1967, Pub. L. No. 93-259, 81 Stat. 602, as amended (codified as amended in 5 U.S.C. §§ 8335, 8339, 29 U.S.C. §§ 621-634) (ADEA), which prohibits employment discrimination against qualified persons 40 years of age or older.
- E. Rehabilitation Act of 1973, Pub. L. No. 93-112, 87 Stat. 355, § 501, as amended (codified as amended in various sections of 29 U.S.C.), which make it illegal to discriminate against qualified Federal employees and applicants based on

disability.

- F. Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 327, as amended (codified as amended in various sections of 42 U.S.C.) (ADA), which prohibits employment discrimination against qualified individuals with disabilities.
- G. Administrative Dispute Resolution Act of 1996, Pub. L. No. 104-320, 110 Stat. 3870 (codified as amended in 5 U.S.C. §§ 561 note, 563 note, 569, 570a, 571, 571 notes, 573 - 575, 580 - 584, 10 U.S.C. § 2304, 28 U.S.C. § 1491, 1491 notes, 29 U.S.C. § 173, 31 U.S.C. § 3556, 3556 note, 41 U.S.C. §§ 253, 605), which requires each Federal agency to develop a policy for implementing alternative means of dispute resolution (ADR) in its administrative programs.
- H. Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No Fear Act), Pub. L. No 107-104, which sets forth requirements of Federal agencies to post certain information on their public web sites.
- I. Genetic Information Nondiscrimination Act of 2008 (GINA), Title II, Pub. L. No 110-233, codified at 42 U.S.C. § 2000ff et seq.), which prohibits discrimination on the basis of genetic information.
- J. 29 C.F.R. Part 1614, *Federal Sector Equal Employment Opportunity*, which provides requirements for Federal agencies in the enforcement of the equal employment opportunity statutes that prohibit workplace discrimination in the Federal government.
- K. U.S. Equal Employment Opportunity Commission, EEO-MD-110, *Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614* (2015).

10. **DEFINITIONS.**

- A. Alternative Dispute Resolution (ADR). Describes a variety of joint problem solving processes that present options in lieu of adjudicative or adversarial methods of resolving conflict. DNFSB uses mediation as its chosen method of ADR. In mediation, the parties work together with the aid of a neutral third party, known as a mediator, to develop an agreement which will resolve the conflict. Participation in the ADR program is voluntary for complainants, the complainants are free to end the ADR process at any time, and the parties have a right to representation during the ADR process.
- B. Equal Employment Opportunity (EEO). The fair and equitable treatment of employees or applicants for employment in all personnel management matters without regard to race, color, religion, sex (including gender identify, sexual orientation and pregnancy), national origin, age, disability, or genetic information.

- C. EEO Complaint. An allegation of discrimination based on race, color, religion, sex (including gender identify, sexual orientation and pregnancy), national origin, age, disability, or genetic information.
- D. EEO Counselor. A DNFSB employee or contractor appointed and trained to act as an initial point of contact for an individual who believes he or she has an EEO related problem. As an objective third party, the counselor attempts to informally resolve such problems by meeting with the parties. The EEO Counselor acts as a neutral and not as an advocate for either the aggrieved person or the agency.
- E. Gender Identity. One's inner sense of one's own gender, which may or may not match the sex assigned at birth.⁹
- F. Harassment. Unwelcome and offensive treatment or conduct (e.g., verbal, physical, psychological, or visual) that can reasonably be considered to adversely affect the work environment or an employment decision affecting the employee based upon the employee's acceptance or rejection of such conduct. Harassment becomes unlawful, i.e., discriminatory, when based on race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information, and where 1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.¹⁰ Sexual harassment is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964.
- G. Sexual Harassment. Any unwelcome sexual advance, request for sexual favors, and other verbal or physical conduct of a sexual nature when submission to such conduct is an explicit or implicit term or condition of an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment.
- H. Sexual Orientation. One's emotional or physical attraction to the same and/or opposite sex.

⁹ Different people choose to express their gender identity differently. For some, gender may be expressed through, for example, dress, grooming, mannerisms, speech patterns, and social interactions. Gender expression usually ranges between masculine and feminine, and some transgender people express their gender consistent with how they identify internally, rather than in accordance with the sex they were assigned at birth.

¹⁰ Petty slights, annoyances, and isolated incidents (unless extremely serious) will not rise to the level of illegality. To be unlawful, the conduct must create a work environment that would be intimidating, hostile, or offensive to reasonable people. Offensive conduct may include, but is not limited to, offensive jokes, slurs, epithets or name calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, and interference with work performance.

- I. Status as a Parent. An individual who, with respect to an individual who is under the age of 18 or who is 18 or older but is incapable of self-care because of a physical or mental disability, is:
 - i. a biological parent;
 - ii. an adoptive parent;
 - iii. a foster parent;
 - iv. a stepparent;
 - v. a custodian of a legal ward;
 - vi. has legal responsibility over such an individual; or
 - vii. actively seeking legal custody or adoption of such an individual.

10. **CONTACT.** Address questions concerning this Directive to the Office of the General Manager.

Joyce L. Connery
Chairman

AFFIRMATION OF BOARD VOTING RECORD

SUBJECT: Draft EEO Program Directive

Doc Control#2016-300-037

The Board, with Board Member(s) Joyce L. Connery, Jessie H. Roberson, Sean Sullivan, Daniel J. Santos, Bruce Hamilton *approving*, Board Member(s) none *disapproving*, Board Member(s) none *abstaining*, and Board Member(s) none *recusing*, have voted to approve the above document on November 9, 2016.

