



## NATIONAL HEADQUARTERS CIVIL AIR PATROL

### CAP REGULATION 36-2

22 AUGUST 2008

#### Nondiscrimination

### COMPLAINTS UNDER THE CIVIL AIR PATROL NONDISCRIMINATION POLICY

This regulation assigns responsibilities and prescribes procedures for addressing alleged violations, involving CAP members, of Civil Air Patrol's Nondiscrimination Policy as specified in the Civil Air Patrol Constitution. This Program implements provisions of Title VI of the Civil Rights Act of 1964 (PL 88-352), Title III of the Age Discrimination Act of 1975 (PL 94-135), Department of Defense (DOD) Directive 5500.11, *Nondiscrimination in Federally Assisted Programs*, DOD Directive 1020.1, *Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of Defense*, and Air Force Instruction (AFI) 36-2707, *Nondiscrimination in Programs and Activities Assisted or Conducted by the Department of the Air Force*.

**1. Background.** Title VI of the Civil Rights Act of 1964, Title III of the Age Discrimination Act of 1975, DOD Directive 5500.11, *Nondiscrimination in Federally Assisted Programs*, DOD Directive 1020.1, *Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of Defense*, AFI 36-2707, *Nondiscrimination in Programs and Activities Assisted or Conducted by the Department of the Air Force*, CAPR 36-1, *Civil Air Patrol Non-Discrimination Program*, and the Sarbanes-Oxley Act all require that CAP members have a method for voicing their concerns about Nondiscrimination so that these concerns will receive the attention they deserve by the leadership/management of Civil Air Patrol.

#### **2. Responsibilities.**

**a. CAP Equal Opportunity Officer (EOO)** shall conduct, or cause to be conducted, an analytical review of all allegations of discrimination and an investigation of all complaints of discrimination deemed sufficient to require the conduct of such an investigation in as efficient and expeditious manner as possible.

**b. CAP Equal Employment Opportunity Officer (EEOO)**, a full-time employee at NHQ, shall conduct, or cause to be conducted, an analytical review of all allegations of discrimination against employees of CAP and an investigation of all complaints of discrimination deemed sufficient to require the conduct of such an investigation in accordance with guidelines provided by the Equal Employment Opportunity Commission.

**c. CAP Equal Opportunity Administrator (CAP/EXS)**, a full-time employee at NHQ, shall provide day-to-day support for the EEO and to those member having issues relating to the CAP Nondiscrimination Policy.

**d. CAP Members** at all levels of command and responsibility shall cooperate with the EOO, or his/her designated representative, in the investigation and resolution of complaints of discrimination or allegations of violation of the CAP Nondiscrimination Policy.

### **3. Submission of Complaints.**

**a.** Only members, the parents or legal guardians of cadet members under the age of 18 filing for the cadet member, or non-members alleging denial of membership due to discrimination, have the right to file a complaint under the provisions of this regulation.

**b.** All complaints of discrimination should be in writing, dated and signed by the complainant. Complainants may submit complaints anonymously; however, anonymous complainants must understand that they will **NOT** receive a response. Complainants may file complaints anonymously through the CAP FWA Hotline, or directly with the EOO or the Equal Opportunity Administrator at CAP National Headquarters. E-mail and voice (telephone) complaints filed anonymously are not required to be followed up in writing. The complainant shall submit the complaint within 60 days of the occurrence or action upon which the complaint is based, or within 60 days of learning of the occurrence or action.

**c.** Complainants will forward complaints of discrimination to the EOO, or the Equal Opportunity Administrator at CAP National Headquarters, for handling. Any commander or inspector general receiving a complaint of discrimination shall also forward it to the EOO, or the Equal Opportunity Administrator at CAP National Headquarters, for handling.

**d.** Complaints against CAP employees will be forwarded to the National Headquarters Equal Employment Opportunity Officer (EEOO) and will be handled in accordance with the Corporate Employee Handbook.

**e.** Complaints against the EOO will be forwarded to the National Headquarters Executive Director (CAP/EX).

**f.** Any member, inspector general, or commander who needs assistance in determining whether an allegation/complaint constitutes discrimination, should call the EOO, or the Equal Opportunity Administrator at CAP National Headquarters. Contacting the EOO, or the Equal Opportunity Administrator for this purpose shall not be considered a violation of the chain of command.

**g.** Complaints may be delivered personally, by mail or by e-mail. The date of actual receipt or 5 days following the date of the postmark, which ever is earlier, is the effective date of the complaint. The complaint must be annotated with the date received and the original postmarked envelope retained to properly establish the effective date. The effective date of e-mail complaints will be the date of actual receipt only if a written follow-up, with signature, is received within 8 days following the date of the receipt of the e-mail. Originals or copies of all available documentation in the possession or control of the complainant must accompany complaints.

**h.** Any member taking reprisal action against another member who has exercised their rights and/or responsibilities under this regulation is in violation of the CAP Whistleblower Protection Program, outlined in CAPR 123-2, as well as the Civil Rights Act of 1964, which states in part, "It shall be an unlawful...practice...to discriminate against any individual...because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing."

