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Policy Against Discrimination Based on Sexual Orientation or Gender Identity and Sexual harassment #17-02:

Date: April 27, 2017
To: All Officers and Members of the Local Board.
From:  Oriel Rodríguez Ramírez – Chairman of the Workforce Development Board

The Guaynabo-Toa Baja Local Workforce Development Area (hereinafter LWDA) has established its public policy against sexual harassment and discrimination based on sexual orientation or gender identity. This policy is rooted in the social and labor responsibility the LWDA has towards the community it serves. Its aim is to prevent, address, and penalize instances of sexual harassment and discrimination based on sexual orientation or gender identity. It is our legal obligation to take all necessary measures to ensure compliance with this policy.

Sexual harassment in the workplace is considered a form of gender-based discrimination, which is both unlawful and unacceptable. It violates the constitutional principle that recognizes the inviolable dignity of individuals involved. The LWDA provides an environment free from sexual harassment, promoting a safe and respectful space for studying and employment.

The Federal Workforce Innovation and Opportunity Act (Public Law No: 113-128 of 2014), establishes a procedure and administrative remedy for any participant who believes they have experienced discrimination based on various factors such as sex, race, color, sexual orientation, gender identity, and more. This applies to participants working or undergoing training under an ADMINISTRATIVE ENTITY or SERVICE PROVIDER. The specific regulations regarding this procedure can be found in 29 CFR Part 37.

PUBLIC POLICY STATEMENT

LWDA firmly condemns and strictly prohibits sexual harassment in the workplace. Any conduct that intentionally or unintentionally leads to sexual harassment will not be tolerated by LWDA. Such conduct is both unlawful and discriminatory, violating the constitutional principle

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that upholds the inviolable dignity of every individual. It goes against the standards of appropriate, polite, and respectful behavior that should govern any workplace, study environment or service office. Furthermore, it contradicts LWDA's steadfast commitment to ensuring equal employment opportunities without discrimination based on factors such as race, color, sex, sexual orientation, birth, age, origin, social status, political or religious beliefs, physical or mental disability, or veteran status. This type of conduct is highly reprehensible as it undermines productivity, efficiency, harmony, and satisfaction in the work environment, as well as the safety of staff, visitors, and participants.

The LWDA is committed to upholding all legal and jurisprudential norms that protect its employees, visitors, participants, or non-employees. Therefore, it is hereby declared that all forms of Sexual Orientation or Gender Identity Discrimination and Sexual Harassment are strictly prohibited within LWDA, including among employees, supervisors, suppliers, visitors, participants, and non-employees.

Employees, required partners, and service providers have a responsibility to lead by example and ensure strict adherence to this public policy. To enforce the policy, the Equal Employment Opportunity Officer (EEO) will regularly monitor compliance by conducting assessments, providing guidance, and reporting to employees, officers, participants, and service providers.

No form of unwanted sexual approach, whether it is direct or indirect, will be tolerated from any employee, service provider, visitor, or third party not employed by or outside LWDA. This includes acts ranging from subtle verbal or physical contact to more severe forms of sexual assault. Any person accused of engaging in such prohibited conduct will be thoroughly investigated, and if found guilty, will be subject to appropriate disciplinary measures based on the seriousness of the offense.

LWDA is committed to maintaining a facility that is free from Sexual Orientation or Gender Identity Discrimination and Sexual Harassment, as mandated by law. It is our responsibility to ensure that visitors, employees, service providers, supervisors, and third parties not employed by or outside LWDA feel respected and are free from any form of sexual threats or harassment.

Article 1 – Purpose

The purpose of this public policy is to prevent and prohibit all forms of Sexual Orientation or Gender Identity Discrimination and Sexual Harassment within LWDA, in accordance with our legal obligations. Additionally, this policy establishes an internal administrative procedure to address complaints of sexual harassment and implements a program for prevention, education, and counseling in line with LWDA's public policy on sexual harassment.

Furthermore, this policy aims to inform job applicants, visitors, suppliers, their representatives, and third parties about LWDA's commitment to preventing and addressing sexual harassment, as well as the consequences for engaging in such behavior.

