

Edward W. Correia

11/17/98 01:44:04 PM

Record Type: Record

To: Koffskyp @ osdgc.osd.mil @ inet
cc: Jennifer L. Klein/OPD/EOP, Julie A. Fernandes/OPD/EOP
Subject: Executive Order

As you may know, we have been working with Helen Sullivan on a draft executive order dealing with educational programs. We would like to add a clarifying sentence to section 3-301, so that the section would now read:

This order does not apply to members of the armed forces or to military training or education programs. Members of the armed forces, including students at military academies, will continue to be covered by regulations that bar discrimination based on race, color, national origin, or sex, which are enforced by the Department of Defense and individual service branches. The Department of Defense shall develop procedures to protect the rights of, and to provide redress to, civilians not otherwise protected from discrimination based on race, color, national origin or sex by existing Federal law, and who participate in military training or education programs conducted by the Department of Defense.

Would you please review this change and let me know if you have concerns. I would appreciate hearing from you as soon as possible. Please e-mail me or call me at 202/456-2024.

THE WHITE HOUSE
WASHINGTON

Jennifer,

Here's the
draft.

Eddie



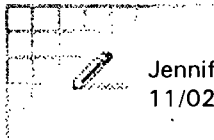
Laura Emmett

11/02/98 03:38:01 PM

Record Type: Record

To: Jennifer L. Klein/OPD/EOP
cc:
bcc:
Subject: Re: phone numbers

Marcia 588-5180
Verna 588-5180
Judy 9986-2647
Nancy- 785-7720
Jennifer L. Klein



Jennifer L. Klein
11/02/98 03:35:07 PM

Record Type: Record

To: Laura Emmett/WHO/EOP
cc:
Subject: phone numbers

Do you have phone numbers for Marcia Greenberger, Verna Williams, Judy Lichtman, and Nancy Zirkon? Can I bother you for them?



U.S. Department of Justice
Civil Rights Division
Appellate Section

October 28, 1998

To: Eddie Correia, Office of Counsel to
President
From: Jennifer Levin, Department of Justice,
Civil Rights Division
Subject: Draft Executive Order

I have enclosed a revised draft Executive order on nondiscrimination in federally conducted education and training programs. We have incorporated both the edits proposed by the Department of Defense, with one minor change, and the language we discussed by telephone today. In Sec. 3-301, we removed commas and changed the phrase "civilian personnel" to "civilians." This phrase refers to non-DOD and non-federal participants in the program. The term "personnel" implies an employment relationship that does exist in these circumstances.

Given the inserts and deletions of text in Sections 2 and 3, DOD's new version of Sec. 3-306 is now Sec. 3-305.

If you have any questions, feel free to contact me at 305-0025.

10/28/98

Executive Order _____

Nondiscrimination on the Basis of Race, Color, National Origin,
and Sex in Federally Conducted Education and Training Programs

Numerous civil rights laws, including Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, et seq., and Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681, et seq., prohibit discrimination on the basis of race, color, national origin, and sex, in educational programs and activities that receive Federal financial assistance. In addition, other Federal laws, including Title VII of the Civil Rights Act of 1964, as amended (Title VII), prohibit discrimination against employees by employers on the basis of race, color, national origin, sex, and other grounds with respect to, among other things, opportunities for and participation in education and training programs. The Federal government has acted, and will continue to act, aggressively through litigation, policy guidance, outreach, and other means to expand and ensure equal opportunities for minorities and women that participate in State, local, and private education programs that receive Federal financial assistance.

In addition to providing Federal assistance to various education and training programs, the Federal government *itself conducts* numerous education and training programs. For example, the Department of Defense operates schools for grades kindergarten through high school to educate the dependents of service members and others in the United States and around the

world. The Department of Interior also operates schools, kindergarten through the undergraduate level, to educate Native Americans. Many agencies also provide training on Federal laws and regulations to a variety of audiences in a variety of settings: formal academies teach state and local personnel principles, laws, techniques, and strategies relating to effective law enforcement; seminars instruct members of select industries on Federal requirements for licensing and operation; programs in prisons train Federal inmates on trade skills; and members of the public are educated about the environment and natural resources.

I believe it is essential that the Federal Government hold itself to the same principles of nondiscrimination in educational opportunities that we now apply to education programs and activities of State and local governments and private institutions receiving Federal financial assistance. Existing laws and regulations prohibit certain forms of discrimination in Federally conducted education and training programs -- including discrimination against people with disabilities (prohibited by the Rehabilitation Act of 1973, as amended), and discrimination based on race, color, national origin, sex, or religion against Federal employees (prohibited by Title VII). Through this Executive order, we are now expanding prohibitions of discrimination on the basis of race, color, national origin, and sex to certain other Federally conducted education and training programs and activities.

NOW, THEREFORE, to enforce the Constitution and laws of the United States, and to achieve equal opportunity in federally conducted education and training programs, and by the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 921-932, title 20, United States Code; section 2164, title 10, United States Code; section 2001 et seq, title 25, United States Code; section 7301, title 5, United States Code; and section 301, title 3, United States Code, it is hereby ordered as follows:

Section 1. Statement of policy on education programs and activities conducted by executive departments and agencies.

1-101. No individual shall, on the basis of race, color, national origin or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in an education or training program or activity of any Executive department or agency conducted in the United States, the territories, the possessions, the Commonwealths of Puerto Rico and of the Mariana Islands, and as set forth in Subsection 1-102.

1-102. The provisions of this Order shall apply to education programs and activities that are operated by the Department of Defense under 10 U.S.C. § 2164 and 20 U.S.C. §§ 921-932.

Section 2. Definitions.

2-201. "Program or activity" includes programs or activities conducted, operated, administered, or undertaken by an executive department or agency.

Refer to military
nondiscrim. regulations

2-202. "Education and training programs" include, but are not limited to, formal schools, extracurricular activities, academic programs, occupational training, scholarships and fellowships, student internships, training for industry members, summer enrichment camps, and programs to train teachers.

2-203. The Attorney General is delegated authority to determine the scope of education and training programs, in addition to those identified in subsection 2-202 and section 3, that are subject to and exempt from coverage by this order, respectively.

2-204. "Military training or education programs" are those training and education programs conducted by the Department of Defense for the primary purpose of training or educating members of the armed forces or to meet a statutory requirement to train Federal, State or local civilian law enforcement officials pursuant to 10 U.S.C. Chapter 18.

2-205. "Armed forces" includes, for purposes of this order, the Armed Forces of the United States, as well as the armed forces of a foreign government recognized by the United States or attached to an international organization.

Section 3. Exemptions from coverage.

3-301. This order does not apply to members of the armed forces or to military training or education programs. However, the Department of Defense shall develop procedures to protect the rights of, and to provide redress to, civilians not otherwise protected from discrimination based on race, sex, national origin, or color by existing Federal law, and who participate in

- Foreign nationals groups
okay to (1)

~~removal~~

+ Does that mean that
other U.S. entities can
discriminate?

What does §504 do on
foreign nationals?

military training or education programs conducted by the Department of Defense.

3-302. This Order does not apply to, affect, interfere, or modify in any way the operation of any otherwise lawful affirmative action plan.

3-303. An individual shall not be deemed subjected to discrimination by reason of his or her exclusion from the benefits of a program limited by federal law to individuals of a particular sex, race, color, or national origin, including Native American or Alaska native, different from his or hers.

3-304. This Order does not apply to programs and activities conducted by the Department of Interior, Bureau of Indian Affairs, that are in conformance with tribal customs or otherwise culturally appropriate. For example, classes that require separation of students on the basis of gender in order to conform to tribal customs that require such separation would not be in violation of this order.

