Department of Behavioral Health

TRANSMITTAL LETTER

SUBJECT **DBH Equal Employment Opportunity Policy**		
POLICY NUMBER **DBH Policy 760.4**	**DATE** DEC 17 2013	**TL#** 219

Purpose.

- To affirm the Department of Behavioral Health (DBH) commitment to create and maintain a workplace that is free from unlawful discrimination;
- To affirm the requirement that DBH employees shall not discriminate, harass, or create a hostile work environment; and
- To set forth the procedures for the DBH Equal Employment Opportunity (EEO) complaint process.

This revision adopts the policy from the former Department of Mental Health, now merged into the new Department of Behavioral Health, in accordance with the DBH Establishment Act of 2013.

Applicability. Applies to all employees and applicants for employment with DBH.

Policy Clearance. Reviewed by affected responsible staff and cleared through appropriate Behavioral Health Authority offices.

Implementation Plans. **Specific staff whose roles are relevant to the implementation of this policy should be trained, as needed. Program managers are responsible for following through to ensure compliance.**

Policy Dissemination and Filing Instructions. Managers/supervisors of DBH must ensure that staff are informed of this policy. Each staff person who maintains policy manuals must promptly file this policy in the DBH Policy and Procedures Manual.

ACTION

REMOVE AND DESTROY	**INSERT**
DMH Policy 760.4	**DBH Policy 760.4**

Stephen T. Baron 12/17/13
Director, DBH

GOVERNMENT OF THE DISTRICT OF COLUMBIA DEPARTMENT OF BEHAVIORAL HEALTH	Policy No. 760.4	Date DEC 17 2013	Page 1
	Supersedes: DMH Policy 760.4, same subject, dated May 26, 2010.		

Subject: DBH Equal Employment Opportunity Policy

1. **Purpose**.
   - To affirm the Department of Behavioral Health (DBH) commitment to create and maintain a workplace that is free from unlawful discrimination;
   - To affirm the requirement that DBH employees shall not discriminate, harass, or create a hostile work environment; and
   - To set forth the procedures for the DBH Equal Employment Opportunity (EEO) complaint process.

2. **Applicability**. Applies to all employees and applicants for employment with DBH.

3. **Authority**. D.C. Human Rights Act of 1977, as amended (HRA, or, the Act), D.C. Law 2-38, D.C. Official Code §§ 2-1401.01 *et seq.* (2001); D.C. Municipal Regulations Title 4, Chapter 1, Complaints of Discrimination in the District of Columbia Government; Civil Rights Act of 1964, as amended, 42 USC §§2000e; and Mayor's Order 2004-171, Sexual Harassment.

4. **Background**. DBH is responsible for planning, implementing and administering mental health services and programs to residents of the District of Columbia. As part of its mission and function, DBH implements and adheres to the mandates of the HRA that prohibit unlawful discrimination in employment on the basis of: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, disability, political affiliation, genetic information and gender identity or expression. The HRA also makes it unlawful to discriminate against an employee who has engaged in a protected activity, or, to retaliate against an employee who initiates a complaint or engages in a protected activity.

DBH requires that employees and applicants for employment receive fair and equal treatment in all employment practices, policies, and decisions, including, but not limited to, vacancy announcements, hiring, promotions, pay and benefits, and discipline. To enforce this policy, DBH has established procedures by which unlawful discrimination in employment practices may be reported, investigated, and addressed.

5. **Definitions**.

5a. Complainant – an employee or applicant for employment with DBH who makes or files an oral or written complaint of discrimination.

5b. Discrimination – treatment or consideration based on a person's actual or perceived membership in a particular category or class of persons rather than individual merit.

5c. Formal EEO Complaint – External complaint filed through OHR or U.S. EEOC.

5d Harassment – is a form of discrimination based on any of the protected categories listed in Section 5h below.

5e. Informal EEO Complaint – Internal complaint filed within DBH.

5f. OHR – District of Columbia, Office of Human Rights.

5g. Protected Activity - includes lawful actions by an employee that furthers the interest and/or upholds the rights of protected categories under the HRA.

5h. Protected Categories – or classes under the HRA include: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, disability, political affiliation, genetic information and gender identity or expression.

5i. U.S. EEOC – United States Equal Employment Opportunity Commission.

6. **Policy**.

6a. Employment discrimination is prohibited under § 2-1402.11, *et seq.* of the HRA. DBH is fully committed to upholding the EEO laws of the District of Columbia, and seeks to ensure a workplace that is free of discrimination in regard to employment and equality of treatment for all employees.

6b. DBH will integrate EEO standards and initiatives into all management actions involving DBH employees and services.

6c. DBH employees shall not discriminate or create a hostile work environment in violation of the D.C. Human Rights Act of 1977, as amended.

