

# YOUTH SERVICES POLICY

<b>Title:</b> Prohibited Harassment and Discrimination	<b>Type:</b> A. Administrative <b>Sub Type:</b> 2. Personnel <b>Number:</b> A.2.57
	<b>Page</b> 1 of 10
<b>References:</b> References are listed in Attachment A.2.57 (b)	
<b>STATUS: Approved</b>	
<b>Approved By:</b> Otha "Curtis" Nelson, Jr., Deputy Secretary	<b>Date of Approval:</b> 02/28/2023

**I. AUTHORITY:**

Deputy Secretary of Youth Services (YS) as contained in La. R.S. 36:405. Deviation from this policy must be approved by the Deputy Secretary.

**II. PURPOSE:**

To establish a formal policy regarding harassment and discrimination. It is the Deputy Secretary's intent to maintain a workplace free of harassment and discrimination from any source, to discourage such conduct, to quickly address violations of this policy, and to respond with investigation and disciplinary action when appropriate to Youth Services (YS), Office of Juvenile Justice (OJJ) employees in accordance with state law.

**III. APPLICABILITY:**

This policy applies to all applicants, candidates, employees, visitors, and individuals who transact business with YS.

This policy applies not only to the customary workplace and work locations where YS employees may be assigned, but also prohibits such behavior while traveling to a work location, at conferences, workshops, trainings, business trips, and business-related social events.

Each Unit Head is responsible for ensuring that all necessary procedures are in place to comply with the provisions of this policy.

**IV. DEFINITIONS:**

**Discrimination** – Conduct which evidences bias, prejudice, dislike, or disfavor towards an individual or class of individuals based upon a prohibited, non-merit factor.

**Equal Employment Opportunity Commission (EEOC)** – The federal regulatory body for Equal Employment Opportunity related complaints and charges.

**Louisiana Employees Online (LEO)** – Statewide management system which includes the Comprehensive Public Training Program (CPTP) providing online courses accessible to all state employees and which can be accessed at: <http://www.civilservice.louisiana.gov/Divisions/Training/Default.aspx>.

**Prison Rape Elimination Act (PREA)** – An Act signed into law by President George W. Bush in September 2003. This legislation requires the Bureau of Justice Statistics (BJS) to initiate new national data collections on the incidence and prevalence of sexual violence within correctional facilities. PREA defines four categories of sexual abuse for purposes of data collection: abusive sexual contacts, nonconsensual sexual acts, staff sexual harassment and staff sexual misconduct.

**Sexual Harassment** – Sexual harassment constitutes discrimination and is illegal under federal, state, and local laws. For the purpose of this policy, sexual harassment is defined, in the Equal Employment Opportunity Commission Guidelines, as unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when, for example:

- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Sexual harassment may include a range of subtle and not so subtle behaviors and may involve individuals of the same or different gender. For illustrative purposes only, these behaviors may include, but are not limited to: unwelcomed sexual flirtations, advances, propositions, or demands; unwelcomed sexual jokes, teasing, pranks, inquiries and innuendo; unwelcomed repeated requests for dates or social engagement; verbal abuse of a sexual nature; commentary about an individual's body, derogatory or stereotypical remarks/comments concerning sexual prowess or sexual deficiencies; lustful looks, staring, leering and catcalls; unwelcomed physical contact including touching, hugging, massaging, rubbing, fondling, groping, tickling and pinching; invading another's

space by leaning over, purposefully cornering, or blocking passage; threatening, intimidating, insulting or obscene comments or gestures; repeatedly referring to an individual as “honey”, “babe”, “sugar”, etc.; display or circulation in the workplace of sexually suggestive objects, pictures, or notes including, but not limited to, memoranda, letters, or e-mail; and other physical, verbal or visual conduct of a sexual nature. (Refer to the above definition of PREA for additional information about sexual harassment and sexual conduct.)

**Staff Development Director** – A Central Office employee charged with overseeing the Agency's Staff Development and Training Program, and who serves as the clearinghouse for training opportunities for agency personnel.