#### **4. Processing of Complaints.**

**a.** The complainant shall receive written acknowledgment of the complaint within 20 days of the effective date of the complaint.

**b.** The subject(s) shall be notified of the complaint within 30 days of the date that an analytical review determines there sufficient evidence to require the conduct of an investigation.

**c.** In accordance with the Title VI of the Civil Rights Act of 1964, the identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this program, including the conduct of any investigation, hearing, or preceding.

**d.** In the case of a discrimination complaint against a senior level CAP official, as defined in CAPR 123-2, the EOO will also:

**(1)** Notify NHQ CAP/EX, CAP-USAF Inspector General (CAP-USAF/IG), and the CAP National Commander (CAP/CC).

**(2)** Following the completion of an investigation, forward a copy of the final Report of Investigation (ROI) to the CAP/CC, NHQ CAP/EX, NHQ CAP General Counsel, and the CAP-USAF/IG.

**(3)** The EOO or an investigating officer (IO), appointed by the Board of Governors, will handle all discrimination complaints against the National Commander or National Vice Commander in accordance with this regulation. Any allegations of personal misconduct or moral turpitude will be promptly turned over to the National Legal Officer in accordance with the CAP Constitution and Bylaws. The CAP National Legal Officer will determine if any action is warranted under CAPR 35-7, *Removal of National Commander or National Vice Commander*.

**(4)** The EOO or an investigating officer (IO), appointed by the Board of Governors, will handle all discrimination complaints against the CAP/IG in accordance with this regulation.

**(5)** Complaints against non-Air Force members of the Board of Governors are filed with the Secretary of the Board of Governors and investigated as determined by the Board of Governors. Complaints against members of the Board of Governors, appointed solely by the Secretary of the Air Force, will be filed with the CAP-USAF/IG and investigated in accordance with the appropriate Air Force directives.

**e.** By the fact of his/her appointment, the EOO is directed to conduct, or cause to be conducted, an analytical review of all allegations of discrimination and an investigation of all complaints of discrimination deemed sufficient to require the conduct of such an investigation in as efficient and expeditious manner as possible. The EOO is authorized to appoint investigating officer(s) when, in the EOO's opinion, such appointment will foster an efficient and expeditious conclusion of an investigation. It is the responsibility of the EOO to ensure that an objective inquiry is conducted to find factual information.

**(1)** The EOO, or the appointed IO, will make every effort to complete the investigation, write the ROI, and submit the report for review and final determination within 100 days of the effective date of the complaint.

**(2)** If the EOO, or IO, finds that, due to extenuating circumstances, the complaint investigation cannot be completed within 100 days of the effective date of the complaint, he/she will advise the CAP/CC as to the reasons for the delay and an estimated date when the investigation will be completed.

(3) ROIs resulting from complaints of discrimination will be forwarded to the CAP/CC for review and final determination.

f. Since the purpose of an investigation is to ascertain facts, complainants, subjects, and witnesses are required to cooperate fully. Failure of CAP members to respond with truthful and complete information or any action by CAP members to impede an investigation in any way may subject that member to disciplinary action up to and/or including termination of membership in accordance with applicable CAP regulations. This is an administrative process. Therefore, there is no requirement for legal representation, a formal hearing, or application of the rules of evidence.

g. Conclusion classifications shall include one of the following categories:

(1) SUSTAINED -- an allegation is "sustained" when the inquiry reveals "a preponderance of evidence" in support of the allegation.

(2) NOT SUSTAINED -- an allegation is "not sustained" when the inquiry determines the act complained of did not occur, was justified according to applicable directives, or there was not a preponderance of evidence to support the allegation.

h. The findings of the EOO or the investigating officer shall be based upon a preponderance of evidence.

i. The investigation and ROI are executed for the CAP/CC and shall not be released to anyone else except under the provisions of paragraphs 4d(2), above and 5b, below.

j. Upon receipt of the ROI, and being satisfied that the complaint has been fully investigated, the CAP/CC will make a final determination as to the disposition of the complaint.

(1) The CAP/CC will notify the complainant, subject, and the subject's commander of the final action, by written memorandum, no later than 120 days from the effective date of the complaint unless the complaint process has been delayed as described in paragraph 4e(2), above. In this case, CAP/CC will provide written notification within 20 days of receiving the ROI. The CAP/CC will send a copy of each notification to the EOO for inclusion in the official case file.

(2) Upon receipt of the copies of all written notifications, the EOO will forward a copy of the case file to the CAP-USAF/IG for distribution in accordance with AFI 36-2707.

## **5. Reports.**

a. The EOO will maintain such records and reports as necessary to ensure compliance with the CAP Nondiscrimination Policy, Title VI, DOD Directives 5500.11 and 1020.1, and AFI 36-2707.

b. ROIs and case files created under the provisions of this regulation are privileged information documents. They will not be released (in whole or in part), reproduced, or given additional dissemination (in whole or in part) outside of Equal Opportunity or legal officer channels without prior written approval of the EOO and the CAP National Commander after consultation with the CAP National Legal Officer. In the event the complainant is a CAP employee, CAP/EX will also be consulted prior to any release.