

EMPLOYMENT DISCRIMINATION AND HARASSMENT COMPLAINT PROCEDURES

511-Rule

I. Purpose

These procedures will be used to process a report or complaint that any employee, former employee, or applicant for employment has been subjected to discrimination or retaliation in violation of any employment-related nondiscrimination law or any board policy that prohibits discrimination based on a legally-protected status in connection with the District's employment practices (including policy provisions prohibiting retaliation).

These procedures serve as the District's grievance procedures for resolving reports and complaints of sex discrimination related to employment matters under Title IX, other than formal complaints of Title IX sexual harassment. In addition, these complaint procedures may also be used in any situation where another Board policy or District procedure directs or allows the use of these complaint resolution procedures.

II. General Provisions and Pre-Investigation Considerations/Procedures

A. Nondiscrimination Coordinators

The District's designated nondiscrimination coordinators have primary responsibility for coordinating the processing of reports and complaints under these procedures. In fulfilling such responsibilities, a coordinator may consult as needed with other administrators/supervisors. With notice to the District Administrator and/or School Board President, a nondiscrimination coordinator may also engage District legal counsel for the purpose of consultation regarding a report or complaint.

Board Policy 113 identifies and provides contact information for each of the District's nondiscrimination coordinators. The contact information for the coordinators is also available on the District's website.

B. Procedures for Filing a Complaint or Report

Refer to Board Policy 113 and Board Policy 511 for procedures and additional information regarding the submission of reports and complaints of prohibited discrimination and retaliation.

C. Referral to Nondiscrimination Coordinators

If, for any reason, a report or complaint alleging prohibited discrimination or retaliation is initially brought to the attention of a District official or employee other than a designated nondiscrimination coordinator, such other person shall refer the report or complaint to an appropriate coordinator.

All reports and complaints of sex discrimination, including sexual harassment, shall be referred to a nondiscrimination coordinator who serves as a District Title IX Coordinator.

D. Coordination with Title IX Sexual Harassment Regulations and Procedures

To the extent a report or complaint concerns conduct that could constitute "sexual harassment" as defined in Chapter 106 of Title 34 of the Code of Federal Regulations ("the federal Title IX regulations"), additional requirements and obligations apply to the District and its designated Title IX Coordinator(s), including but not limited to the obligations to contact the alleged victim of the sexual harassment, to consider and implement supportive measures, and to avoid implementing disciplinary sanctions against the alleged perpetrator of the sexual harassment until after an appropriate determination of responsibility.

Further, as required by the federal Title IX regulations, the District has adopted a separate grievance process for the resolution of “formal complaints” of “sexual harassment,” as those terms are defined in the federal regulations (see [34 C.F.R. §106.30](#)). Accordingly, formal complaints of Title IX sexual harassment will be processed pursuant to the separate grievance process.

The District is not required to use these complaint procedures to further address any report, complaint, allegation, or basis for a finding of potential misconduct or liability that reaches a determination, or that is otherwise resolved, through the separate Title IX grievance process.

E. Concerns with Safety, Confidentiality, or Retaliation

Any person who presents a report or complaint or who participates in any manner in an investigation or other proceeding under these procedures should arrange to discuss any concerns about safety, confidentiality, or retaliation with the District’s Equal Employment Opportunity Coordinator (EEO Coordinator), any other designated nondiscrimination coordinator, or the District Administrator as early as possible in connection with their involvement in the process — including at or even prior to the time that a report or complaint is filed. The District’s nondiscrimination policies further address the issues of confidentiality and protections for retaliation.

F. Interim Measures

In conjunction with the District’s receipt of notice of any report or complaint of alleged discrimination, harassment, or retaliation, or any other matter that is directed to these procedures for a resolution, a District nondiscrimination coordinator or an administrator acting on behalf of a coordinator shall consider the potential need for and may implement interim measures that are taken before the resolution of the report or complaint (e.g., safety planning, a “no contact” directive, or other steps needed to protect the complainant or other persons). A complainant may also affirmatively request the consideration of such interim measures. To the extent a report or complaint concerns conduct that could constitute Title IX sexual harassment, the District’s consideration and implementation of any such interim measures shall be consistent with the requirements of the federal Title IX regulations.

G. Substitution of Parties

If a report or complaint is initially submitted to the District by someone who is not claiming to have been personally harmed or victimized by the alleged conduct or challenged policy (such as a witness or a person who received a third-party account of an incident or allegation), the District reserves discretion, for purposes of these procedures, to substitute the actual party in interest in place of the person who initially submitted the complaint or report. The District will inform the person who initially submitted the complaint or report of any such decision to substitute the actual party in interest as the complainant.

