

104. DISCRIMINATION COMPLAINT PROCEDURES

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The Discrimination Complaint Procedures prescribed in this attachment apply to reports of retaliation or discrimination on the basis of race, color, age, religious creed, religion, sex, gender identity, sexual orientation, ancestry, national origin, marital status, genetic information, handicap/disability or pregnancy, childbirth or pregnancy-related medical conditions that do not constitute Title IX sex-based discrimination or harassment as defined in Policy 104.

All reports of discrimination will be reviewed by the Title IX Coordinator upon receipt to determine if the allegations meet the definition and parameters of sex-based discrimination and harassment under Title IX. If the result of this review determines that the allegations fall within the scope of Title IX sex-based discrimination and harassment, then the Grievance Procedures set forth for Title IX Sex-Based Discrimination and Harassment will be followed.

[Note: if the same individual is assigned to the roles of Title IX Coordinator and Compliance Officer through Policy 104, please revise the terminology in this document to reflect the position of Title IX Coordinator/Compliance Officer throughout.]

All reports of discrimination and retaliation brought pursuant to the district's discrimination policy **will** also be reviewed for conduct which may not be proven discriminatory under Policy 104 but merits review and possible action under other Board policies or the Code of Student Conduct for students. (Pol. 103.1, **113.1**, 218, **233**, 317)

Reasonable Accommodations

Throughout the discrimination complaint procedures, the district **will** make reasonable accommodations for identified physical and intellectual impairments that constitute disabilities for all parties, **as well as reasonable accommodations for pregnancy, childbirth or pregnancy-related medical conditions**, consistent with the requirements of federal and state laws and regulations and Board policy. (Pol. 103.1, 104, 113, **234**, 906)

Required Reporting Under Other Policies

In addition to implementing the complaint procedures, the building principal or Compliance Officer **will** ensure that reported conduct which meets the definition of other laws, regulations or Board policies, is also appropriately addressed in accordance with the applicable laws, regulations or Board policies, including but not limited to, incidents **involving school safety**, reports of educator misconduct, threats or reports of suspected child abuse. (Pol. 218, 317.1, 805.1, 806, 824)

Timeframes

Reasonably prompt timeframes **will** be established for completing each step of the discrimination complaint procedures, including timeframes for filing and resolving appeals.

The established timeframes included in these procedures may be adjusted to allow for a temporary delay or a limited extension of time for good cause. Written notice of the delay or extension and the reason for such action **will** be provided to the complainant and the respondent, and documented with the records of the complaint. Good cause may include, but is not limited to, considerations such as:

1. The absence of a party or a witness.
2. **Request from law enforcement or child welfare agency.**
3. Need for language assistance or **accommodations.**

PROCEDURES FOR COMPLAINTS OF DISCRIMINATION

Step 1 – Reporting

An employee or individual who believes they have been subject to discrimination by any district student, employee or third party is encouraged to immediately report the incident to the building principal **or Title IX Coordinator** using the Discrimination/**Harassment**/Retaliation Report Form or by making a general report **orally** or in writing. A person who is not an intended victim or target of discrimination but is adversely affected by the offensive conduct may file a report of discrimination.

An employee serving in a supervisory position who suspects or is notified that a district employee may have been subject to conduct that constitutes a violation of this policy shall immediately report the incident to the Title IX Coordinator.

If a student is identified as a party in the report, parents/guardians have the right to act on behalf of the student at any time. **(Pol. 103)**

Any person with knowledge of discrimination in violation of Board policy or this procedure is encouraged to immediately report the matter to the building principal or **Title IX Coordinator**.

The building principal **will** immediately notify the Title IX Coordinator and Compliance Officer of reported discrimination.

If the building principal, **Title IX Coordinator or Compliance Officer** is the subject of a complaint, the person making the report **will** report the incident directly to the **Superintendent or designee.**

The complainant or reporting individual **will** be encouraged to use the Discrimination/**Harassment**/Retaliation Report Form, however, complaints **will** be accepted in person, by phone, by mail or email or by any other means that results in the appropriate individual receiving the **oral** or written report. **Oral** reports **will** be documented using the Discrimination/**Harassment**/ Retaliation Report Form, and these procedures **will** be implemented.

The Title IX Coordinator **will** review reports and complaints, and may gather additional information from the individual submitting the report and other parties identified in the report using the Discrimination/**Harassment**/Retaliation Report Form. The Title IX Coordinator **will** promptly contact the complainant regarding the report to gather additional information as necessary, and to discuss the availability of supportive measures. The Title IX Coordinator **will** consider the complainant's wishes with respect to supportive measures.