3-305. This Order does not apply to (1) selections based on national origin of foreign nationals to participate in covered programs, if such programs concern primarily national security or foreign policy; or 2) selections or other decisions regarding participation in covered programs made by entities outside the Executive Branch, provided that it shall be the policy of the Executive Branch that education and training programs and activities shall not be available to entities that select persons for participation in violation of Federal or State law.

Section 4. Administrative enforcement.

4-401. Any person who believes him or herself, or any specific class of individuals, to be aggrieved by a violation of this order or implementing regulations, rules, policies, or guidance, may, by him or herself or a representative, file a written complaint with the agency that such person believes is in violation of this order or implementing regulations, rules, policies, or guidance. Pursuant to procedures established by the Attorney General, each executive department or agency shall conduct an investigation of a complete complaint alleging a violation by one of its employees.

4-402. (a) If the office within an executive department or agency that is designated to investigate complaints for violations of this order or its implementing rules, regulations, policies, or guidance concludes that an employee has not complied with this order or any implementing rules, regulations, policies, or guidance, such office shall refer a copy of the report and findings, and supporting evidence to an appropriate agency official. The appropriate agency official shall review such material and determine what, if any, disciplinary action is appropriate.

(b) In addition, the designated investigating office may provide appropriate agency officials a recommendation for any corrective and/or remedial action. The appropriate officials shall consider such recommendation and implement corrective and/or remedial action by the agency, when appropriate. Nothing

in this order authorizes monetary relief to the complainant as a form of remedial or corrective action by an executive department or agency.

4-403. Any action to discipline an employee who violates this order or its implementing rules, regulations, policies, or guidance (including removal from employment, if appropriate), shall be taken in compliance with otherwise applicable procedures, including the Civil Service Reform Act (Civil Service Reform Act of 1978, Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1111, see Tables for classification.)

Section 5. Implementation and Agency Responsibilities.

5-501. The Attorney General shall publish in the Federal Register such rules, regulations, policies, or guidance, as deemed appropriate by her, to be followed by all executive departments and agencies. The Attorney General shall address:

- a. the scope of education programs and activities subject to and exempt from coverage by this order, in addition to those identified in Sections 2 and 3;
- b. examples of discriminatory conduct;
- c. applicable legal principles;
- d. enforcement procedures with respect to complaints against employees;
- e. remedies;
- f. requirements of an agency's annual report as set forth in Section 7;
- g. and such other matters as deemed appropriate.

5-502. Within 60 days of the publication of final rules, regulations, policies, or guidance by the Attorney General, each executive department and agency shall establish a procedure to receive and address complaints regarding its federally conducted education and training programs activities. Each executive department and agency shall take all necessary steps to effectuate any subsequent rules, regulations, policies, or guidance issued by the Attorney General within 60 days of issuance.

5-503. The head of each executive department and agency shall be responsible for ensuring compliance with this order.

5-504. Each executive department and agency shall cooperate with the Attorney General and provide such information and assistance as the Attorney General may require in the performance of the Attorney General's functions under this order.

5-505. Upon request and to the extent practicable, the Attorney General shall provide technical advice and assistance to executive departments and agencies to assist in full compliance with this order.

Section 6. *Annual Report.*

6-601. Consistent with the regulations, rules, policies, or guidance issued by the Attorney General, each executive department and agency shall submit to the Attorney General a report that summarizes the number and nature of complaints filed with the agency and the disposition of such complaints. Such reports shall be submitted annually for the first three years

after the effective date of this order, and submitted within 60 days of the end of the preceding year's activities.

Subsequently, reports shall be submitted every three years, within 90 days of the end of each 3 year period.

Section 7. *General Provisions.*

7-701. Nothing in this order shall limit the authority of the Attorney General to provide for the coordinated enforcement of nondiscrimination requirements in Federal assistance programs under Executive Order No. 12250.

7-702. Nothing in this order amends, supplements, or subtracts from an employee's protections and remedies under Title VII of the Civil Rights Act of 1964, as amended.

Section 8. *Judicial Review.*

8-801. This order is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or its employees. This order is not intended, however, to preclude judicial review of final decisions in accordance with the Administrative Procedure Act, 5 U.S.C. 701, et seq.



DEPARTMENT OF DEFENSE
OFFICE OF GENERAL COUNSEL
1600 DEFENSE PENTAGON
WASHINGTON, DC 20301-1600

October 26, 1998

To: Eddie Correia, Office of Counsel to the President
From: Helen Sullivan, Office of General Counsel, DoD
Re: Draft Executive Order on Education Programs

I received your fax of the draft text of the executive order proposed by DOJ, as well as your memorandum. Thank you.

We have looked at and discussed the comments in your memorandum. In response, here are our views and recommendations for proposed revisions to the draft text.

1. Coverage of Students at Service Academies

The cadets, air cadets and midshipmen at the Academies (United States Military Academy, United States Naval Academy, United States Air Force Academy) are members of the armed forces, as evidenced by the fact that they are appointed by the President (10 U.S.C. §§ 4341a, 6953, and 9341a) and subject to the Uniform Code of Military Justice (10 U.S.C. § 802(a)(2)), and would be covered by an exclusion that applies to the armed forces.

We will get copies of any applicable academy regulations for you. However, since the Academies are subordinate organizational elements of the Military Departments (United States Military Academy (10 U.S.C. Ch 403); United States Naval Academy (10 U.S.C. Ch 603); United States Air Force Academy (10 U.S.C. Ch 903)), they are covered by, and subject to, the overall Department of Defense and Military Department regulations on nondiscrimination and equal opportunity applicable to military members. For example, Section B, "Applicability," of Department of Defense Directive 1350.2, "Department of Defense Military Equal Opportunity (MEO) Program," states that it applies to the Military Departments. As members of the armed forces, the cadets, air cadets, and midshipmen at the Military Academies are covered by this regulation and this Program. (In this context, the Air Force regulation sent to you does not cover discrimination complaints by military members, including air cadets. I will provide that regulation (Air Force Instruction 36-2706) to you as well.)

To clarify our position, DoD fully supports the President's initiative and the goals of the proposed executive order. However, it has always been our understanding that the President's initiative is intended to expand the scope of protection against discrimination based on sex, race, color and national origin to include civilian education programs and activities conducted by the Federal Government which are currently not covered by existing laws prohibiting such discrimination. Training and education programs conducted by this Department for military personnel, including training and education programs conducted by the Military Services, do not fall within this category.



In the context of military training and education programs, the issue is not the status of the civilian attendees, that is whether they are Federal employees, foreign nationals, or others. It is the nature and the purpose of military training and education, itself. Continued maintenance of the good order and discipline among the armed forces dictates that they continue to have the exclusive authority and responsibility, through the military command structure, to enforce prohibitions against discrimination in all aspects of the military environment, to include military training and education programs. You can see evidence of this focus in the emphasis placed on enforcement through the chain of command, contained in the Military Service regulations we sent to you. DoD believes that superimposing external structures on the armed forces and the chain of command, through the proposed executive order, is unnecessary and could significantly damage the military command structure and, thus, the ability of the armed forces to assure the nation's defense. In particular, we believe that an official outside the military chain of command (such as the Attorney General) should not establish enforcement procedures or remedies that must be adopted within the command structure.

However, because we support the goal of prohibiting discrimination based on race, sex, color, and national origin in all training and education programs conducted by DoD, including in military training and education programs, we would propose including in the executive order a provision that would require DoD to establish procedures to provide protections and a means of redress for civilians participating in military training and education programs who are not otherwise protected by existing laws. Coupled with the exclusion for military training and education programs, section 3-301 could be revised to read:

3-301. This order does not apply to members of the armed forces or to military training or education programs. However, the Department of Defense shall develop procedures to protect the rights of, and to provide redress to, civilian personnel not otherwise protected from discrimination based on race, sex, national origin, or color by existing Federal law, who participate in military training or education programs conducted by the Department of Defense.