The votes were recorded as:

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIPATING*	COMMENT	DATE
Joyce L. Connery	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	11/04/16
Jessie H. Roberson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	11/04/16
Sean Sullivan	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	11/04/16
Daniel J. Santos	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	11/09/16
Bruce Hamilton	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	11/03/16

*Reason for Not Participating:

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Board Members.


 Assistant Executive Secretary to the Board

Attachments:

1. Voting Summary
2. Board Member Vote Sheets

cc: Board Members
 OGC
 OGM Records Officer
 OTD

**DEFENSE NUCLEAR FACILITIES SAFETY BOARD
NOTATIONAL VOTE RESPONSE SHEET**

FROM: Joyce L. Connery

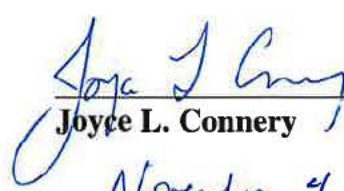
SUBJECT: Draft EEO Program Directive

Doc Control#2016-300-037

Approved **Disapproved** **Abstain**

Recusal - Not Participating

COMMENTS: **Below** **Attached** **None**



Joyce L. Connery
November 4, 2016

Date

**DEFENSE NUCLEAR FACILITIES SAFETY BOARD
NOTATIONAL VOTE RESPONSE SHEET**

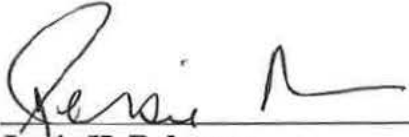
FROM: Jessie H. Roberson

SUBJECT: Draft EEO Program Directive

Doc Control#2016-300-037

~~Approved~~ Disapproved _____ Abstain _____
Recusal - Not Participating _____

COMMENTS: Below _____ Attached _____ None ~~_____~~



Jessie H. Roberson
Nov 4, 2016

Date

Lotus Smith

From: Sean Sullivan
Sent: Friday, November 04, 2016 11:33 AM
To: Lotus Smith; Shelby Qualls
Subject: RE: Notational Vote: Doc#2016-300-037, Draft EEO Program Directive Blue Folder

Approved. No comments.

From: Lotus Smith
Sent: Thursday, November 03, 2016 3:27 PM
To: Bruce Hamilton <[REDACTED]>; Daniel J. Santos <[REDACTED]>; Jessie Roberson <[REDACTED]>; Joyce Connery <[REDACTED]>; Sean Sullivan <[REDACTED]>
Cc: ExSec <[REDACTED]>
Subject: Notational Vote: Doc#2016-300-037, Draft EEO Program Directive Blue Folder

This email is an electronic record of Notational Vote. Voting ballot will follow shortly. Also, accepting electronic votes.

**DEFENSE NUCLEAR FACILITIES SAFETY BOARD
NOTATIONAL VOTE RESPONSE SHEET**

FROM: Members of the Board
SUBJECT: Draft EEO Program Directive

DOC#2017-300-037

Approved _____
Disapproved _____
Abstain _____
Recusal – Not Participating _____

COMMENTS:

Below _____
Attached _____
None _____

Lotus Smith
Executive Secretary
Office of the Chairman
Defense Nuclear Facilities Safety Board
625 Indiana Ave, NW, STE 700
Washington, DC 20004

Shelby Qualls

From: Daniel J. Santos
Sent: Wednesday, November 09, 2016 9:59 AM
To: Shelby Qualls; Lotus Smith
Subject: Re: Notational Vote: Doc#2016-300-037, Draft EEO Program Directive Blue Folder

Approved.

From: Shelby Qualls
Sent: Wednesday, November 9, 2016 9:32:40 AM
To: Daniel J. Santos
Cc: Lotus Smith; Nora Khalil
Subject: FW: Notational Vote: Doc#2016-300-037, Draft EEO Program Directive Blue Folder

Mr. Santos,

Just a reminder, we are waiting for your vote on this item.

Shelby

From: Lotus Smith
Sent: Thursday, November 03, 2016 3:27 PM
To: Bruce Hamilton <[REDACTED]>; Daniel J. Santos <[REDACTED]>; Jessie Roberson <[REDACTED]>; Joyce Connery <[REDACTED]>; Sean Sullivan <[REDACTED]>
Cc: ExSec <[REDACTED]>
Subject: Notational Vote: Doc#2016-300-037, Draft EEO Program Directive Blue Folder

This email is an electronic record of Notational Vote. Voting ballot will follow shortly. Also, accepting electronic votes.

**DEFENSE NUCLEAR FACILITIES SAFETY BOARD
NOTATIONAL VOTE RESPONSE SHEET**

FROM: Members of the Board
SUBJECT: Draft EEO Program Directive

DOC#2017-300-037

Approved _____
Disapproved _____
Abstain _____
Recusal – Not Participating _____

COMMENTS:
Below _____
Attached _____
None _____

DEFENSE NUCLEAR FACILITIES SAFETY BOARD
NOTATIONAL VOTE RESPONSE SHEET

FROM: Bruce Hamilton

SUBJECT: Draft EEO Program Directive

Doc Control#2016-300-037

Approved **Disapproved** **Abstain**
Recusal - Not Participating

COMMENTS: **Below** **Attached** **None**


Bruce Hamilton

3 NOV 2016
Date