**Staff Development Training Specialist** – A full time secure care trainer position at the unit level, who has completed a specialized 40-hour training-for-trainers curriculum through the agency or other qualified source, [i.e., American Correctional Association, National Institute of Corrections, Federal Bureau of Investigation Instructor Development Course (FBI-IDC) etc.], responsible for the development, documentation, and delivery of the agency's approved training.

**Unit Training Officer** – A regional office employee who by job description or assignment oversees the development, documentation and delivery of agency approved training.

**Unit Head** – For the purposes of this policy, the unit head consists of the Deputy Secretary, Facility Directors and Regional Managers.

**Unusual Occurrence Report (UOR)** – A document that must be completed by staff to report incidents or observations of events that may have an impact on any aspect of the agency. UOR forms shall be made available to all employees, working in all areas at all times. Employees must complete and submit a UOR prior to the end of their tour of duty on the day the incident was observed or comes to the employee's attention in any way. If a UOR form is not available, the employee must use any paper available to report the pertinent information. UORs may also be submitted by email. (Refer to YS Policy No. A.1.14)

**YS Central Office (CO)** – Offices of the Deputy Secretary, Assistant Secretary, Undersecretary, Deputy Undersecretary, Chief of Operations, Probation and Parole Program Director, Youth Facilities Director - Statewide, Executive Management Advisor, General Counsel, Regional Directors, and their support staff.

**YS Employee** – For the purposes of this policy, a YS Employee includes employees, contract providers, visitors, volunteers or interns.

**V. POLICY:**

The Deputy Secretary and YS strictly prohibit and shall not tolerate discrimination and harassment on the basis of race, color, religion, sex, sexual origin, national origin, political affiliation, veteran's status, age, disability, genetic information, sickle cell trait, or any other non-merit factor. (This policy broadly addresses discrimination and harassment. Employees should also review YS Policy A.2.8 Sexual Harassment for a comprehensive understanding of the prohibitions against sexual harassment and sexually inappropriate behavior in the workplace.)

YS strives to maintain a workplace that fosters mutual respect, promotes harmonious, productive working relationships, and avoids even the appearance of favoritism. To foster a work environment based on merit and inclusion, supervisors and managers are required to make business decisions that are objective, impartial, and not influenced by prohibited factors or personal bias.

Conduct prohibited by this policy is unacceptable in the workplace and in any work-related setting outside the workplace, such as during business trips, business meetings, and business-related social events.

**VI. PURPOSE:**

Through this policy, YS seeks to:

1. State its intolerance for inappropriate behavior
2. Identify the broad scope of such prohibited behavior
3. Establish an effective, uniform reporting process
4. Establish an effective, uniform investigative process
5. Ensure resolution that imposes appropriate corrective action
6. Protect complainants and individuals involved in the investigative process from harassment, reprisal, or retaliation
7. Respect confidentiality and the privacy rights of employees

This policy establishes a procedure to administratively report and address complaints of discrimination and harassment. It is not in any way intended to replace or supersede the statutory or regulatory rights regarding sexual harassment available to employees under federal and state law.

**VII. PROHIBITED CONDUCT:**

Discrimination is conduct which evidences bias, prejudice, dislike, or disfavor towards an individual or class of individuals based upon a prohibited, non-merit factor. Discrimination also includes conduct or decisions which evidence preference for or favoritism towards an individual or class of individuals based upon a prohibited, non-merit factor.

Harassment is deliberate, persistent conduct purposefully directed to an individual which inflicts emotional distress, unreasonably interferes with the individual's work performance, or intentionally creates an intimidating, hostile, or offensive work environment.

In general, discrimination and harassment may include epithets, slurs, name-calling, jokes, negative stereotyping, ostracism, physical conduct, and favoritism based upon a prohibited fact. Writings, pictures, caricatures, cartoons, and the like which degrade, demean, or otherwise show hostility towards an individual because of or based upon a prohibited factor constitute discrimination and harassment.

Particular forms of discrimination and harassment prohibited by this policy include discrimination or harassment based on race, color, religion, sex, sexual orientation, national origin, age, disability, veteran's status, political beliefs, sickle cell trait, and genetic information.

Every employee, regardless of rank, status, or authority, may experience or engage in discriminatory or harassing behavior. Such behavior is prohibited, even when it fails to satisfy the standards of severity and pervasiveness required by law to prevail in a civil action.