6d. Any employee or applicant for employment who believes that he or she has been discriminated against based on an unlawful employment practice may file an informal complaint as outlined in Section 10 below (or, in the case of sexual harassment, directly with the Office of Human Rights). Eligible DBH employees hired prior to October 1, 1987, may opt to file complaints of discrimination directly with the U.S. EEOC (see www.eeoc.gov).

7. **Examples of Discrimination**.

7a. Disparate Treatment – may occur when an employer or other person subject to the HRA treats someone differently because of that person's membership in a protected class, or intentionally excludes individuals from an employment opportunity on the basis of actual or perceived discrimination with regard to an employment action, or a term and condition of employment.

7b. Adverse Impact – can involve a facially neutral pattern or practice of discrimination against a particular group, and/or a claim that there is an *adverse effect* of an agency's policy or procedure on a particular group.

7c. Harassment of an employee will be deemed unlawful if submission to or rejection of such conduct by an employee is made the basis for an employment decision affecting the employee; or, such conduct is sufficiently severe or pervasive to create a hostile work environment.

7d. Hostile Work Environment –

(1) The determination of what constitutes a hostile work environment requires a case-by-case review of facts and circumstances that explain:

(a) whether the conduct was physically threatening or intimidating;

(b) how frequently the conduct was repeated;

(c) whether the conduct was clearly hostile and/or offensive;

(d) the context in which the harassment occurred; and

(e) whether management responded appropriately when it learned of the harassment.

(2) The following are some examples of conduct which, if unwelcomed, may constitute unlawful harassment, depending upon the totality of the circumstances:

(a) Use of electronic media to harass employees based on a protected category;

(b) Oral or written abuse and/or threats that may include teasing, jokes, insults, gestures, epithets, or remarks based on sex, race, age, disability, religion, national origin, color, or retaliation;

(c) Comments on an individual's body, sexual activity, or lewd or obscene comments;

(d) Visual displays, including electronic media (screen savers) or printed media material (posters, cartoons), in the workplace that are sexually explicit or derogatory or demeaning to a particular color, national origin, race, religion, sex, age, or disability; and

(e) Unwelcome or unsolicited physical contact, including touching, patting, pinching, hugging, grabbing, cornering, or brushing against another person's body.

(3) A hostile work environment may also occur, but is not limited to, circumstances involving alleged sexual harassment as follows:

(a) Quid Pro Quo sexual harassment action (sexual advances) involving an abuse of power by someone such as a supervisor, manager, or a co-worker with authority to make job decisions who can withhold a job benefit from an employee who does not succumb to his or her advances.

(b) Alternatively, sexual behavior targeted at the complainant, or nonsexual behavior directed at the complainant because of a protected class.

(4) A finding of sexual harassment requires proof that the harassing actions are so severe or pervasive that they effectively change the complainant's working conditions, or sexual behavior that is not directed at the complainant, but adversely affects the complainant's working conditions.

7e. Retaliation – taking or threatening to take adverse employment action against an employee because he/she has filed a complaint alleging unlawful discrimination, participated

in a discrimination investigation, or engaged in other activity protected under the HRA and Title VII of the Civil Rights Act of 1964.

8. **Proving Discrimination**. In informal claims, the burden of proof is a preponderance of the evidence – complainants must prove that it is more likely than not that the unlawful discriminatory acts complained of occurred. Methods of proof may include:

8a. Direct Evidence – facts revealing intentional discrimination -- that an adverse action was motivated by an individual's membership in a protected class. If revealed, there is no need to resort to circumstantial evidence.

8b. Circumstantial Evidence – facts showing that other similarly-situated employees outside the complainant's protected category are treated differently (disparate treatment).

8c. Statistical Evidence – numerical evidence revealing an adverse impact on members of a protected class even if the specific employment practice is facially neutral.

9. **Responsibilities**.

9a. The DBH EEO Manager is responsible for developing and implementing the DBH EEO policy and procedures, and administers the complaint process with accountability to the Office of the Director, DBH. The EEO complaint process goals include:

- Resolving complaints informally at the earliest stage possible;
- Ensuring equal employment opportunity is provided to all employees;
- Ensuring impartiality, confidentiality, and system integrity;
- Mediating informal complaints, if possible, to avoid costly litigation; and
- Informing employees of their rights and responsibilities through periodic training.

9b. Role of EEO Counselors. EEO Counselors will:

- Assess complaints carefully, to include the employee's account, management's position and agency vulnerability;
- Exercise impartiality and ethics;
- Develop an early intervention and resolution strategy for complaints;
- Process complaints as indicated in Section 10 below;
- Document efforts to achieve a resolution; and
- Preserve confidentiality.