Instead of the section 3-302 language we had proposed, we would propose adding the following definitions to section 2:

2-204. "Military training or education programs" are those training and education programs conducted by the Department of Defense for the primary purpose of training or educating members of the armed forces or to meet a statutory requirement to train Federal, State or local civilian law enforcement officials pursuant to 10 U.S.C. Chapter 18.

2-205. "Armed forces" includes, for purposes of this order, the Armed Forces of the United States, as well as the armed forces of a foreign government recognized by the United States or attached to an international organization.

This approach would both meet the goals of the proposed executive order and address DoD's concerns.

3. National Origin

We appreciate the opportunity to comment and provide input on this issue. Our primary concerns would be alleviated by the proposed changes above, since they address military training and education programs as a whole. However, we agree that the executive order should include the exclusion for programs based on national origin for national security or foreign policy reasons, as you have proposed. We also share your concerns that it may not be appropriate or practical to cover by executive order the decisions of entities, including foreign governments, other than Executive Branch agencies regarding their participation in covered programs. We would propose a slight variation to your amendment to section 3-306:

This order does not apply to (1) selections based on national origin of foreign nationals to participate in covered programs, if such programs concern primarily national security or foreign policy; or (2) selections or other decisions regarding participation in covered programs made by entities outside the Executive Branch.

4. Other

Finally, as an administrative matter, we suggest that the last sentence in section 1-101 be changed as follows:

The provisions of this Order shall apply to education programs and activities that are operated by the Department of Defense under 10 U.S.C. § 2164 and 20 U.S.C. §§ 921-932.

This change more accurately defines the activities in question and makes explicit that the order would apply to the Department's overseas and domestic school systems.

Again, thank you for the opportunity to give you our views on these matters. Please telephone (695-1078), fax (693-7616), or send e-mail (sullivan@osdgc.osd.mil), if I can be of further assistance.



For Official Use Only

Department of Defense
Office of General Counsel
1600 Defense Pentagon
Washington, D.C. 20301-1600

FAX

Date: 22 October 1998
Total Number of Pages: See note below
(including cover)
To: Ms. Jennifer Klein or Ms. Julie Fernandes
Phone: (202) 456-6266; (202) 456-2216

FROM: Helen Sharett-Sullivan, Associate Deputy General Counsel
Phone: (703) 695-1078, Fax: (703) 693-7616
Email: sullivanh@osdgc.osd.mil

Comments:

Ms. Klein/Ms. Fernandez,

Eddie Correia had asked that we provide copies of regulations specifically indicating that the cadets, air cadets and midshipmen of the military academies were covered by Department of Defense and applicable Military Department implementing regulations prohibiting discrimination based on race, color, national origin, and sex. I am faxing to you in two separate transmissions applicable United States Military Academy (4 pages); United States Naval Academy (18 pages), and United States Air Force Academy (27 pages) regulations. These regulations implement Military Department and Department of Defense regulations prohibiting discrimination. By a third transmission, I will send you the Department of Air Force Regulation covering discrimination complaints by military members, including air cadets. That regulation (Air Force Instruction 36-2706 (47 pages)) also is available on-line at "<http://afpubs.hq.af.mil/elec-products/series.stm>."

We are still working our response to Eddie's memo to me.

Helen Sullivan

If all of the pages are not received, or if they are not legible, please contact the action officer.

WARNING: Most Fax machines produce copies on thermal paper. The image produced is highly unstable and will deteriorate significantly in a few years. It should be copied on a plain paper copier prior to filing as a record.

*DEPARTMENT OF THE AIR FORCE
34th Training Group (USAFA)
September 1997
USAF Academy CO 80840*

AFCW INSTRUCTION 36-2706

PERSONNEL

Military Equal Opportunity (EO)/Human Relations (HR) Program

PURPOSE: This publication implements Air Force Policy Directive (AFPD) 36-27, Social Actions; Air Force Instruction, 36-2706, Military Equal Opportunity and Treatment Program; DoD Directive 1350.2 with Changes 1 and 2, Department of Defense Military Equal Opportunity Program, December 23, 1988, and DoD Instruction 1350.3, Military Equal Opportunity Assessment (MEOA), DoD Directive 1300.17, Accommodations of Religious Practices Within the Military Services, 17 October 1988.

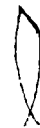
This instruction outlines the requirements of the 34th Training Wing (34 TRW/CC) and the Cadet Wing Equal Opportunity (EO) and Human Relations Education (HR) Program. It applies to 34 TRW military personnel and cadets subject to the Uniform Code of Military Justice (UCMJ), and all 34 Training Wing civilian personnel subject to administrative and/or disciplinary action under applicable directives or implementing instructions governing civilian disciplinary or adverse actions. This instruction describes responsibilities for implementing this instruction, prohibitions concerning discrimination, and EO/HR requirements for 34 TRW and cadet personnel.

SUMMARY OF REVISIONS

This AFCWI contains EO program information taken from AFCWI 36-2701, Equal Opportunity and Treatment (EOT)/Human Relations Education (HRE) Program. It also contains information from the AFCWI 51-201, United States Air Force Academy (USAFA) Conduct, Discipline and Probation System and AFCWI 38-101, Cadet Wing Command, Organization, and Duties. This AFCWI expands EO program objectives; requires documentation in performance reports for serious or repeated EO violations; expands informal assistance; requires documenting all EO/HR issues in AFCW Form 1587-1, 34th Cadet Wing EO Informal Complaint Summary; clarifies mediation process; includes guidance on accommodation of religious practices; adds more terms and updates the definitions of existing terms; deletes age as a category of "unlawful discrimination" and deletes ethnic group as a basis for filing a complaint. Furthermore, it provides procedures for reporting and tracking Cadet Wing EOT/HR issues. It also includes education requirements for cadets, as well as recommended education for Air Officers Commanding (AOCs), Military Training Advisors (MTAs) faculty and staff.

Supersedes AFCWI 36-2701, November 1995
OPR: 34 TRW/CWCR (MSgt Adcox)

Certified by: Col David L. Connors
Pages: 27/Distribution: F, X



1. Organization Actions

1.1. Program Objectives. The primary objective of the EO program is to improve mission effectiveness by promoting an environment free from personal, social, or institutional barriers which prevent Air Force members from rising to the highest level of responsibility possible based on their individual merit, fitness, and capability. The EO program:

1.1.1. Is a function of leadership and command based on fairness, equity, and justice.

1.1.2. Seeks to eliminate unlawful discrimination against military, civilian, and cadet personnel based on race, color, religion, sex, or national origin. Unlawful discrimination and sexual harassment are contrary to good order and discipline and counterproductive to combat readiness and mission accomplishment. Unlawful discrimination against Air Force personnel or their family members, civilian employees, and cadets, on or off base, will not be tolerated.

1.1.3. Encourages members to use the chain of command to identify and correct unlawful discriminatory practices. This includes processing and resolving complaints of unlawful discrimination and sexual harassment. The chain of command is responsible for creating an environment free from unlawful discrimination and sexual harassment.

1.1.4. Ensures rating and reviewing officials evaluate in compliance with the DoD and Air Force directives prohibiting unlawful discrimination and sexual harassment and document serious and repeated deviations from such directives in the performance report. Memberships in groups espousing supremacist causes or advocating unlawful discrimination must be considered in evaluating and assigning members. (See AFI 51-903, Dissident and Protest Activities)

1.2. Organizations That Discriminate. Military members and their family members must not be arbitrarily denied access to on or off base facilities in the United States or overseas.

Organizations that deny personnel access because of their race, color, religion, sex, or national origin, or which otherwise in the judgment of the installation commander engage in de facto discrimination, will be denied use of military facilities or resources.