The Title IX Coordinator **will** conduct an assessment to determine whether the reported circumstances are most appropriately addressed through the Discrimination Complaint Procedures prescribed in this **document**, or if the reported circumstances meet the definition and parameters of Title IX **sex-based discrimination or** harassment and are most appropriately addressed through the Grievance **Procedures**, or other applicable Board policies.

If the Title IX Coordinator determines that the report should be addressed through the discrimination complaint procedures, the Compliance Officer **will** be notified and the complaint procedures in this **document will be** implemented.

When a party is an identified student with a disability, or thought to be a student with a disability, the Title IX Coordinator **will** notify the Director of Special Education and coordinate to determine whether additional steps must be taken for the party, while the discrimination complaint procedures are implemented. Such measures may include, but are not limited to, conducting a manifestation determination, functional behavioral assessment (FBA) or other assessment or evaluation, in accordance with applicable law, regulations **and** Board policy. FBAs must be conducted when a student's behavior interferes with the student's learning or the learning of others and information is necessary to provide appropriate educational programming, and when a student's behavior violates the Code of Student Conduct and is determined to be a manifestation of a student's disability. (Pol. 113, 113.1, 113.2, 113.3)

Step 2 – Initial Communications/Supports

The complainant **will** be informed about the Board's policy on discrimination, including the right to an investigation of both **oral** and written reports of discrimination.

The building principal or designee, in consultation with the Compliance Officer, Title IX Coordinator and other appropriate individuals, **will** promptly implement appropriate measures to protect the complainant and others as necessary from violation of the policy throughout the course of the investigation.

The building principal or designee may provide to the complainant factual information on the complaint and the investigative process, the impact of choosing to seek confidentiality and the **opportunity to report incident(s) to law enforcement**. The person accepting the complaint **will** handle the report objectively, neutrally and professionally, setting aside personal biases that might favor or disfavor the complainant or respondent.

The building principal or Compliance Officer **will** provide relevant information on resources available in addition to the discrimination complaint procedure, such as making reports to **law enforcement**, available assistance from domestic violence or rape crisis programs and community health resources, including counseling resources.

Informal Remedies -

At any time after a complaint has been reported, if the Compliance Officer believes the circumstances are appropriate, the Compliance Officer may offer the parties involved in the complaint the opportunity to participate in informal remedies to address the reported conduct. Informal remedies can take many forms, depending on the particular case. Examples include, but are not limited to, mediation, facilitated discussions between the parties, acknowledgment of responsibility by a respondent, apologies, a requirement to engage in specific services such as an Employee Assistance Program or other measures to support the parties.

If the matter is resolved to the satisfaction of the parties, the district employee facilitating the informal remedies **will** document the nature of the complaint and the proposed resolution of the matter, have both parties sign the documentation to indicate agreement with the resolution and receive a copy, and forward it to the Compliance Officer.

The Compliance Officer **will** contact the complainant to determine if the resolution was effective and to monitor the agreed upon remedies, and **will** document all appropriate actions.

*If the informal remedies result in the final resolution of the complaint, the following steps are not applicable.

Step 3 – Investigation

The Compliance Officer **will** assess whether the investigation should be conducted by the building principal, another district employee, the Compliance Officer or an attorney and **will** promptly assign the investigation to that individual. **The individual assigned to investigate the complaint must not be an employee supervised by the respondent or complainant.**

The Compliance Officer **will** ensure that the individual assigned to investigate the complaint has an appropriate understanding of the relevant laws pertaining to discrimination and retaliation issues and Board policy. **The individual must have received training on** how to conduct investigations, **including interviewing witnesses and evaluating credibility**, and **how to** draft an investigative report.

When investigating conduct that may be considered discriminatory harassment, and whether the harassment was objectively hostile, the investigator should review the conduct in its social context, from the perspective of a reasonable person of the complainant's protected class. For example, if investigating conduct related to harassment on the basis of race, the harassment should be evaluated from the perspective of a reasonable person of that same race.

The investigator **will** work with the Compliance Officer to assess the anticipated scope of the investigation, who needs to be interviewed and what records or evidence may be relevant to the investigation.

The investigator **will** conduct an adequate, reliable and impartial investigation. The complainant and the respondent may suggest additional witnesses and provide other evidence during the course of the investigation. When the initial complaint involves allegations relating to conduct which took place away from school property, school-sponsored activities or school conveyances, the investigation may include inquiries related to these allegations to determine whether they resulted in continuing effects such as harassment in school settings.