Note: the EEO Counselor is not an advocate for either the complainant or the agency, but acts strictly as a neutral party in the EEO process to facilitate a prompt and fair resolution of the complaint.

9c. All DBH supervisors and managers are responsible for furthering the goals of equal employment opportunity outlined in Section 9a above, and must ensure:

(1) Complainants:
- are free from restraint, interference, coercion, discrimination, or reprisal;
- are provided a reasonable amount of official time for preparation of the complaint (if they are an employee); and
- have the right to be accompanied, represented, and advised by a representative of his or her own choosing (if the representative is a District employee, the

representative shall be free from restraint, interference, coercion, discrimination, or reprisal and shall have a reasonable amount of official time to assist the employee).

(2) EEO Counselors will be free from restraint, interference, coercion, discrimination, or reprisal, and DBH will assist and cooperate with the EEO Counselor's performance of duties.

10. **Complaint Processing and Filing Deadlines**. (Also see Exhibit 1).

10a. **Informal EEO Complaint Process**.

(1) Informal complaints must be filed with an EEO Counselor or the DBH EEO Office within 180 calendar days of the occurrence of the alleged unlawful discrimination in employment practice or the discovery thereof. *See exception for sexual harassment claims in 10b below.* A listing of agency EEO Counselors may be found at www.ohr.dc.gov.

(2) The EEO Counselor/Office will:

- Provide the individual a copy of the EEO Counseling Procedures Rights and Responsibilities for Individuals, and ask the individual to sign the certification of receipt form (Exhibit 2);
- Make an inquiry and review the matter;
- Counsel the complainant concerning the issues of the matter;
- Keep a record of counseling activities, including dates and times of interviews;
- Seek a solution of the matter on an informal basis; and
- In so far as practical, complete the review, conduct the final interview with the complainant, and provide an exit letter within 30 calendar days after the matter is brought to the counselor's attention.

(3) The complainant also has the option of providing the EEO Counselor additional time -- up to 60 calendar days to complete the review, which typically requires interviews with managers, supervisors, and other employees. Also see Section 10a (6) and (7) below.

(4) If the outcome is favorable to the employee, the matter will be referred to management for appropriate resolution.

(5) If the EEO Counselor is unable to resolve the issue to the complainant's satisfaction, the counselor will conclude informal counseling and issue an exit letter (notice of right to file a formal complaint). The complainant may then file a formal complaint with OHR within 15 calendar days of receipt of the exit letter. Complaints filed after the 15-day period may be deemed untimely and dismissed by the Director, OHR.

(6) 60-Day Rule. If the EEO Counselor does not conduct a final interview and does not provide an exit letter, then the complainant has the right to file a formal complaint with the OHR within 60 calendar days of the date on which the matter was called to the attention of the EEO Counselor.

(7) Complaints filed beyond the 60-day period may be deemed untimely and dismissed by OHR.

10b. **Special Filing Procedures**.

(1) Sexual Harassment Complaints may be filed directly with the District of Columbia Office of Human Rights (OHR). DBH must document the complaint and advise the complainant of his/her rights, if filed informally with DBH.

- Current employees of the District government have one (1) year to file complaints of sexual harassment directly with OHR.

- Former employees who leave the District government because of sexual harassment may file a complaint with OHR within 180 calendar days of separation from the District government.

(2) All other complaints may be filed through the DBH informal process or filed as a civil action with the appropriate court, or where applicable, filed directly with OHR, or the U.S. EEOC.

11. **Training**. The DBH EEO Manager will conduct training on EEO to include: Employee Rights and Responsibilities under the District of Columbia Human Rights Act of 1977, at least annually.

12. **Reporting Requirements**. The DBH EEO Manager or assigned EEO Counselor will submit a quarterly report to OHR that lists the status of all informal complaints received during the quarter.

Approved By:

Stephen T. Baron
Director, DBH

(Signature) 12/17/13 **(Date)**

EEO Filing Deadlines

Informal EEO Complaint Process

Within 180 calendar days

Complainant must file complaint with EEO Counselor or the DBH EEO Office within 180 calendar days of the occurrence or discovery of the occurrence of the alleged unlawful discrimination in employment practice. *See below for exception for sexual harassment.

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Within 30 calendar days

In so far as practical, the EEO Counselor will complete the review, conduct the final interview with complainant, and provide an exit letter within 30 calendar days after the matter was brought to the EEO Counselor's attention.

→ Complainant has option of providing the EEO Counselor additional time -- up to 60 calendar days to compete review, which typically requires interviews with managers, supervisor, and other employees.

If the outcome is favorable to the employee, the matter will be referred to management for resolution.