1.3. Off base Discrimination. Commanders must impose "off-limits" sanctions using the procedures in AFI 31-213, Armed Forces Disciplinary Control Boards and Off-Installations Liaison and Operations. Sanctions are imposed when there is substantive information indicating that an establishment or area frequented by their personnel presents conditions that adversely affect the health, safety, welfare, morale, or morals of such personnel. Efforts to combat unlawful discrimination must continue despite pending results of suits initiated under the Civil Rights Act of 1964 and 1991, Title II, III, and IV as amended (Title 42, U.S.C., Chapters 20 and 21 et. seq.).

AFCWI 36-2706, 6 Sep 1997

3

1.4. 34 TRW/CC: Responsible for the EO/HR Program within the Cadet Wing.

1.4.1. Provides for an environment free of unlawful discrimination and sexual harassment. Directs all commanders, supervisors, and cadets to support the purpose and intent of the EO policy.

1.4.2. Develops policies to prevent unlawful discrimination and sexual harassment, and ensures those policies are prominently posted in locations and areas frequented by the Cadet Wing population. Ensures members of the Cadet Wing are advised on Air Force policies concerning EO.

1.4.3. Ensures Training Wing and Cadet Wing personnel attend HR education as required in Attachments 3 and 4.

1.4.4. Acts to repeal any Cadet Wing instruction or change any practice, including reprisal, that does not support equal opportunity policy.

1.4.5. Directs the assessment of the Cadet Wing HR climate.

1.4.6. Ensures appropriate disciplinary and corrective actions are taken if unlawful discrimination or reprisal is substantiated.

1.4.7. Ensures rating and reviewing officials evaluate in compliance with directives prohibiting unlawful discrimination and sexual harassment and documents serious or repeated deviations.

1. 5. Human Relations Division, Center for Character Development (34 TRW/CWCR):

1.5.1. Serves as staff office for 34 TRW/CC on Cadet Wing EO/HR Program. Process owner of Cadet Wing EO/HR tracking.

1.5.2. Keeps 34 TRW/CC apprised of discriminatory practices and HR issues within the Cadet Wing even when no formal complaint has been submitted.

1.5.3. Develops and maintains EO/HR directives impacting the Cadet Wing.

1.5.4. Develops, monitors, modifies, and assesses the Cadet Wing EO/HR Program.

1.5.5. Assists AOCs, squadron commanders, group commanders, and cadets to prevent, eliminate, or neutralize factors that adversely affect the Cadet Wing EO/HR climate.

1.5.6. Serves as the Cadet Wing advisor and consultant on EO/HR issues, to include discrimination, sexual harassment, and diversity.

1.5.7. Directs the Cadet Wing's EO/HR climate assessment effort and briefs the 34 TRW/CC on findings and trends. Provides courtesy copy to Social Actions (10 ABW/SA) and the Inspector General (IG).

1.5.8. Gathers data from SA and the IG on EO/HR issues involving cadets and impacting the Cadet Wing.

1.5.9. Consolidates EO/HR trends, studies, and statistical analyses throughout the Cadet Wing. Briefs 34 TRW/CC (monthly and/or quarterly) on informal and formal EO/HR issues in the Cadet Wing.

1.5.10. Plans future program development and initiates appropriate research and evaluation on EO/HR issues impacting the Cadet Wing.

1.5.11. Provides the Academy 10 ABW/SA a copy of the Cadet Wing HR educational plan.

1.5.12. Maintains contact with other Academy, Air Force, Department of Defense, and civilian agencies that have collateral EO/HR responsibilities and interests.

1.5.13. Convenes and attends conferences, workshops, and other professional forums that address EO/HR issues.

1.6. 34 TRG/CC:

1.6.1. Provides an environment free of unlawful discrimination and sexual harassment.

1.6.2. Ensures unit members are able to present EO complaints without fear of reprisal.

1.6.3. Ensures cadets and 34 TRG assigned personnel attend EO/HR education as required in Attachments 3 and 4.

1.6.4. Ensures appropriate disciplinary and corrective actions are taken if unlawful discrimination or reprisal is substantiated.

1.6.5. Ensures rating and reviewing officials evaluate in compliance with directives prohibiting unlawful discrimination and sexual harassment and documents serious or repeated deviations.

1.6.6. Provides 34 TRW/CWCR with a monthly Disciplinary Summary.

AFCWI 36-2706, 6 Sep 1997

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1.7. 10 ABW/SA:

1.7.1. Conducts and processes complaint and incident clarifications.

1.7.2 Documents cadet discrimination (informal and formal) complaints lodged with the SA Office, including those referred to other agencies.

1.7.3. Clarifies cadet discrimination complaints when the chain of command mechanism is not appropriate or cadet decides to file a formal complaint.

1.7.4. Notifies and briefs appropriate commanders of discriminatory circumstances within the Cadet Wing even when no formal complaint has been submitted.

AFCWI 36-2706, 6 Sep 97 Attachment 1

17

GUIDELINES ON COMPLAINT PROCESSING		
R U L	A	B
E	If the complainant or complaint	then
1.	Alleges unlawful discrimination/sexual harassment that involves homosexual conduct.	Refer the individual to the Commander.
2.	Alleges use of racial, sexual, religious, etc., slurs.	If at all possible, address the concern with the individual. If not comfortable discussing the issue with the offender, use the cadet chain of command. Document on AFCW Form 1587-1.
3.	Alleges unlawful discrimination/sexual harassment against someone in the cadet chain of command.	Address concern with the Squadron commander. Notify AOC. Document on AFCW Form 1587-1.
4.	Alleges unlawful discrimination or sexual harassment against the AOC.	Refer the complaint to the Appropriate Group AOC or the 34 TRG/CC. Document on AFCW Form 1587-1.
5.	Alleges unlawful discrimination or sexual harassment and wants to file a formal complaint.	Notify AOC. Coordinate With CWCR for referral to 10 ABW/SA. Document on AFCW Form 1587-1.
6.	Alleges unlawful discrimination against senior officer.	Notify AOC. Coordinate with CWCR for referral to the IG. Document in AFCW Form 1587-1.
7.	Involves sexual assault, rape, or abuse.	Contact the Cadet Counseling Center or the Sexual Assault Hotline (330-5929)

GUIDELINES ON COMPLAINT PROCESSING	
R U L E	
A	B
If the complainant or complaint	then
8. Is anonymous.	Notify AOC. If allegations are serious consider requesting a commander directed inquiry/ investigation. Clarify allegations included in the complaint. Document on AFCW Form 1587-1
9. Alleges discrimination against an off-base establishment- other than a landlord or realtor.	Notify AOC. Coordinate With CWCR for referral to the 10 ABW/SA. Document on AF Form 1587-1