#### **VIII. CONFRONTING THE ACCUSED:**

Individuals who believe they are being subjected to inappropriate or offensive conduct are encouraged to promptly advise the offender that the behavior is unwelcome and request that it be discontinued. Doing so may be sufficient to prevent recurrence.

OJJ recognizes that confronting the offender can be discomfoting, especially in those situations in which the offender is within the employee's supervisory chain of command. Therefore, OJJ does not require employees to do so. Failure to have this dialogue does not in any way prevent or hamper the employee from making a verbal or written complaint to a supervisor. If the request to discontinue the harassing conduct does not end the harassment, the employee should report the matter to the supervisor or may file a complaint in accordance with the YS/OJJ complaint procedure, set forth in Section IX below.

#### **IX. REPORTING AN INCIDENT OF HARASSMENT, DISCRIMINATION, OR RETALIATION:**

Early reporting and intervention have proven to be the most effective methods of resolving actual or perceived incidents of discrimination and harassment. Therefore, while no fixed reporting period has been established, YS/OJJ encourages employees-witnesses to report complaints or concerns promptly so that rapid and constructive action can be taken.

The report can be made by filing a statement or Unusual Occurrence Report (UOR) and/or a written complaint or UOR with the Unit Head/designee and sending a copy to the Public Safety Services Human Resources Office and to the Statewide Program Manager – Diversity, Equity and Inclusion (DEI) . The information may also be submitted by email to the Unit Head/designee with copies sent as stated above.

If the complaint involves the Unit Head/designee, the report can be made directly to the Statewide Program Manager - DEI or by utilizing the OJJ hotline listed below.

Complaints may also be reported verbally. A verbal report of discrimination and harassment is as valid as a written complaint.

Another outlet for reporting your complaint is by utilizing the toll free hotline created for staff to bring their concerns to management while maintaining strict confidentiality. The number for the OJJ hotline is 1-800-626-1430.

If an employee makes a verbal complaint to a supervisor, the supervisor is required to immediately inform the Unit Head/designee by preparing a UOR or written statement, and forwarding it to the Unit Head. If a supervisor hears a second-or third-hand report of discrimination or harassment, the supervisor shall respond in the same manner as if the complaint was directly reported to him.

Persons who have witnessed discriminatory or harassing conduct, that is contrary to this policy, or who have concerns about matters involving possible discrimination or harassment must make the situation known so that management can address the matter.

Employee-witnesses are also encouraged to file a statement or Unusual Occurrence Report (UOR) and/or a written complaint or UOR with the Unit Head/designee and send a copy to the Public Safety Services Human Resources Office and to the Statewide Program Manager - DEI.

**X. INVESTIGATION OF COMPLAINTS:**

- A. All reports and complaints of discriminatory and harassing behavior or retaliation will be directed to the Director of Investigative Services (IS).
- B. Any reported allegations of harassment or retaliation shall be investigated as soon as practicable and thoroughly by a designated team, led by an IS investigator, CO Human Resources designee, Statewide Program Manager – DEI and others identified by management. This team approach permits the investigators to evaluate

the information gathered from different perspectives, enhance objectivity, and ensure thoroughness.

- C. Pending the investigation, the Unit Head may temporarily reassign the alleged harasser so that there is no further contact between the complainant and the alleged harasser. Additionally, in certain cases the Unit Head may place the alleged harasser on enforced annual leave or invoke the suspension pending investigation provisions consistent with YS Policy A.2.17.
- D. The investigation may include individual interviews with the parties involved and with individuals who may have observed the alleged conduct or may have other relevant knowledge.
- E. All individuals called upon to participate in the investigation are required to fully cooperate and provide truthful responses. Employees, including the accused, do not have the option of remaining silent or declining to get involved.
- F. To the extent allowed by law, confidentiality shall be maintained throughout the investigatory process. Information regarding a discrimination and harassment incident and investigation is confidential and may only be shared and discussed among personnel necessary to the investigation. Employees are prohibited from obstructing or interfering with the investigation, which includes questioning or confronting any individuals participating in the investigation.
- G. Upon completion of the investigation, Investigative Services will inform management of the outcome and recommendations for resolution. Until a final decision is made, the investigative team will remain available to receive new information.
- H. Employees must understand that despite the best efforts and thoroughness of the investigative process, not all complaints can be substantiated. This does not indicate, however, that the complaint was made in bad faith or fake.