The investigation may consist of individual interviews with the complainant, the respondent and others with knowledge relative to the allegations. The investigator may also evaluate any other information and materials relevant to the investigation. The person making the report, parties, parents/guardians, if applicable, and witnesses **will** be informed of the prohibition against retaliation for anyone's participation in the process and that conduct believed to be retaliatory should be reported. All individuals providing statements or other information or participating in the investigation **will** be instructed to keep the matter confidential and to report any concerns about confidentiality to the investigator.

If the investigation reveals that the conduct being investigated may involve a violation of criminal law, the investigator **will** promptly notify the Compliance Officer, who **will** promptly inform law enforcement authorities about the allegations.

The obligation to conduct this investigation **will** not be negated by the fact that a criminal or child protective services investigation of the allegations is pending or has been concluded. The investigator should coordinate with any other ongoing investigations of the allegations, including agreeing to requests for a delay in fulfilling the district's investigative responsibilities during the fact-finding portion of a criminal or child protective services investigation. Such delays **will** not extend beyond the time necessary to prevent interference with or disruption of the criminal or child protective services investigation, and the reason for such delay **will** be documented by the investigator.

Step 4 – Investigative Report

The investigator **will** prepare and submit a written report to the Compliance Officer within

{ } twenty (20) school days

{ } thirty (30) school days

{ } _____ school days

of the initial report of alleged discrimination, unless the nature of the allegations, anticipated extent of the investigation or the availability of witnesses requires the investigator and the Compliance Officer to establish a different due date. The parties **will** be notified of the anticipated date the investigative report will be completed and of any changes to the anticipated due date during the course of the investigation.

The investigative report **will** include a summary of the investigation, a determination of whether the complaint has been substantiated as factual, the information and evaluation that formed the basis for this determination, whether the conduct violated Board Policy 104 and of any other violations of law or Board policy which may warrant further district action, and a recommended disposition of the complaint. An investigation into discrimination or harassment **will** consider the record as a whole and the totality of circumstances in determining whether a violation of Board policy has occurred, recognizing that persistent and pervasive conduct, when taken together, may be a violation even when the separate incidents are not severe.

The complainant and the respondent **will** be informed of the outcome of the investigation, for example, whether the investigator believes the allegations to be founded or unfounded, within a reasonable time of the submission of the written investigative report, to the extent authorized by the Family Educational Rights and Privacy Act (FERPA) and other applicable laws. The respondent **will** not be notified of the individual remedies offered or provided to the complainant.

Step 5 – District Action

If the investigation results in a finding that some or all of the allegations of the discrimination complaint are founded and constitute a violation of Board policy, the district **will** take prompt, corrective action designed to ensure that such conduct ceases and that no retaliation occurs. The district **will** promptly take appropriate steps to prevent the recurrence of the prohibited conduct and to address the discriminatory effect the prohibited conduct had on the complainant and the district education program or activity. District staff **will** document the corrective action taken and, where not prohibited by law, inform the complainant. The Compliance Officer **will** follow up by assessing the effectiveness of the corrective action at reasonable intervals.

If an investigation results in a finding that a different policy was violated separately from or in addition to violations of Policy 104 or these procedures, or that there are circumstances warranting further action, such matters **will** be addressed at the conclusion of this investigation or through disciplinary or other appropriate referrals where further evaluation or investigation is necessary. (Pol. 113.1, 218, 233, 317, **317.1, 806, 824**)

Disciplinary actions **will** be consistent with Board policies and administrative regulations, the Code of Student Conduct for students, district procedures, applicable collective bargaining agreements and state and federal laws and regulations. (Pol. 103, 104, 113.1, 218, 233, 317, 317.1)

Appeal Procedure

If the complainant or the respondent is not satisfied with a finding made pursuant to these procedures or with recommended corrective action, they may submit a written appeal to the Compliance Officer within fifteen (15) school days of receiving notification of the outcome of the investigation. If the Compliance Officer investigated the complaint, such appeal **will** be made to the Superintendent.

The individual receiving the appeal **will** review the investigation and the investigative report and may also conduct or designate another person to conduct a reasonable supplemental investigation to assess the sufficiency and propriety of the prior investigation.

The person handling the appeal **will** prepare a written response to the appeal within

{ } five (5) school days.

{ } ten (10) school days.

{ } twenty (20) school days.

{ } _____ school days.

Copies of the response **will** be provided to the complainant, the respondent and the investigator who conducted the initial investigation.