Article 2 - Legal Basis

This public policy is established in accordance with the **Bill of Rights of the Constitution of the Commonwealth of Puerto Rico**, Article 11, Section I, which upholds the inviolable dignity of every human being and guarantees equality before the law without discrimination based on race, color, sex (gender), birth, origin, social condition, or political or religious ideas. It is also aligned with **Title VII of the Federal Civil Rights Act of 1964**, as amended, which prohibits discrimination in employment.

Furthermore, this public policy is adopted in harmony with the following laws:

Act No. 17 of April 22, 1988, as amended, which prohibits sexual harassment in employment and imposes the responsibility on every employer to establish a clear public policy against sexual harassment and an effective internal procedure to address complaints of sexual harassment.

Act No. 69 of July 6, 1985, as amended, which mandates strict adherence to equal employment rights for both men and women and prohibits discriminatory actions based on sex (gender).

Act No. 100 of June 30, 1959, provides protection to employees and job applicants against discrimination by employers based on various factors, including race, color, sex, birth, social origin or condition, political or religious ideas, age, sexual orientation, gender identity, being a victim or perceived victim of domestic violence, sexual assault or stalking, veteran status, or physical or mental disability.

The Matthew Shepard and James Byrd, Jr. **Hate Crime Prevention Act** of 2009, 18 U.S.C. 249, includes gender, sexual orientation, and gender identity as protected categories under federal hate crime law.

Act No. 22-2013, establishes the prohibition of discrimination based on sexual orientation or gender identity as a public policy of the Commonwealth of Puerto Rico.

Article 3 - Applicability

This policy applies to all officers and employees of LWDA, as well as individuals not employed by LWDA, including applicants for employment, visitors, suppliers, or their representatives, and third parties not employed by or outside LWDA.

Article 4 - Definitions

For the purposes of these Regulations, the following terms shall have the meanings indicated below:

1. **Service Provider:** Refers to any person, natural or legal, their representatives or employees, who maintains a contractual relationship with LWDA, including individuals under contract for miscellaneous services and those working under professional and consulting contracts.
2. **Officer or Employee:** Refers to any person holding a position or employment at LWDA, including regular, irregular, transitory, probationary, and candidate for employment employees.
3. **Gender Identity:** Refers to the way in which a person identifies and recognizes themselves in terms of gender, which may or may not correspond to their biological or assigned sex at birth. To fulfill the purposes of Act No. 22-2013, this definition shall be interpreted as broadly as necessary to extend its benefits to all citizens who have been subjected to an episode or pattern of discrimination, in accordance with the provisions of the Federal Matthew Shepard and James Byrd, Jr. Hate Crime Prevention Act, Public Law No. 111-34 (2009).
4. **Investigator:** Refers to the person or group designated by the Executive Director of LWDA to conduct the investigation of the facts, interview the parties involved in the dispute, interview witnesses, and provide a written report on the matter along with their recommendations.
5. **Sexual Orientation:** Refers to the capacity of each person to feel an emotional, affective, or sexual attraction to individuals of a gender different from their own, the same gender, or more than one gender. To fulfill the purposes of Law No. 22-2013, this definition shall be interpreted as broadly as necessary to extend its benefits to all citizens exposed to an episode or pattern of discrimination.
6. **Complaint:** Refers to a verbal or written complaint made by an employee, officer, vendor, visitor, non-employee, or third party not employed by or outside LWDA, indicating that they have been or are being subjected to sexual harassment or have witnessed such acts against another person, with the purpose of initiating an investigation. If the complaint is in written form, it must be signed and dated by the employee, officer, vendor, or third party not employed by or outside LWDA.
7. **Respondent:** Refers to the person who is alleged to have committed acts constituting sexual harassment in the workplace.

8. **Complainant:** Refers to the person who has been affected by an act of sexual harassment or who has witnessed such an act against another person, and has the right to file a complaint in accordance with the procedure established by these Regulations.
9. **Victim:** Refers to the person against whom an act of Sexual Orientation or Gender Identity Discrimination and Sexual Harassment, as defined in these Regulations, has been committed.
10. **Visitor:** Refers to any person who is not an officer, employee, or supplier, as defined in these Regulations, and who visits LWDA to carry out any procedure.
11. **Final Determination:** Refers to the decision issued by the Executive Director upon reviewing the report of the Investigating Officer.
12. **Director:** Refers to the Executive Director of the LWDA.
13. **Sub-recipient:** Refers to any person, institution, or service provider that directly benefits from WIOA funds.