**XI. RETALIATION IS PROHIBITED:**

Retaliation consists of any negative conduct in response to an employee's complaint of discrimination and harassment or participation in a discrimination and harassment investigation. Retaliation can include adverse employment actions, such as demotions, transfers, or firings. Co-workers can also engage in retaliation by ostracizing, teasing, threatening, withholding information from, or engaging in physical actions against another employee.

YS/OJJ prohibits retaliation against any individual who reports discrimination and harassment and/or participates in an investigation of such reports. Retaliation against an individual for reporting or for participating in an investigation is a serious violation of this policy and, like discrimination or harassment itself, shall be subject to disciplinary action (refer to YS Policy No. A.2.1).

**XII. COMPLAINT RESOLUTION & FOLLOW UP:**

Upon completion of the investigation, the complainant and accused will be notified of the outcome. Regardless of the outcome, the complainant has the option of pursuing a claim under state or federal law.

An employee may file charges of discrimination or harassment with the EEOC even if they have not utilized the complaint procedure (Section X). However, the employee may choose to wait until the conclusion of OJJ's investigation before filing a charge.

To initiate a claim under federal or state law, employees are referred to the Equal Employment Opportunity Commission (EEOC) and the Louisiana Commission on Human Rights (LCHR):

EEOC District Office  
Hale Boggs Federal Building  
500 Poydras Street, Suite 809  
New Orleans, Louisiana 70130  
800-669-4000 (Voice)  
504-595-2958 (TDD)  
504-595-2884 (Fax)  
844-234-5122 (ASL Video)  
<http://www.eeoc.gov/>

LCHR  
1001 N. 23<sup>rd</sup> Street, Suite 268  
Post Office Box 94094  
Baton Rouge, Louisiana 70804  
225-342-6969 (Voice)  
888-241-0859 (TDD)  
225-342-2063 (Fax)  
<http://gov.louisiana.gov/page/lchr>

Given the wide range of behaviors prohibited by this policy, the resolution decided upon by executive management will be determined by a number of factors. These factors include the nature, circumstances, frequency, severity of the behavior, and whether the behavior recurs after having been previously addressed.

After resolution, the CO Human Resources designee will follow-up with the complainant to determine whether there has been a recurrence of the behavior complained of or whether the complainant has suffered any retaliation or adverse consequences for having filed a complaint. Such follow-up will be at periodic intervals and will seek to identify repercussions such as disciplinary action, poor performance evaluation, ostracism, avoidance, non-inclusion, etc.



**XIII. VIOLATIONS:**

- A. If any employee is found, after investigation, to have engaged in discrimination and harassment or retaliation, the Unit Head shall take appropriate measures that are reasonably calculated to end the harassment. This may include disciplinary action or appropriate non-disciplinary action including counseling, additional training, reassignment, and Performance Evaluation review actions.
  
- B. Disciplinary penalties available include, but are not limited to:
  - 1. Reduction in pay;
  - 2. Demotion in rank;
  - 3. Suspension without pay; and
  - 4. Dismissal.
  
- C. Corrective action may also be imposed for:
  - 1. Failure to comply with mandatory training requirements
  - 2. Failure by a supervisor or manager to timely report a complaint of discrimination or harassment
  - 3. Failure to participate or cooperate in the investigative process
  - 4. Withholding or providing false information during questioning
  - 5. Filing a false, malicious, or frivolous complaint
  - 6. Harassment, reprisal, or retaliation towards a complainant or anyone involved in the investigative process

**XIV. APPEAL RIGHTS:**

If an employee making a complaint does not agree with the resolution, the employee may file a grievance as outlined in the Youth Services Employee Manual and YS Policy A.2.46 Employee Grievance Procedure.

Also, complaints alleging discrimination, harassment, or retaliation that are not based on membership in a protected class may be submitted through the process as outlined in YS Policy A.2.46.