If the issue is not resolved to the Complainant's Satisfaction:

Within 15 Calendar Days of receipt of exit letter

Complainant may file a formal complaint with OHR within 15 calendar days of conclusion of informal counseling and receipt of the exit letter (notice of right to file a formal complaint). Complaints filed after the 15-day period may be deemed untimely and dismissed by the Director, OHR.

If the EEO Counselor does not conduct a Final Interview and does not provide an Exit Letter:

Within 60 Calendar Days

Complainant has the right to file a formal complaint with OHR within 60 calendar days after the matter was brought to the EEO Counselor's attention. Complaints filed beyond the 60-day period may be deemed untimely and dismissed by OHR.

*Special Filing Procedures for Sexual Harassment Complaints

Sexual Harassment Complaints may be filed directly with the D.C. Office of Human Rights (OHR).

- Current employees of the District government have one (1) year to file complaints of sexual harassment directly with the OHR.
- Former employees who left the District government because of sexual harassment may file a complaint with OHR within 180 calendar days of separation from the District government.

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All other complaints must be filed through the DBH informal process or filed as a civil action with the appropriate court, or where applicable, directly with OHR or the U.S. EEOC.

EEO Counseling Procedures

Rights and Responsibilities for Individuals

In accordance with the District of Columbia Human Rights Act of 1977, as amended, and the District of Columbia Municipal Regulations, Title 4, you are herein advised of your rights and responsibilities as you process with EEO Counseling and, if you chose, to file a formal complaint of discrimination. At a minimum, and in summary, those rights include the following:

a. The right to allege discrimination in employment because of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, disability, political affiliation, genetic information, gender identity or expression, in connection with any aspect of District government employment.
b. The right to consult with an EEO Counselor within one-hundred eighty (180) days of the occurrence of alleged unlawful discrimination practice; within one hundred-eighty (180) calendar days of his/her discovery of the occurrence.
c. A complaint of sexual harassment may be filed directly with the DC Office of Human Rights.
d. The right to representation throughout the complaint process, including the counseling stage. It is the Complainant's duty to immediately inform the EEO Counselor or the DC Office of Human Rights if the Complainant, at any time, retains counsel or a representative. Note: The EEO Counselor is not an advocate for either the Complainant or the agency, but acts strictly as a neutral party in the EEO Process.
e. The EEO Counselor shall, insofar as is practicable, conduct the final interview with the Complainant no later than thirty (30) calendar days after the date of which the matter was called to his/her attention by the Complainant.
f. The requirement that in the event that the Complainant wishes to file a formal complaint at the conclusion of counseling, s/he will do so within 15 calendar days of receipt of the Counselor's notice of right to file a formal complaint.
g. Complaints filed after the fifteen (15) calendar day period specified above shall be deemed untimely and dismissed by the Director of the DC Office of Human Rights
h. In any event, and regardless of whether or not the EEO Counselor completes his/her review and action with the time limits, a Complainant shall be free to file a complaint with the DC Office of Human Rights at the expiration of the thirty (30) day period as set forth above.
i. If the EEO Counselor does not conduct the final interview, and does not provide an exit letter, the Complainant may file a formal complaint with the DC Office of Human Rights within sixty (60) calendar days after the date on which the matter was called to the attention of the EEO Counselor.
j. The duty to keep the EEO Counselor and the DC Office of Human Rights informed of his/her current mailing address and telephone number(s).
k. That only those claims raised at the counseling stage or claims that are like or related to those were raised may be the subject of a formal complaint. If new allegations are raised the Complainant must pursue to the counseling process with those allegations

l. The EEO Counselor shall be free from restraint, interference, coercion, discrimination, or reprisal and shall be given the assistance and cooperation of the agency in connection with the performance of his/her duties.

m. At any stage in the proceeding, the Complainant shall be free from restraint, interference, coercion, discrimination, or reprisal.

EEO Counseling Procedures

Certification of Receipt of Rights and Responsibilities

1. I certify that I have been advised of the rights and responsibilities available to me under the rules governing "Complaints of Discrimination it the District of Columbia," in accordance with the District of Columbia Human Rights Act of 1977, as amended, and the District of Columbia Municipal Regulations, Title 4.
2. If I later choose to have representation (attorney or non-attorney), I will inform the EEO Counselor immediately and provide the name and contact information (telephone number, mailing address, and email address, if available) of that person.
3. I understand that if my representative is an attorney, all official correspondence, documents, and decision(s) will be served to my attorney, and not to me.
4. If my representative is not an attorney, all official correspondence will be served to me, with a copy to my representative.
5. I understand that I must inform the EEO Counselor of a change of address immediately, and that my failure to do so may be a basis for dismissal.

Signature: _____

Date: _____

Printed Name: _____