H. Authority to Dismiss Complaints or Specific Allegations

The District retains discretion to dismiss a complaint, or specific allegations, without completing the steps of these complaint procedures for any of the following reasons:

1. The allegations, in whole or in part, raise issues over which the District does not have authority or jurisdiction or that are not amenable to a resolution through these procedures;
2. Mootness (e.g., a challenged policy or practice has been changed);

3. The District determines that specific circumstances prevent the District from gathering evidence that is sufficient to reach a determination regarding the allegations;
4. Due to a lack of timeliness (e.g., an unreasonable or prejudicial delay in reporting);
5. Abuse of process; or
6. The complainant requests to withdraw the complaint and the District consents.

A decision to dismiss a complaint or any allegations for purpose of these complaint procedures does not prevent the District from otherwise addressing a matter through other processes.

An actual party in interest may, within 10 calendar days of being notified of a dismissal decision, submit a written request to the District Administrator asking for the District Administrator to review/reconsider such decision.

I. Modification of Procedures to Address Conflicts

In all cases, these procedures shall be implemented in a manner that avoids conflicts of interest, including but not limited to situations where one of the individuals acting on behalf of the District in the resolution process is alleged to have engaged in the conduct that is the basis for the allegations. The primary means of avoiding conflicts is to substitute different individuals in place of any individual who has a conflict of interest. Provided that the District Administrator is not personally affected by a conflict of interest, all concerns with conflicts of interest or potential conflicts of interest shall be brought to the attention of the District Administrator, and the District Administrator is authorized to direct or approve such substitutions if he/she determines that it is necessary or appropriate to do so.

If a report or complaint alleges that the District Administrator has engaged in the improper conduct that is the basis for the allegations, or if the District Administrator or School Board determines that the administrator is affected by some other material conflict of interest, a designated nondiscrimination coordinator or the District Administrator shall forward the complaint or report to the Board President. The Board President shall engage District legal counsel for the purpose of formulating a recommendation on any modifications to these procedures that may be appropriate to address the District Administrator's conflict of interest. Such recommendation may include the appointment of an outside investigator, and the Board President is authorized to appoint/engage such an outside investigator. When the District Administrator is affected by a conflict of interest, the Board President is also authorized to assign an individual to serve as the complaint manager for any formal investigation (see below) and to perform any other responsibility that these procedures assign to the District Administrator, including, upon advice of counsel and with notice to the Board, making decisions regarding the dismissal of a complaint. In addition, in any case where the District Administrator is alleged to have engaged in the conduct that is the basis for the allegations, the Board shall automatically serve as the body that, following an investigation, makes a determination regarding any allegations of misconduct on the part of the District Administrator. Any appeal of the Board's decision shall be treated as a request for reconsideration and final decision by the Board.

Beyond the modifications identified in this section, any additional modifications of these procedures that are deemed necessary or advisable in order to address conflicts of interest shall be approved by the Board.

III. Informal Resolution (other than for complaints of Title IX sexual harassment)

A. Conditions on the Use of Informal Resolution

The District permits, but does not require, attempts to informally resolve reports, complaints, or other concerns regarding (1) possible employment-related discrimination, harassment, or retaliation, or (2) other claims or allegations that are addressed under these procedures. However, both of the following conditions apply:

1. If any such report, complaint, or concern relates to conduct that could constitute “sexual harassment” as defined by the federal Title IX regulations, informal resolution may be attempted only if a formal complaint of Title IX sexual harassment is pending and the attempt at informal resolution is conducted pursuant to the Title IX regulations and the District’s separate grievance process for such formal complaints.
2. No person is required to participate in an informal resolution process (i.e., if such a process is offered, then participation is voluntary). A person who initially agrees to participate in an informal resolution process may withdraw from the process prior to its conclusion without penalty.

B. Description of the Process

1. An attempt to reach an acceptable informal resolution may be initiated at any point after the District has been notified of a report or complaint that would otherwise be resolved using the formal investigative and decision-making steps defined below, including after a formal investigation has been initiated.
2. Although various administrators/supervisors may be involved in attempting an informal resolution, an appropriate nondiscrimination coordinator should still be notified of the complaint or report and involved in the decision to offer/pursue an informal resolution.
3. An informal resolution process is intended to be flexible, but generally includes any process that departs from the formal investigative and decision-making steps defined below. For example, an informal resolution may involve calling resolution meetings, gathering relevant information (e.g., regarding requested remedies), seeking agreement on facts that are not in dispute, holding mediated resolution sessions, and/or offering one or more options for changes to the relevant circumstances.
4. Attempts at informal resolution may resolve some, all, or none of the issues/allegations submitted for resolution. Any unresolved issues and allegations may proceed to be further processed under these procedures.
5. The person(s) facilitating the informal resolution process on behalf of the District shall document the allegations/issues that were submitted for attempted resolution and the outcome of the process. If such documentation is prepared by another person, the record shall be provided to the appropriate nondiscrimination coordinator.