Article 5 - Sexual Harassment and its Modalities

Sexual harassment in the workplace encompasses various forms of unwanted sexual advances, requests for sexual favors, and any other verbal or physical conduct of a sexual nature. It is considered sexual harassment when one or more of the following circumstances are present:

- (a) When the submission to such conduct becomes implicitly or explicitly a requirement for employment, study, or receipt of services.
- (b) When the submission to or rejection of such conduct by a person becomes a basis for employment, study, or service-related decisions affecting that person.
- (c) When such conduct unreasonably interferes with a person's performance or creates an intimidating, hostile, or offensive work or study environment.

Sexual harassment can occur between individuals of the same or opposite sexes. No person receiving WIOA funds is obligated to tolerate or accept acts or advances of a sexual nature. Sexual harassment is categorized into two types:

- 1) Harassment that involves sexual favors as a condition or requirement for financial gain in employment or study.
- 2) Harassment that, although lacking economic implications, creates a hostile or offensive work or study environment.

Thus, sexual harassment is defined as sexual advances, requests for sexual favors, or any other verbal or physical conduct of a sexual nature that significantly disrupts the work or study performance of an LWDA participant or when acceptance of sexual harassment is used to make decisions that affect the individual's employment or studies.

Additionally, subjecting an individual to generalized or severe sexual expressions or acts that alter their employment or study status or create a hostile and offensive work or study environment also constitutes sexual harassment. The concept of a "hostile environment" implies that sexual harassment can occur when a person is subjected to work or study conditions that compel them to resign or significantly diminish the quality or quantity of their work or studies. In other words, economic harm is not necessary for an act to be considered harassment; the objective is to establish a work or study environment free from sexual harassment.

It should be noted that certain expressions of affection, comments about physical attributes or attractiveness, promises, or gestures with sexual content may be misinterpreted or cause resentment by the recipient, even if they were not intended with malice or ill intent. Therefore, all LWDA sub-recipients are strictly prohibited from engaging in such practices.

Article 6 – Prohibitions

Sexual harassment is strictly prohibited for all personnel within LWDA, regardless of their gender. This prohibition extends to any individual under contract, subcontract, or service provider, as well as their representatives, who provide services within or for LWDA during the duration of their contracts.

Article 7 - Guidance and Counseling Program

To ensure the effective implementation of this public policy, a program for orientation, counseling, and follow-up is established to oversee the handling of sexual harassment complaints.

This program will be coordinated by the Local Area Equal Employment Opportunity Officer (EEO), who will have the following responsibilities:

1. Ensure the implementation and compliance with the established public policy.
2. Disseminate LWDA's public policy on Sexual Orientation or Gender Identity Discrimination and Sexual Harassment in the workplace, as well as the relevant provisions of this Regulation.
3. Develop and implement an education program on Sexual Orientation or Gender Identity Discrimination and Sexual Harassment for LWDA officials, employees, and

non-employees, such as applicants for employment, visitors, suppliers, or their representatives, as well as third parties not employed by or outside LWDA.

4. Disseminate and implement effective methods to raise awareness and promote the prohibition of Sexual Orientation or Gender Identity Discrimination and Sexual Harassment in the workplace.
5. Attend to, update, and follow up on complaints regarding sexual harassment in the workplace, ensuring compliance with internal regulations concerning such matters.
6. Provide advice, information, and guidance to all LWDA officials, employees, and participants upon request, ensuring the confidentiality of the information entrusted to them.
7. Ensure that each employee, official, applicant for employment, and participant in WIOA-funded programs is oriented on the public policy regarding sexual harassment in employment established by LWDA and provide them with a copy of such policy.
8. Ensure that LWDA, its employees, visitors, suppliers, or their representatives comply with the provisions of Act No. 17 and Act No. 69.
9. Recommend interim measures necessary to prevent the complainant from being further exposed to the reported conduct or to protect them from potential acts of retaliation once the complaint has been filed and ensure that such measures are implemented within the specified timeframe.

