

# Breastfeeding and Lactation Support Policy

## I. PURPOSE AND SCOPE

The District of Columbia Public Schools (DCPS) supports all employees and students who require space and time to express breast milk for a nursing child. This policy conveys the rights of breastfeeding and lactating parents and the requirements to provide lactation spaces and accommodating schedules. This policy does not address the full scope of protections related to pregnancy or post-pregnancy conditions.<sup>1</sup>

This policy rescinds and supersedes all previous policy, memoranda, and guidance promulgated by DCPS on this subject matter.

## II. AUTHORITY AND APPLICABLE LAW

Source	Citation
Federal Law	- 20 U.S.C. § 207(r) (Fair Labor Standards Act) – Reasonable Break Time for Nursing Mothers
District of Columbia Law	- D.C. Official Code § 2-1401.05 – Discrimination based on pregnancy, childbirth, related medical conditions, or breastfeeding - D.C. Official Code § 2-1402.82 – Rights of breastfeeding mothers - D.C. Official Code § 32-1231.01 <i>et seq.</i> – Reasonable accommodations for pregnant and nursing workers
District of Columbia Regulations	- 4 DCMR § 518 – Breastfeeding Guidelines

## III. KEY TERMS AND DEFINITIONS

**Breastfeed** means to provide breast milk from a mother’s breast or to express breast milk into a container or bottle. (4 DCMR § 599)

**Undue hardship** means any action that requires significant difficulty or expense when considered in relation to factors such as the size of the business, its financial resources, and the nature and structure of its operation. (D.C. Official Code § 2-1402.82(a)(2))

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<sup>1</sup> For more information about pregnancy protections, please see D.C. Official Code § 32-1231.01 *et seq.* and DC Office of Human Rights resources at <https://ohr.dc.gov/page/pregnantworkers>.

## IV. REQUIREMENTS

### A. General

DCPS shall not unlawfully discriminate against any breastfeeding or lactating parent who requests or uses reasonable accommodations related to breastfeeding or expressing breastmilk.<sup>2</sup>

#### 1. Employees

DCPS shall not take adverse actions against an employee who requests or uses reasonable accommodations related to breastfeeding.<sup>3</sup>

Examples of adverse actions include, but are not limited to:

- Failing to reinstate the employee when the need for reasonable accommodations ceases to the employee's original job or to an equivalent position with equivalent pay, accumulated seniority and retirement, benefits, and other applicable service credits;
- Denying employment opportunities to an employee or a job applicant if the denial is based on the need of the employer to make reasonable accommodations to the known limitations related to breastfeeding;
- Requiring an employee affected by breastfeeding to accept an accommodation that the employee chooses not to accept if the employee does not have a known limitation related to breastfeeding or the accommodation is not necessary for the employee to perform her duties;
- Requiring an employee to take leave if a reasonable accommodation can be provided.

#### 2. Students

DCPS is committed to providing all students with an excellent education in a safe and loving environment. This includes providing support for lactating student mothers who must be given the time and space to express milk as necessary. DCPS shall not deny nursing students the right to breastfeed.<sup>4</sup> Students shall be afforded the same types of space and time accommodations for expressing milk as DCPS employees.<sup>5</sup>

### B. Reasonable Accommodations

DCPS is required by law to provide reasonable workplace accommodations for employees who need to express milk throughout the day, unless doing so would cause an undue hardship.<sup>6</sup> This requirement applies to all DCPS facilities, including all schools and central services locations.<sup>7</sup> Staff in any DCPS school or facility must be given accommodations if they need to express breastmilk. DCPS shall provide notice

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<sup>2</sup> D.C. Official Code § 2-1402.82; *see also* D.C. Official Code § 2-1401.05(a) (discrimination on the basis of sex includes discrimination on the basis of breastfeeding).

<sup>3</sup> D.C. Official Code § 32-1231.03(2).

<sup>4</sup> D.C. Official Code § 2-1402.82(b).

<sup>5</sup> Pregnant and parenting students can also be connected to the New Heights Programs for information about other available supports. The program can be reached at [new.heights@k12.dc.gov](mailto:new.heights@k12.dc.gov) or 202-442-5040.

<sup>6</sup> D.C. Official Code § 32-1231.02-.03.