IV. Formal Investigation and Determination Procedures (other than for formal complaints of Title IX sexual harassment)

The formal complaint procedures listed below shall be initiated based on a written statement of the complaint or other report of the relevant claims/allegations. The written statement may be a statement that was submitted by a complainant, or a statement that is prepared by a District-designated nondiscrimination coordinator or a designee. If necessary, the written statement may be amended during the process, or the District may otherwise inform the parties of any clarifications of or changes to the claims or allegations under investigation.

The District will normally attempt to make an initial determination of a complaint under these procedures within 90 days of the date that a District-designated nondiscrimination coordinator, or an administrative-level designee of the coordinator, is first notified of the claims/allegations. However, the District may determine that there is a legitimate need to extend the normal timeline and shall notify the relevant parties of any such extension.

Step 1: The District will designate a complaint manager, who will normally be one of the District's designated nondiscrimination coordinators. The complaint manager will be the primary point of contact regarding the complaint for the relevant parties, ensure that appropriate communications from the District are provided to the parties, and ensure appropriate record-keeping in connection with the complaint process.

Step 2: In consultation with the complaint manager, the the District Administrator or the relevant Building Principal or their administrative-level designee shall assign one or more individuals to conduct an investigation of the claims/allegations, decide the merits of the matter at this Step, and determine what responsive, remedial, or disciplinary actions will be taken or recommended (if any). The complaint manager shall ensure that the District provides the appropriate parties with written notice of the initial administrative determination of the complaint.

Step 3: If any complainant or alleged responsible party under the complaint is dissatisfied with the determination reached at Step 2, the individual may, within 14 calendar days of the date that the District issues notice of the initial determination, file a written request for reconsideration with the office of the District Administrator. (The request may be submitted via electronic mail to the District Administrator's District-issued email address.) The request for reconsideration shall state the specific reason(s) why the party believes the administrative determination should be modified. Prior to reaching a decision that would modify the previous determination, the District will give the other parties to the matter at least 5 calendar days to submit a statement regarding the asserted grounds for modification. The District Administrator will normally issue a written decision on reconsideration to the parties within 30 calendar days unless further investigation is initiated and/or the District Administrator determines that an extension of time is otherwise needed. The District shall notify the parties of any extension of the 30-day timeline.

Step 4: If any complainant or alleged responsible party is dissatisfied with the determination reached at Step 3, the party may appeal the Step 3 determination to the School Board. [Insert if desired to limit the scope of such appeals: "Although the Board reserves ultimate discretion to modify any sanctions or remedies, the Board will not modify the determination of the merits of the complaint unless the complainant is able to demonstrate (1) that the determination was affected by a material conflict of interest or undue bias; (2) that there was a clear legal or procedural error that affected the outcome; or (3) that a material factual determination lacked any rational foundation or can be affirmatively disproven by new evidence that was not available at the time of the earlier determination."]
Any appeal to the Board shall be filed in writing within 14 calendar days of the date that the District issues notice of the Step 3 determination. The appeal shall be filed at the Office of the District Administrator, addressed to the attention of the Board Clerk with a copy directed to the attention of the District Administrator. (The notice

of appeal may be filed as an email that is sent the District-issued email addresses of the two officials.) The notice of appeal must state the specific reason(s) why the party believes the Step 3 determination should be modified.

Prior to issuing a decision that would modify the determination, the District will give any other parties to the matter at least 5 calendar days to submit a written statement regarding the asserted grounds for the appeal. The Board will meet to determine the appeal and will issue a written response to the appeal. Unless otherwise directed by the Board, an appeal to the Board shall not involve any further investigation of the matter or any in-person appearances by the parties.

V. External Agency or Court Filing

If a complainant is not satisfied with the District's decision, or in lieu of or in addition to utilizing the internal complaint procedures established by this procedure, the complainant may pursue alternate actions that may be available under state or federal law (e.g., filing an appeal to State Superintendent of Public Instruction in appropriate cases, or filing a complaint with the Equal Rights Division of the Department of Workforce Development, with the U.S. Department of Education's Office for Civil Rights - Region V, and/or with any court or agency having proper jurisdiction). Any party with a complaint is responsible for determining the applicable outside agencies or courts with which a complaint may properly be filed and the applicable filing deadlines and procedures. While it is not always necessary to pursue an internal complaint before filing a complaint with an external agency or court, the failure to follow an employer's internal procedures for giving notice of incidents and complaints can, in some cases, affect the individual's ability to seek remedies from an external agency or court. Unless mandated by a state or federal statute or regulation, pursuing an internal complaint under these procedures does not extend or delay the filing deadlines applicable to filing a complaint with an external agency or court.

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