**XV. EQUAL EMPLOYMENT OPPORTUNITY COORDINATOR**

The Statewide Program Manager - DEI shall be designated as YS' EEO Coordinator. Questions regarding this policy should be directed to the YS EEO Coordinator.

The YS EEO Coordinator, along with Legal Services, the Unit Head, and other appropriate personnel shall coordinate YS/OJJ response(s) to formal complaints and charges of discrimination or harassment generated by the EEOC or USDOJ.

Any unit receiving a "Notice of Charge of Discrimination" document or similar notice from the EEOC or USDOJ shall forward the notice to the YS EEO Coordinator and Legal Services within 24 hours of receipt.

Responses to the charges shall be under the signature of the Deputy Secretary/designee.

**XVI. TRAININGS/STAFF DEVELOPMENT:**

New secure care employees shall receive education and training on preventing harassment and discrimination within 90 days of hire during pre-service/orientation and then annually during in-service training.

New Central Office and Regional Office employees shall receive the required education and training within 90 days of hire during pre-service/orientation and then annually utilizing YS' online training platform.

All records of compliance shall be tracked . using YS' online training platform.

Signage promoting a harassment-free workplace and instructions on how to file complaints must be posted in all work areas of YS.

**Previous Regulation/Policy Number:** A.2.57

**Previous Effective Date:** 02/02/2022

**Attachments/References:** A.2.57 (a) – References. February 2023

## References

### **Laws:**

Title VII of the Civil Rights Act of 1964 and 1991, Equal Employment Opportunities Commission Guidelines; Equal Pay Act of 1963; Age Discrimination in Employment Act of 1967 (ADEA); Title I and Title V of the Americans with Disabilities Act of 1990 as amended by the ADA Amendments Act of 2008; United States Code TITLE 42 - Chapter 126 - EQUAL OPPORTUNITY FOR INDIVIDUALS WITH DISABILITIES, Sec 12101 et seq.; Sections 501 and 505 of the Rehabilitation Act of 1973; Vietnam Era Veterans Readjustment Assistance Act of 1974; 38 U.S.C. 4212; La. R.S. 42:1119 Nepotism; La. R.S. 42:341 et seq., Chapter 6 Prevention of Sexual Harassment; 28 CFR Part 35, Nondiscrimination on the Basis of Disability in State and Local Government Services - Final Rule; Code of Ethics for Public Officials, Section 1119 (Nepotism); La. Employment Discrimination Law (La. R.S. 23:301 et seq.), and La. Senate Concurrent Resolution No. 107 of the 2012 Regular Session of the Legislature.

### **State Civil Service:**

Louisiana State Civil Service General Circular Number 2012-022 "Preventing Sexual Harassment"; and Civil Service Handbook Guidelines for Preparing Affirmative Action Plans.

### **ACA Standards:**

ACA Standards 2-CO-1C-09, 2-CO-1C-09-1, 2-CO-1C-10, 2-CO-2B-04 (Administration of Correctional Agencies); 4-JCF-6C-01, 4-JCF-6C-02, 4-JCF-6D-06, 4-JCF-6D-07 (Performance-Based Standards of Juvenile Correctional Facilities); 2-7032 (Standards for Juvenile Probation and Aftercare Services).

### **YS Policies:**

- A.1.4 "Investigative Services"
- A.1.11 "Polygraph Testing of Employees"
- A.1.14 "Unusual Occurrence Reports"
- A.2.1 "Employee Manual"
- A.2.5 "Family and Medical Leave of Absence"
- A.2.8 "Sexual Harassment"
- A.2.13 "Americans with Disabilities Act - (Employees, Applicants, Candidates, Visitors)"
- A.2.17 "Employee Suspensions: Pending Investigation, Enforced Annual Leave, Pending Criminal Proceedings"
- A.2.28 "Return to Work"
- A.2.38 "Ethics for Public Employees: Nepotism, Prohibited Relations, Gifts, Ethics Opinions"

- A.2.46 "Employee Grievance Procedure"
- A.2.47 "Equal Employment Opportunity"
- C.2.11 "Prison Rape Elimination Act (PREA)"
- D.2.2 "Off Duty Work Details"