AFCWI 36-2706, 6 Sep 97 Attachment 2

19

34 th CADET WING EQUAL OPPORTUNITY INFORMAL COMPLAINT SUMMARY				Case No.	Process Time (days)
PRIVACY ACT STATEMENT Priority: Title 10 United States Code #013 and Department of Defense Directive 1350.2 Principal Purposes: 1) Collecting and reporting essential data on unlawful discrimination or sexual harassment 2) Ensuring resolution and follow up of all discrimination complaints allegations Uses: None Disclosure: Disclosure of SSN is voluntary. SSN, if furnished, will be used to facilitate search for records applicable to complaints					
Check the following that applies: CWCR Consult _____ HREO Consult _____ Disciplinary Action (attach to Form 10) _____					
1. Name (Last, First, MI)		2. SSN		3. Class Yr	4. Duty Phone
5. Squadron	6. Cadet Grade	7. Race	8. Ethnic Group	9. Sex	☐ Male ☐ Female
10. Nature of Complaint (Mark all that apply) _____ AF Policy _____ Verbal _____ Non Verbal _____ Physical Other (specify) _____					
11. Area of Complaint (Mark all that apply) _____ Commander _____ Supervisor _____ USAF/AF Policy _____ Individual/Coworker Facility/Location _____ Other (specify) _____					
12. Category of Discrimination/Assistance (Mark all that apply)			13. Alleged Offender's Demographics		
_____ Race _____ Sex _____ National Origin _____ Color _____ _____ Sexual Harassment _____ Religion _____ Other (specify) _____			Race _____ Sex _____ Ethnic Grp _____ (Cadet) Grade _____ Class Year _____ Squadron _____		
14. Explanation of Concern/Complaint (Be specific. Include details necessary to explain the nature of the complaint, e.g., race, sex, religion. If disciplinary action is being taken include names of participants involved. State if there were witnesses to the incident and/or any individuals allegation(s) were reported to previously)					
15. Date		16. Signature of Interviewer (HREO, AOC/MTA, Cadet Command or CWCR Consultant)			17. Signature of Complainant (optional)
18. Resolution Option(s) Selected: _____ Group Command _____ AOC/MTA _____ Cadet Command _____ HREO _____ Individual _____ CWCR _____ Other (specify) _____					
19. Remarks (Indicate any referrals made and perceived status of resolution, as of date signed above)					
Actions Taken:					
CWCR USE ONLY					
20. Follow Up Date (if required)		21. Follow Up With		Comment:	
22. Status: Resolved _____ Unresolved _____ Formal Complaint _____ (Date to IG or SA _____ / _____ / _____)					
23. Date Closed	24. Signature (Group Consultant)		25. Signature (Chief, CWCR)		
AFCW Form 1587-1					

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(c) Discipline. Conduct data will be collected and analyzed to include such things as the number of midshipmen placed on report, separated, assigned Extra Military Instruction, and referred to courts-martial. Types of punishment will be analyzed for similarities and disparities and for severity with respect to race/ethnic groups or gender. Officer and civilian staff and faculty discipline records, including military justice cases, non-judicial punishment, letters of reprimand, and other official action potentially damaging to personnel career advancement, will be collected and analyzed.

(2) The demographic data and the results of the command assessment will be retained for at least 36 months at which time it may be destroyed.

d. Grievance Procedures

(1) Equal opportunity complaints of discrimination and/or harassment must be evaluated and acted on by the midshipmen or officer and civilian chains of command, per enclosures (7) and (8), respectively. Legitimate complaints can provide valuable information about existing or developing patterns of discrimination and sexual harassment within the Naval Academy and the Brigade of Midshipmen. Firm, positive, and timely action on valid complaints reinforces USNA's genuine commitment of equal opportunity for all command personnel.

(2) A complainant should consider attempting to resolve the grievance with the individual(s) involved. Assistance of the individual's immediate superior may be requested as circumstances require. If the accused is the complainant's immediate superior and the issue cannot be resolved at that level, that superior must present the complaint to the next senior in the chain of command. If the complaint cannot be resolved between the two parties with the help of the immediate superior, then the immediate supervisor must submit a written request to the next superior in the chain of command, who must convene and conduct a grievance hearing at the earliest opportunity. The convening officer must inform all parties as to the results of the hearing and the action taken by the presiding/convening officer on legitimate complaints. The convening officer must send a written report up the chain of command with the results at the earliest opportunity.

(3) The grievance system requires the trust and confidence of the individuals who use this system. Any acts of reprisal against the complainant are intolerable and must be investigated by the next senior member in the chain of command. Verified acts of reprisal will be dealt with rapidly and to the fullest extent allowed by policy/Administrative Conduct System.

(a) Examples of reprisals may include but are not limited to increased or abnormal duty/watchstanding assignments, unwarranted reduced performance rankings, unwarranted conduct actions and silencing.

(b) The chain of command will set a climate which makes it absolutely clear that the policy is one of zero tolerance of reprisals. When reprisals are reported, their validity will be aggressively investigated, determined, and prompt disciplinary action taken against violators when appropriate.

(4) Service members have the responsibility to submit only legitimate complaints and to exercise caution against immature or reckless charges.

(a) Anyone found to have submitted a frivolous complaint will be responsible for attending the next NR&R workshop for equal opportunity education purposes (one conducted every 90 days).

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(b) Should the presiding officer in a grievance procedure find that the complaint was ill-intended, then he will forward the case to the Commanding Officer and the complainant may be subject to conduct proceedings.

e. Ombudsman

(1) An alternative avenue of reporting grievances is through the use of the Ombudsman representatives, although the primary and preferred method of reporting is through the chain of command. This communications network was established to allow for anonymous reporting of incidents of discrimination and/or sexual harassment.

(a) Brigade of Midshipmen - A Senior Enlisted Advisor will be assigned to each battalion as the point of contact for midshipmen who need this grievance redress. Additionally, two commissioned officers will be assigned as Ombudsman representatives.

(b) Commandant's staff - Two commissioned officers will be assigned by the Commandant's CMEO Coordinator as the Ombudsman representatives to service the officer staff. These may be the same as those assigned to the Brigade of Midshipmen.

(c) Officer/civilian faculty - Two officer and two civilian representatives will be assigned as the Ombudsmen for the faculty staff.


V. L. HILL, JR.

Distribution:

A-1

CMEO Coordinator (100)

COMDT (60)

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COMMAND MANAGED EQUAL OPPORTUNITY
Brigade of Midshipmen

MIDSHIPMEN DATA COLLECTION

I. Comparative Groupings:

- A. Gender - (2)
male / female
- B. Race - (6)
White / Black / Asian / Hispanic / American Indian / other
- C. Class - (4)
first / second / third / fourth
- D. Athlete - (2)
varsity member / non member

II. Evaluation Areas:

- A. Attrition -
 - vol. resignations
 - qualified resignations
 - academic
 - conduct
 - honor
 - performance
 - medical
 - overall
- B. Academics -
 - majors (group)
 - SAT scores
 - SQPR
 - CQPR
 - Ac. Board attendance
 - VGEP
 - scholarship selection
 - Trident scholar
- C. Conduct -
 - grades
 - no. 6000 violations
 - no. 5000 violations
 - no. 4000 violations
 - no. demerits
 - no. days restriction
 - Conduct boards
- D. Honor -
 - cases reported
 - cases guilty
- E. Physical Education -
 - PE grades
 - PE Test failures
 - PE Review board
- F. Sports -
 - varsity letters
 - varsity members
- G. Professional -
 - Performance grades
 - company rank
 - Performance boards
 - PCR grades
- H. Leadership -
 - unit commanders
 - non-command 3+stripers
 - team captains
 - ECA presidents
 - Honor committee
 - Training committee
 - Brigade Activities Co.
- I. Awards -
 - graduation week
 - "with distinction"
 - Supt/Cmdt/Dean Lists
- J. Publicity -
 - interviews
 - news releases
 - catalog

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**COMMAND MANAGED EQUAL OPPORTUNITY
Office of the Commandant****Officer Data Collection****I. Period. Annually; 12 months (1Jan9X - 31Dec9X)****II. Scope. All officer personnel assigned to the following:**

- | | |
|-----------------------|----------------------------|
| A. Commandant's Staff | E. Professional Programs |
| B. Brigade Officers | F. Seamanship & Navigation |
| C. Physical Education | G. Leadership & Law |
| D. Midshipmen Supply | |

III. Groupings:

- A. Sex - (2)
male / female
- B. Race - (6)
white / black / asian / hispanic / native amer. / other
- C. Rank - (7)
O-1 / O-2 / O-3 / O-4 / O-5 / O-6 / O-7
- D. Specialty - (7)
surface / submarine / air / marine / supply / URL / other
- E. Source - (5)
USNA / ROTC / OCS / AOCs / other
- F. Department - (5)
Comdt Staff / Brigade / Pro Dev / Phys. Ed. / Midn Supply