Article 8 - Internal Procedure for Handling Sexual Harassment Complaints at LWDA

Any employee of LWDA who witnesses an act of Sexual Orientation or Gender Identity Discrimination and Sexual Harassment committed by an officer, employee, supplier, or their representatives, any visitor, or any third person not employed by or outside LWDA, is obligated to report it immediately in accordance with the provisions stated in Article 8 of this Regulation.

The duty to file a complaint, as outlined in this article, is a strict obligation for all individuals involved, including LWDA employees. LWDA strongly encourages prompt filing of such complaints as soon as an employee or non-employee becomes aware that they have been subjected to the prohibited conduct specified in this Regulation.

Section 8.1 - Filing of Complaint Claim

- (a) An employee shall generally file a written complaint of sexual harassment in employment with the EEO Officer.

- (b) Upon filing the complaint with the EEO Officer, the complainant will be informed of their rights and remedies under Act No. 17 and this procedure.
- (c) The EEO Officer will conduct a preliminary investigation within ten (10) business days of the complaint being filed.
- (d) If there is evidence indicating that sexual harassment in employment has occurred, the complaint will be referred to the Executive Director, who will take appropriate corrective action.
- (e) The Director will appoint an Investigating Officer within ten (10) working days from the date of the EEO Officer's notification.
- (f) If the EEO Officer determines that there is no evidence warranting further investigation, they will notify the complainant. If the complainant disagrees with this determination, they may directly approach the Director.
- (g) In such a case, the Director may appoint an Investigating Officer within ten (10) days from the date of the complainant's submission of the complaint.

Section 8.2 - Interim Measures

8.2.1 - Purpose

Upon filing a complaint of sexual harassment in the workplace, interim measures will be implemented as necessary to protect the complainant from potential retaliation and to prevent further exposure to the alleged conduct. These measures may be applied in the following situations:

- (a) When the respondent is the complainant's immediate supervisor or case manager.
- (b) When a hostile environment caused by the supervisor or co-workers is alleged.
- (c) In cases involving aggression or threats of a similar nature.

8.2.2 - Provisional Measures

Provisional measures shall be implemented as part of the interim measures and may include, but are not limited to, the following:

- (a) Reassigning the complainant to report to another supervisor when the immediate supervisor is the respondent.

- (b) Ensuring that the complainant is not left alone with the respondent and that work or study interactions occur in the presence of another person, or through written or other means of communication (such as telephone or recordings).
- (c) Ensuring the confidentiality of witness testimony.
- (d) Informing witnesses of their right to file a complaint if they face negative employment decisions, adverse work conditions, or retaliation due to their involvement in the investigation.
- (e) Informing the complainant and witnesses that their participation in the investigation will not be documented in their official program file.
- (f) Informing any individual whose statement is taken or who participates in the investigation of their rights under the applicable laws and regulations.

Provisional measures shall not be established against the will of the person requesting them. The person requesting such measures must provide a written and signed waiver or acceptance of the proposed provisional measures.

Section 8.2.3 – Duration of Provisional Measures

The provisional measures established will be in effect until a final determination of the complaint is made or until corrective action is taken in accordance with the final determination of the complaint.

Section 8.2.4 - Informal Hearing

- (a) The Investigating Officer shall promptly notify the respondent in writing about the complaint filed against them. Additionally, the Investigating Officer shall summon all involved parties and relevant witnesses to an administrative hearing with a notice period of ten (10) days prior to the hearing.
- (b) The Investigating Officer shall inform the respondent of their right to appear with legal counsel. All parties shall be informed of their rights and the confidentiality requirements outlined in Article nine (9) of this regulation.
- (c) During the administrative hearing, the parties and their witnesses shall present their statements, provide evidence, and provide their version of the facts. The Investigating Officer shall review relevant documents to corroborate the alleged facts, as deemed necessary.

- (d) Once all the evidence has been gathered, the Investigating Officer shall evaluate the evidence and prepare a report containing their findings and recommendations on disciplinary measures. The report must be submitted to the Director within five (5) working days after the conclusion of the administrative hearing.

Section 8.2.5 - Notification

The Director shall provide written notification of the final determination to all parties involved within ten (10) working days upon receiving the Investigating Officer's report.