<sup>7</sup> Central services locations include 1200 First Street NE, Emery, V Street, the Warehouse, Early Stages locations, and any other future DCPS-controlled locations at which central services are provided.

to employees regarding their rights to receive reasonable workplace accommodations and the process for requesting such accommodations.

A reasonable accommodation is any change in the work environment or in the way a job is performed that enables a person to enjoy equal employment opportunities. In this case, a reasonable accommodation may mean arrangements or agreements between DCPS and a staff member who is lactating, pregnant, or recovering from pregnancy. Examples of reasonable accommodations include:

- More frequent and/or longer break times;
- Acquiring or modifying equipment or seating;
- Temporary transfer to a safer or less strenuous position or duties;
- Relocation of an employee's work area; and
- Providing private space, that is not a bathroom, for expressing milk.

### C. Spaces for Expressing Breastmilk

DCPS is required to provide space, based upon needs, for staff and students who need to express breastmilk during their time in a DCPS school or central services location.<sup>8</sup> Elementary schools shall have at least one space for staff to express milk. Middle schools and high schools shall have at least two spaces for new mothers to express milk. Of these, one space will be designated for staff and authorized visitors in the building. The other space will be designated for students who need to express breastmilk. No DCPS school or facility shall refuse to provide a space for staff, authorized visitors, or students to express breastmilk.

The spaces that are provided for staff and students to express breastmilk shall:

- Not include bathrooms<sup>9</sup> or locker rooms;
- Be clean and hygienic;<sup>10</sup>
- Be shielded from view and free from intrusion;<sup>11</sup> and
- Not be a common area or space where other individuals are likely to enter freely.<sup>12</sup>

### D. Schedules for Lactating

DCPS is required to provide reasonable daily unpaid break periods to express breastmilk, as necessary for employees. DCPS also works to accommodate the needs of student mothers by providing break periods throughout the day to express milk. Lactation breaks may occur during otherwise provided break times. Employees may work directly with their supervisor to coordinate their break periods. If additional assistance is needed, employees may reach out to the LMER Equal Employment Opportunity (EEO) Team at [dcps.eeo-ada@k12.dc.gov](mailto:dcps.eeo-ada@k12.dc.gov). If a lactation accommodation is requested that may cause undue hardship for DCPS, other options may be explored.

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<sup>8</sup> Central services locations include 1200 First Street NE, Early Stages, Emery, V Street NE, the Warehouse, and any additional central locations.

<sup>9</sup> D.C. Official Code § 2-1402.82(d)(2) (prohibiting employers from providing bathrooms as a space for expressing breastmilk).

<sup>10</sup> D.C. Official Code § 2-1402.82(d)(2) (requiring employers to provide a sanitary location).

<sup>11</sup> 29 U.S.C. § 207(r).

<sup>12</sup> D.C. Official Code § 2-1402.82(d)(2) (requiring employers to provide spaces that provide privacy and security).

All DCPS staff and students that require time for expressing breastmilk shall be given such time. No staff member shall be denied a reasonable amount of time to express breastmilk each day. Employees should not be penalized, retaliated against, or otherwise discouraged from requesting and utilizing such time. Providing staff members break time throughout the day to express breastmilk is part of DCPS' legal requirement to provide reasonable workplace accommodations. Students must also be provided reasonable break time to express breastmilk and may not be marked tardy or otherwise penalized for class time missed for this reason. Supervisors, principals, and other administrators within a DCPS school or facility must work with staff or students to accommodate break time(s) to express milk throughout the day.

### E. Complaints

Any employee who believes that DCPS has violated any law or policy regarding breastfeeding or lactation has several options for filing a complaint or seeking a remedy. They may address the issue with their supervisor directly, they may reach out to the Labor Management & Employee Relations Team (LMER) to file an internal complaint, or they may initiate an external administrative or civil action. If an employee has concerns about violations of this policy or would like to file a complaint, options are described in more detail Appendix A.

Any student who wishes to file a complaint against DCPS for related to breastfeeding or expressing breastmilk should file a grievance with the DCPS Central Office CARE Team<sup>13</sup> by completing an online referral form, emailing the CARE Team at [dcps.care@k12.dc.gov](mailto:dcps.care@k12.dc.gov), or calling (202) 442-5405.<sup>14</sup> Students can also contact their school's New Heights' coordinator or email [new.heights@k12.dc.gov](mailto:new.heights@k12.dc.gov) for assistance.