IV. Data elements:

- | | |
|---|--|
| A. Retention -
"GREE-MAIN"
resignation
force outs | E. Punishment -
court-martial
NJP
letters of censure
letters of caution |
| B. Promotions -
time in service
in-zone
selected | F. Evaluations -
eval summary (1%, 5%, etc)
accelerated promotion |
| C. Command screen -
year group
in screen-group
selected | G. Drug/Alcohol
drug incidents
alcohol incidents |
| D. Awards -
medals
letters of commendation
letters of appreciation | H. Miscellaneous -
request trans. early
approved trans. early
request trans. late
approved trans. late
request spec. programs
selected spec. prog.
grievances filed |

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USNA MIDSHIPMEN COMMAND MANAGED EQUAL OPPORTUNITY SAMPLE SURVEY

Please respond to the statements listed below with the choice that most closely matches your true feelings. Rely as much as you can on your personal experiences and situations of which you have direct or first-hand knowledge:

- (a) Strongly agree
- (b) Agree somewhat
- (c) Neither agree nor disagree
- (d) Disagree somewhat
- (e) Strongly disagree

1. I feel I am afforded the same opportunities to excel in academics as my classmates.
2. The commissioned officers assigned to the brigade with whom I have been associated make themselves equally available to all midshipmen.
3. If I were accused of an honor violation, I feel confident that my case would be handled fairly in accordance with the published Honor Concept.
4. If I felt the chain of command was not responsive to my problems, I would feel comfortable approaching an ombudsman on any subject.
5. I know how to seek corrective action if I felt I were receiving unfair or unjust treatment.
6. I feel the standards of the Honor Concept are truly applied equally to all midshipmen regardless of class, rank, athletic status, gender, or race.
7. Most midshipmen I know would take an active role in either correcting or reporting a situation involving preferential or unfair treatment of another midshipman.
8. Striper selections are based on a midshipman's performance, leadership ability, and overall USNA achievement.
9. If it were necessary for me to go to a conduct board, I feel I would receive fair and unbiased treatment.
10. I feel that peer evaluations are important in identifying strong performing midshipmen and recognizing those weak performing midshipmen who may need more attention.
11. I believe the responsibilities I have been assigned within my company have allowed me to effectively develop leadership skills.
12. In my opinion, the grievance procedures outlined in the Midshipmen Regulations are very effective in resolving issues of fairness and equity.
13. Although specific test and grading criteria for physical fitness differ for men and women, I believe the current standards create equivalent stress for both genders.
14. Those classmates of mine who have been separated by academic boards left because of poor academic achievement only.
15. If I were to observe a midshipman being treated unfairly or encounter an unjust situation, I would actively work to solve it.

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16. If I were placed on report for misconduct I am certain there would be a thorough investigation, and I would receive a fair hearing.

17. I feel I have received thorough training on the Navy's Equal Opportunity Programs and understand my rights and responsibilities as a midshipman with regard to equal treatment.

18. I am expected to live by the same regulations as my classmates.

19. I am comfortable with my company's T-shirt, logo, and/or nickname and feel they are in good taste, boosting morale by building company unity.

20. Dirty jokes and degrading or off-color comments are not permitted nor tacitly encouraged at my table during meals.

21. My first step if I felt I was being treated unfairly would be to talk to my squad leader, whom I could count on to work to resolve the problem.

22. Men and women who are good athletes are afforded the same opportunity to compete on an intercollegiate level and earn varsity letters with the present mix of sports at the Academy.

23. It seems to me that the midshipmen treat one another with courtesy and respect for individual differences.

24. If I observed what I believed to be an honor offense, counseled the person involved, and then decided the offense should be forwarded to an honor board, I could do so without being criticized by my classmates.

25. My professors in the courses I am taking seem genuinely interested in my education and are willing to spend extra time with me when I ask for help.

26. In practice the Honor Concept has helped me to develop and refine my own personal sense of honor and integrity.

27. Because there are generally more qualified midshipmen than striker positions available in a given semester, the Commandant can ensure all groups within the Brigade are represented without compromising the quality of leadership within the Brigade.

28. If I were mistakenly accused of committing an honor offense and later found innocent by an honor board, I am confident that it would not affect my reputation in the company.

29. Classmates of mine who have been separated by a conduct board left because of unacceptable behavior only.

30. In the courses I am taking the instructors divide their attention equally among students, challenging each of us without teaching only to the brightest or those with less aptitude.

31. It seems to me that the restriction on dating within companies is effective in promoting good order and preventing possible conflicts between professional and personal commitments.

32. The articles, pictures, and drawings in the "Log Magazine" accurately reflect life at the Academy and my own attitudes.

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33. If a midshipman who had been found guilty of an honor offense or 6000 series conduct offense was retained and transferred into my company, I feel my classmates could accept that decision and would give that midshipman a chance for a fresh start.

34. Even though the circumstances surrounding a retention or separation decision may be unclear to me, I have faith that the right decisions generally are being made.

35. If it were necessary for me to go to an academic board, I feel I would receive fair and impartial treatment.

36. I feel that as a varsity athlete I would receive the same considerations for retention at an academic board as a non-varsity athlete.

37. I feel the Honor Concept is highly regarded and respected within the Brigade.

38. Brigade Honor Board recommendations for retention of midshipmen who have been found guilty of honor violations are based solely on the offense.

39. I agree with the criteria for determining performance grades as outlined in the Performance Manual.

40. I feel being physically fit is necessary in order to fulfill the mission of the Naval Academy.

41. It seems to me that strong or poor academic ability does not unduly influence performance grades and company rankings.

42. Very few midshipmen fall short of the physical fitness and weight standards.

43. I feel confident that if I work hard nothing will prevent me from being selected to a command position within the Brigade.

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USNA OFFICER COMMAND MANAGED EQUAL OPPORTUNITY SAMPLE SURVEY

Please respond to each of the questions below with the choice that most nearly matches your true feelings. Rely as much as possible on your own personal experiences and situations of which you have direct or first-hand knowledge.

- (a) To a very little extent
- (b) To a little extent
- (c) To some extent
- (d) To a great extent
- (e) To a very great extent

To those questions which request an open response, please be as honest and specific as possible.

1. What is your definition of equal opportunity?
2. To what extent does the Navy support its equal opportunity (EO) programs?
3. To what extent do you feel this command is committed to EO?
4. To what extent do EO considerations impact on (affect) your daily performance at this command?
5. To what extent is the chain of command knowledgeable about the EO climate?
6. To what extent are EO issues being addressed in this command?
7. To what extent do you see EO to be in your self interest?
8. To what extent are work and collateral duty assignments fairly made at this command?
9. To what extent does this command ensure that you receive a fair and objective performance evaluation (FITREP)?
10. To what extent does this command ensure that you have an equal opportunity for education and training?
11. To what extent are awards and other methods of recognition given in a fair and unbiased manner?
12. To what extent do you feel you have been fairly rewarded for your contributions to this command?
13. To what extent are grievances and redress procedures understood in this command?
14. To what extent would you feel free to use the grievance procedures in this command?
15. To what extent would you feel free to report a sexual discrimination complaint?

Enclosure (4)

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16. To what extent would you feel free to report any racial/ethnic discrimination in this command through proper channels?

17. To what extent is your chain of command (those above you) willing to take action on known or alleged sex discrimination issues?