The notification shall include information about the right to appeal to the Equal Employment Opportunity Commission (EEOC) or the appropriate judicial forum within thirty (30) days from the receipt of the notice.

Article 9 - Confidentiality

The investigative procedures conducted under these Regulations shall maintain confidentiality to protect all parties involved.

Article 10 - Request for Disqualification.

Either the complainant or the respondent may submit a written request to the Director seeking the disqualification of the official conducting the preliminary investigation or presiding over the informal hearing. The request should also include a request for the assignment of a new investigator. The requesting party must provide well-founded reasons demonstrating a conflict of interest, bias, prejudice, or any other circumstance that may affect the objectivity and impartiality required in such cases.

All requests for disqualification must be resolved within ten (10) working days from the date of receipt. In such cases, the time frame for completing the report shall restart from the date the request for inhibition was resolved.

Article 11 - Corrective Measures Related to LWDA Officials or Employees

If there is sufficient evidence to support the application of a corrective or disciplinary measure, in accordance with the administrative procedure, such measures shall be imposed on the LWDA official or employee who has engaged in prohibited conduct constituting sexual harassment, as well as on any other personnel who have violated the LWDA rules. An employee found to have engaged in sexually harassing conduct may be subject to one or more of the corrective and disciplinary measures outlined in Table A.

Table A

GUIDELINE ON CORRECTIVE AND DISCIPLINARY MEASURES APPLICABLE TO EMPLOYEES OF THE GUAYNABO-TOA BAJA LWDA IN SITUATIONS OF SEXUAL HARASSMENT IN THE WORKPLACE

CORRECTIVE ACTION BY THE IMMEDIATE SUPERVISOR OR THE DIRECTOR OF OPERATIONS			DISCIPLINARY MEASURES BY THE APPOINTING AUTHORITY		
INFRACTIONS	VERBAL WARNING	WRITTEN WARNING	WRITTEN REPRIMAND	SUSPENSION OF EMPLOYMENT AND SALARY	DISMISSAL
Obscene language or language of a sexual nature, such as: offensive jokes, comments and compliments, offensive looks, etc.	X	X			
Properties of a sexual nature	X	X	X		
Obscene gestures and obscene drawings	X				
Touching, rubbing, grabbing, squeezing of body parts		X	X		
Kissing and fondling	X	X	X	X	X
Attempts to perform sexual acts or sexual intercourse as such			X	X	X
Expression of genital organs			X	X	X
Sexual intercourse				X	X
Attempted rape				X	X
Rape				X	X

Article 12 - Measures Related to Suppliers, Visitors or Third Parties Not Employed by or Outside LWDA

When addressing individuals who are under contract, subcontract, service providers, or their representatives, as well as visitors or third parties not employed by or outside the Guaynabo-Toa Baja LWDA, the Director is responsible for taking appropriate corrective measures within their authority and in compliance with applicable laws and regulations.

If the respondent is a provider, or its representative, and incurs in the prohibited conduct, its contract will be terminated and will not be renewed, nor will it be awarded any subsequent contract with LWDA. All contracts for miscellaneous, consulting, or professional services must include a clause stating that the contract will be terminated if the complaint is proven.



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Article 13 - Other Remedies

An employee or participant who believes they have experienced sexual harassment may choose to utilize the procedures outlined in Act No. 17 of April 22, 1988, as amended. They have the option to file a complaint directly with the Anti-Discrimination Unit of the Department of Labor or with the Federal Office of Equal Employment Opportunity (EEOC), without being required to exhaust the administrative remedies specified in these Regulations.

It is important to note that the administrative procedure established in this Regulation does not suspend the one-year statute of limitations for filing a legal action under Act No. 17. Therefore, the complainant must be informed that pursuing the administrative procedure does not extend or interrupt the one-year time limit to initiate a judicial action as provided in the Act.

Article 14 - Severability

Should any word, clause, article, section, or part of these Regulations be declared unconstitutional or null and void by a court of competent jurisdiction, such declaration shall not affect, impair, or invalidate the remaining provisions and parts of these Regulations.

Article 10 – Effectiveness

The validity of this procedure shall commence as of the date of its approval by the Local Board and the signature of the Chairman of the Local Board.