## V. REQUIREMENTS FOR POLICY IMPLEMENTATION

All DCPS employees are required to comply with the requirements set forth in this policy. Questions or concerns regarding providing lactation support for employees should be directed to the DCPS Labor Management and Employee Relations (LMER) division at [dcps.lmer@k12.dc.gov](mailto:dcps.lmer@k12.dc.gov). Questions and concerns regarding providing lactation support for students should be directed to the New Heights Program at [new.heights@k12.dc.gov](mailto:new.heights@k12.dc.gov).

For any concerns about or violations of this directive, contact the Office of the Chief Integrity Officer by completing the [Online Referral Form](#)<sup>15</sup> or sending an email to [dcps.cio@k12.dc.gov](mailto:dcps.cio@k12.dc.gov).

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<sup>13</sup> The Comprehensive Alternative Resolution & Equity (CARE) Team is responsible for receiving claims of discrimination, sexual harassment, bullying, or any unfair treatment a student, parent, or visitor encounters at a DC Public School.

<sup>14</sup> The online form is available at <https://dcps.dc.gov/page/studentparentvisitor-grievance-process>.

<sup>15</sup> Available at <https://dcforms.dc.gov/webform/online-referral-form>.

## Appendix A: Employee Complaint Options

If an employee believes that DCPS has violated any law or policy regarding their lactation or pregnancy conditions, they may maintain an administrative or civil action. If an employee has concerns about violations of this policy or would like to file a complaint, they may choose from the options below:

### **A. Informal Employee Relations Review by the DCPS Labor Management and Employee Relations (LMER) Team**

The LMER Team works to promote positive and productive relationships between DCPS and all its employees. LMER is always happy to speak with employees about Equal Employment Opportunity (EEO) concerns, investigate an employee's situation, and explore possible solutions.

To begin this process, employees should contact LMER at [dcps.lmer@k12.dc.gov](mailto:dcps.lmer@k12.dc.gov). An employee<sup>16</sup> regarding their concerns and send this document to LMER to provide LMER context and clarity. Filling out a Pre-Complaint Questionnaire is not mandatory. Employees should note that this is an informal option and does not extend or pause the deadlines for filing a formal complaint.

### **B. U.S. Equal Employment Opportunity Commission (EEOC)**

Employees have the right to immediately file a formal complaint with the EEOC. Depending on the basis of a complaint, an employee has 180 calendar days or 300 calendar days from the date the complaint arises to file an EEOC complaint. There is no requirement to meet with an EEO counselor before filing an EEOC complaint.

Employees may find the EEOC's guidance on filing a complaint online at: <https://www.eeoc.gov/employees/howtofile.cfm>. The EEOC Washington, DC Field Office is located at 131 M Street, NE, Fourth Floor, Suite 4NWO2F, Washington, DC 20507-0100, and its telephone number is (800) 669-4000.

### **C. District of Columbia Office of Human Rights (OHR)**

Employees also have the right to initiate a formal EEO complaint through OHR, but are required to first contact an OHR-certified EEO counselor within 180 days from the date a complaint arises.<sup>17</sup> The roster of OHR-certified EEO counselors is maintained by OHR, not by DCPS.<sup>18</sup> Employees will need to meet with an EEO counselor from an agency outside of DCPS.<sup>19</sup> Employees may bring their EEO concern to any of the OHR-certified EEO counselors at other agencies. The EEO counselor will discuss the employee's EEO concern and provide a Pre-Complaint Questionnaire for employees to complete. Employees should contact OHR directly by telephone at (202) 727-4559 or by email at [ohr@dc.gov](mailto:ohr@dc.gov).

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<sup>16</sup> Available for download from the DCPS LMER website: <https://dcps.dc.gov/page/dcps-labor-management-and-employee-relations>.

<sup>17</sup> In the case of sexual harassment, however, employees may file a complaint with OHR immediately, without first contacting an EEO counselor.

<sup>18</sup> A list of counselors can be found here: <https://ohr.dc.gov/page/EEOcounselors>

<sup>19</sup> The list of counselors available at the OHR site identifies each counselor's agency.