18. To what extent is discipline administered fairly throughout this command?

19. To what extent do you understand your rights as a member of this command?

20. To what extent do you understand your responsibilities as a member of this command?

21. To what extent do people discourage favoritism?

22. To what extent do you feel that racial minorities are shown favoritism at this command?

23. To what extent do you feel that females (or males) are shown favoritism at this command?

24. To what extent do you feel the physical standards are equal for males and females?

25. To what extent are racial slurs, derogatory jokes, or words used at this command?

26. To what extent are racial or sexual language and practices openly confronted at this command?

27. To what extent do the people you work closely with avoid the use of racist language?

28. To what extent do the people you work closely with avoid the use of sexist language?

29. To what extent are assigned military or civilian women effectively integrated into the command's work force?

30. To what extent do the assigned women contribute to the overall output to the command?

31. To what extent do women accomplish job assignments effectively?

32. To what extent do racial minorities accomplish job assignments effectively?

33. To what extent do you feel comfortable working with racial minorities in this command?

34. To what extent do you feel comfortable working with sexual minorities in this command?

35. To what extent would you accept and support a woman who was assigned to this command?

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Open-ended questions

36. How would you describe the equal opportunity climate of this command?
37. What indicators do you use to measure the EO climate?
38. What one thing would cause the biggest improvement in the EO climate?
39. In your opinion, can any group expect to receive harsher (or more lenient) treatment than others in this command?
40. Do you see any indicators of racial hostility in this command?
41. Do you feel that your chain of command (those above you) are receptive to your ideas or inputs?
42. Do you feel that unpleasant tasks are assigned based on any racial or sexist biases?
43. How effective do you feel the NR&R workshop updates are?
44. How effective do you feel the Command Managed Equal Opportunity Program has been to date?

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MIDSHIPMAN CONDUCT ASSESSMENT TEAM SAMPLE INTERVIEW

1. What is your reaction to the CMO program? Does it help make you a more effective leader? Are the equal opportunity policies at the Academy adequate?
2. Can you give any recent examples of favoritism or discrimination at the Academy?
3. Which USNA policy do you consider most fair? Most unfair?
4. How would you describe the midshipman/officer relationship here at the Academy?
5. What are your opinions on the Honor Concept and how the Honor System currently functions?
6. What are your opinions of the Conduct System and how it functions?
7. Do you feel midshipmen are free to register complaints or grievances without fear of reprisal?
8. Do you know of any cases of reprisal?

Enclosure (5)

USNAINST 5354.1

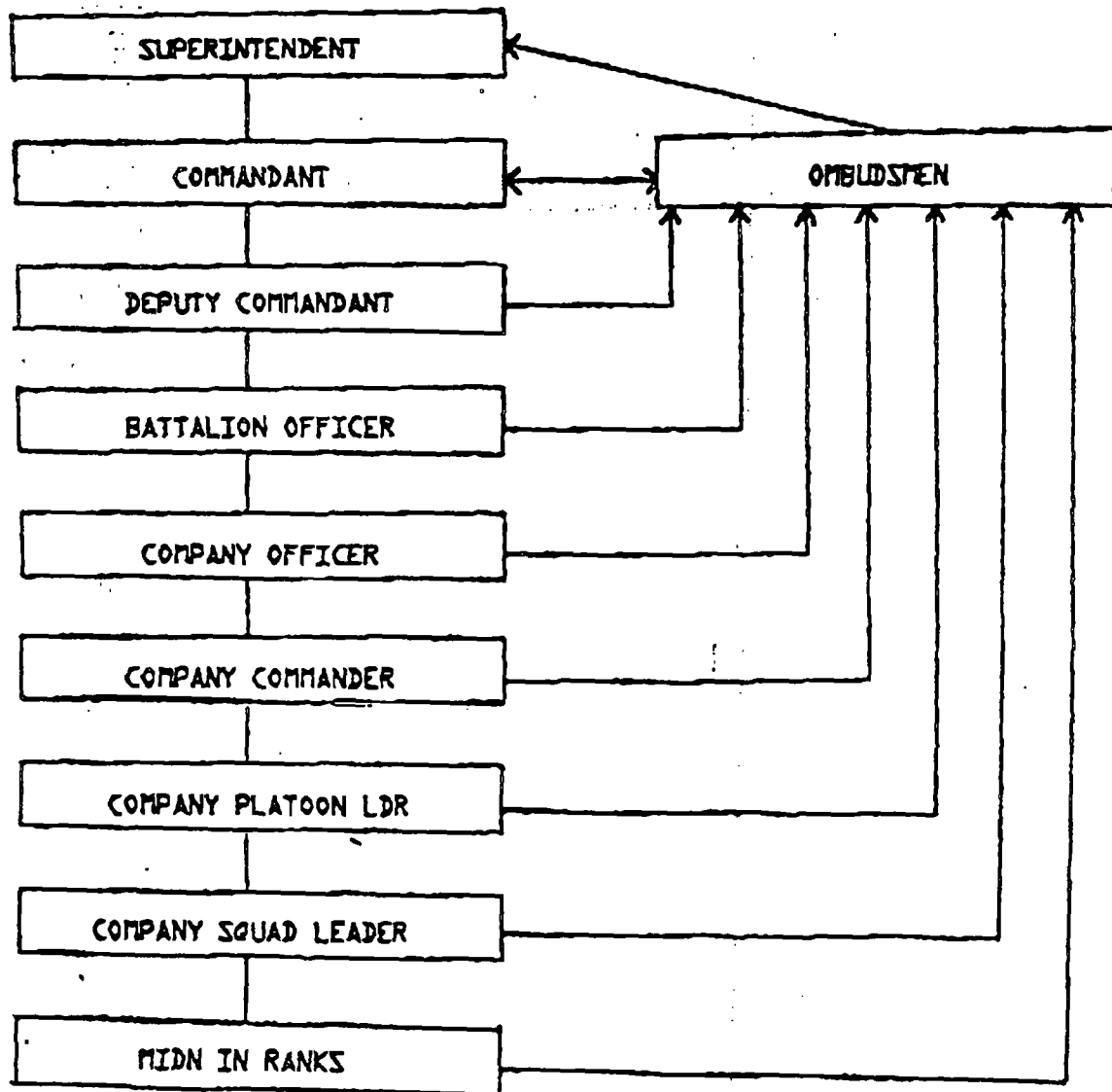
22 APR 1991

OFFICER COMMAND ASSESSMENT TEAM SAMPLE INTERVIEW

1. How has assignment to this command affected your career?
2. Do you feel your FITREPS from this command have been fair and objective?
3. How specific are the goals of the Naval Academy and do they contribute to its mission?
4. Do you have an active role in the decision making process? Is your chain of command receptive to your ideas and suggestions?
5. Do you have any examples of favoritism or discrimination?
6. Are there differences in how different warfare designators are treated? How so?
7. Are non-USNA grads treated differently from USNA grads? How so?
8. If you could change one thing at this command, what would you change?

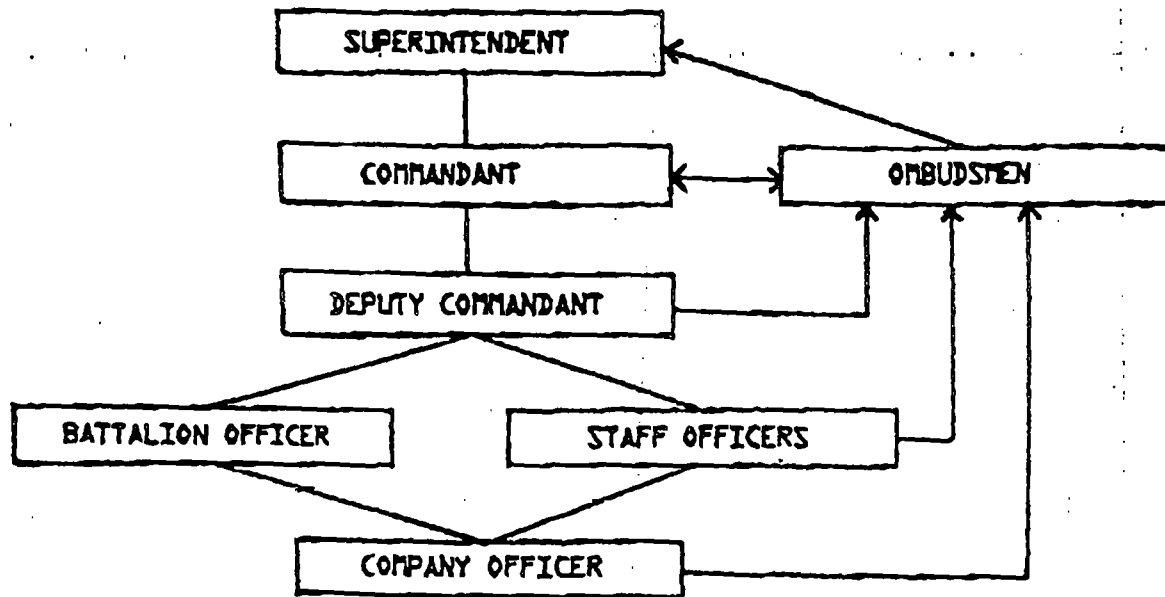
Enclosure (6)

MIDSHIPMAN CHAIN OF COMMAND



OFFICER CHAIN OF COMMAND

22 APR 1991



Edward W. Correia

10/14/98 03:56:24 PM

Record Type: Record

To: Jennifer L. Klein/OPD/EOP, Julie A. Fernandes/OPD/EOP

cc:

Subject: Executive Order

DOD now says that they cannot meet this week on the draft order. I'm out next week (I'm getting married Saturday!), so go ahead without me if you want. Please let me know and I will help you set it up. Otherwise, we'll do it the following week.

However, I think we might be able to get away without a meeting since we are really down to two issues:

1) DOD has objected to covering civilians in courses put on mainly for members of the military. However, federal employees are already covered under Title VII. That leaves only non-federal employees (e.g., state and local officials). My conversations with DOD suggest that they may withdraw their objection to coverage in this case because we cannot issue an executive order that leaves these people with no protections at all.

2) DOD asserts that the students at the military academies are covered by protections equivalent to those in Title VI and Title IX and has shipped over their regs to demonstrate that. DOJ is less certain because, in some cases, this conclusion is not clear from the face of the regs. However, we should be able to get a clarifying statement from DOD on this point.

I'll try to get these points nailed down in the next two days. Please let me know if you have suggestions.

October 15, 1998

MEMORANDUM

To: Helen Sullivan, Office of General Counsel, DOD
From: Eddie Correia, Office of Counsel to the President
Re: Draft Executive Order on Educational Programs

I have sent you by fax the draft text of the executive order as proposed by DOJ. It also includes some alternative language proposed by DOD. As we have discussed, we are anxious to resolve any outstanding issues and to finalize an order for the President's review and signature. I would appreciate your reviewing the comments below and discussing them with the appropriate persons at DOD.

1. Coverage of Students at Military Academies

We understand DOD's position to be that students in the military academies are already covered by civil rights protections that are comparable to, or perhaps more protective than, Title VI and Title IX. Since your proposed section 3-301 exempts the "armed forces," I assume your position is that students would be exempt from the order since they fall within this category. I appreciate your sending me DOD and branch regulations that include civil rights protections. However, based on our review, we were only able to identify one specific textual reference to the academies (midshipmen at the Naval Academy). Are you certain that existing regulations cover these students? Can you refer me to the provisions that cover them?

2. Civilians

I understand that DOD has no objection to an executive order that extends to civilians (e.g., state and local officials) if they participate in a DOD-sponsored educational program that does not have primarily a military purpose. However, we understand DOD to have some concerns about covering civilians who participate in DOD-sponsored educational programs in two situations -- courses that are primarily intended for military personnel and courses that are in the nature of training exercises in the event of an emergency such as a terrorist attack.

Military personnel are already protected under DOD and/or individual branch regulations. Thus, there may be no need to cover them under the order. As I

understand it, both DOJ and DOD have concluded that Title VII protects civilian federal employees from discrimination in the setting of a DOD-sponsored educational program, regardless of the federal agency that is the employer. For that reason, an exemption for federal employees who participate in these courses may also be appropriate.

The remaining issue regarding these programs appears to be limited to non-federal employee civilians who participate in a course that has primarily a military purpose. You have indicated that DOD has some concerns about overlapping and inconsistent regulations and potential administrative difficulties. However, we believe it is important that there be no gaps in civil rights protections. If there are simply no existing regulatory protections for these persons, then it is important to address this situation. One possible solution is to limit an exemption for any DOD-sponsored military training program to military personnel and federal employees. That has the advantage of ensuring that non-federal employee civilians are covered by the same protections and it avoids carving out particular categories of courses that are excluded. For example, section 3-302 could be revised to read:

This order does not apply to claims by federal employees who participate in military training or education programs conducted by the Department of Defense if such claims are otherwise covered under Title VII of the Civil Rights Act of 1964.

However, I am interested in whatever suggestions you have consistent with the overall purpose of the order.

3. National Origin

As we discussed, DOD and other agencies occasionally sponsor educational programs that for legitimate purposes focus on persons of particular national origin. For example, a course may be designed for foreign nationals from Latin America or the Middle East. The draft order did not address this situation. On the other hand, the draft did include a complete exemption for decisions made by entities other than federal agencies. That is probably appropriate where the entity making the decision is a foreign government, but it may not be appropriate for decisions made by other entities, such as domestic companies or state and local governments. If you have any thoughts on that issue, please let me know.

One possible solution is to amend the proposed section 3-306 to read as follows:

This order does not apply to: 1) selection of foreign citizens to participate in covered programs based on national origin if such programs concern primarily national security or foreign policy; or 2) the selection process utilized and/or

decisions **made by foreign entities** as to who may attend or participate in an education or training program conducted by an executive department or agency.

I would appreciate receiving your comments and suggestions on these matters as soon as possible. I will be out of the office next week. In the event that you need to reach White House staff next week, please contact Jennifer Klein, 456-6266 or Julie Fernandes, 456-2216.

Edward W. Correia

10/08/98 12:13:51 PM

Record Type: Record

To: Jennifer L. Klein/OPD/EOP
cc: Julie A. Fernandes/OPD/EOP
Subject: Re: Title IX 

Here's where things stand. I had a long talk with the person in DOD General Counsel who handled this. She sent over a copy of all the services regulations, which apparently cover the academies as well as uniformed members of the armed forces and state the same substantive principles as Title VI and Title IX. I have legal intern looking at that, but assuming that is true, then I think we can accept the idea of an "exemption" for all members of the armed forces, which includes students at the academies.

As for civilian students of DOD-sponsored educational programs, DOD says their position is that civilians should be exempted only if the educational program is for a "military purpose." Otherwise, DOD agrees that civilians should be covered by the executive order. Her rationale for this position was unclear to me, as was the actual effect of their position. This is one of the loose ends we need to resolve. On another point, she agrees that if a non-DOD federal employee is participating in one of a DOD program, that person would be covered by Title VII.

Finally, as to national origin, DOD agrees that we need an exemption for national origin for education programs that are limited to participants for certain countries. This was not included in the DOJ proposal, but I imagine we can include something like an exemption for "decisions regarding participation by foreign nationals in education programs concerning national security or foreign policy."

As for DOJ, they are nailing down the Title VII and I will ask them to confirm that DOD regulations provide adequate protection for students at military academies. I will also asked them to come up with a formulation for covering civilians in DOD-sponsored programs which takes account of DOD's legitimate concerns (if any) about military-sponsored programs.

I am trying to schedule a meeting next week on all of this, which includes DOD and DOJ, to finalize the language. When we are close to a final draft, I'll call Wade Henderson and Barbara Arnwine at LDF to tell them about it. You should be getting a call about a meeting soon.