Personnel

NONDISCRIMINATION IN EMPLOYMENT

Complaint Procedures

All complaints containing an allegation that a District employee, or when applicable a job applicant, unpaid intern, volunteer, or person providing services to the District pursuant to a contract, was subject to unlawful discrimination, harassment, or related retaliation shall be addressed in accordance with the procedures set forth in this regulation unless the alleged conduct meets the definition of sexual harassment set forth in the Title IX of the Education Amendments of 1972 (34 C.F.R. § 106.30), as defined in Board Policy 4119.11 – Sexual Harassment.

If the alleged conduct meets the definition of sexual harassment set forth in the Title IX of the Education Amendments of 1972 (34 C.F.R. § 106.30), as defined in Board Policy 4119.11 – Sexual Harassment, then the complaint shall be addressed in accordance with Administrative Regulation 4119.12 – Title IX Sexual Harassment Complaint Procedures. The alleged conduct must meet the definition of sexual harassment under Title IX, as defined in Board Policy 4119.11 – Sexual Harassment, in order to be addressed in accordance with Administrative Regulation 4119.12 – Title IX Sexual Harassment Complaint Procedures.

(cf. 0410 - Nondiscrimination in District Programs and Activities)
(cf. 1240 - Volunteer Assistance)
(cf. 3312 - Contracts)
(cf. 3600 - Consultants)
(cf. 4032 - Reasonable Accommodation)
(cf. 4119.11 - Sexual Harassment)
(cf. 4119.12 - Title IX Sexual Harassment Complaints)

Filing of Complaint

To the extent possible, complaints should be submitted in writing and signed by the complainant. If the complainant is unable to put the complaint in writing, due to conditions such as disability or illiteracy, the Title IX Coordinator identified in Board Policy 4030 – Nondiscrimination in Employment or designee, shall assist the complainant in memorializing the allegations. Failure to submit a complaint in writing, does not, by itself, negate the District’s duty to process the complaint.

Every effort shall be taken to memorialize the verbal complaints. Doing so shall not be interpreted to be the filing of a formal written complaint by the individual making the report, unless requested by the reporting individual. If the reporting individual does not want to file a formal written complaint, does not want to be identified, or does not give names of the individual harmed and/or the individual alleged to have inflicted the harm, the District may still have a duty
to respond in some way depending on the seriousness of the allegations and the risk of future harm to others (for example, the notification of other District administration, law enforcement or Child Protective Services). However, the extent to which these concerns can be investigated and/or responded to may be limited given the lack of information made available to the District. The Title IX Coordinator or designee, as appropriate, shall determine the proper means of processing verbal complaints.

Complaints may be submitted anonymously. However, it is within the discretion of the Title IX Coordinator or designee to determine whether an anonymous complaint states sufficient facts to allow the District to conduct a thorough and complete investigation into the alleged conduct. If the anonymous complaint fails to do so, the anonymous complaint may be dismissed.

Absolute anonymity cannot be guaranteed. However, the District shall ensure that identity of individuals participating in the investigation process remain confidential where appropriate and to the extent possible.

**Informal Resolution**

The District encourages early resolution of complaints whenever possible.

The Title IX Coordinator or designee may discuss with the complainant(s) and respondent(s) the possibility of resolving the complaint using an informal resolution process. Such discussion shall include the notification to both the complainant(s) and respondent(s) of the following:

1. Each party must voluntarily consent to participate in an informal resolution process in order for it to be utilized;
2. Each party has a right to the informal resolution process at any time; and
3. Each party must voluntarily agree to make any involved mediator a party to relevant confidential information.

An informal resolution process shall not be offered or used to resolve any complaint involving an allegation of sexual assault or where there is a reasonable risk that either party would feel compelled to participate.

If the parties each voluntarily agree to participate in an informal resolution process, the Title IX Coordinator or designee shall make all arrangements for the same. The Title IX Coordinator or designee shall ensure that the use of an informal resolution process is consistent with state and federal laws and regulations.
NONDISCRIMINATION IN EMPLOYMENT (continued)

If the informal resolution process does not resolve the problem within the parameters of law, the Title IX Coordinator or designee shall proceed with an investigation of the complaint. The use of informal resolution shall extend the timelines for investigating and resolving the complaint should the Title IX Coordinator or designee determine an extension of time is necessary and reasonable.

Investigation Process

Upon notice of and/or receipt of a written complaint alleging an incident of prohibited discrimination or harassment, the Title IX Coordinator or designee, shall meet with the complainant to describe the applicable complaint procedure and discuss the actions being sought by the complainant in response to the allegation. The Title IX Coordinator or designee shall inform the complainant that the investigation of the allegations will be fair, timely, and thorough and will be conducted in a manner that provides all parties due process and reaches reasonable conclusions based on the evidence collected. The Title IX Coordinator or designee shall also inform both the complainant and respondent that the investigation will be kept confidential to the extent possible, but that absolute anonymity cannot be guaranteed as some information may need to be disclosed in order to conduct an effective investigation.

Written notice of receipt of the complaint and the initiation of an investigation into the same, shall be provided to both the complainant and the respondent within a reasonable amount of time after the District has received notice of the complaint.

(cf. 3580 - District Records)
(cf. 4112.6/4212.6/4312.6 - Personnel Files)
(cf. 4119.23/4219.23/4319.23 - Unauthorized Release of Confidential/Privileged Information)

If the Title IX Coordinator or designee determines that a detailed fact-finding investigation is necessary, the investigation shall begin as soon as practically possible. As part of this investigation, the Title IX Coordinator or designee should interview the complainant, the respondent, and other persons who could be expected to have relevant information.

The Title IX Coordinator or designee shall track and document the progress of the investigation to ensure reasonable progress and shall inform the parties as necessary.

When necessary to carry out the investigation or to protect employee safety, the Title IX Coordinator or designee may discuss the complaint with the Superintendent or designee, District’s legal counsel, or the District’s risk manager.

The Title IX Coordinator or designee shall also determine whether supportive measures, such as schedule changes, transfers, or leaves, need to be taken before the investigation is completed in order to prevent further incidents. The Title IX Coordinator or designee shall ensure that such supportive measures do not constitute retaliation.
Investigation Findings

No more than sixty (60) calendar days after notice and/or receipt of a written complaint alleging an incident of prohibited discrimination or harassment, the Title IX Coordinator or designee shall conclude the investigation and prepare written investigation findings. This timeline may be extended for good cause. If an extension is needed, the Title IX Coordinator or designee shall notify the parties, in writing, and explain the reasons for the extension.

The written investigation findings shall include factual findings based on a preponderance of the evidence and shall summarize the steps taken during the investigation. If a determination has been made that discrimination or harassment occurred, the written investigation findings shall also include any corrective measure(s) that have been or will be taken to address the prohibited conduct, provide appropriate options for remedial actions and resolutions for the complainant, and ensure that retaliation or further discrimination or harassment is prevented. A copy of the written investigation findings shall be provided to both the complainant and the respondent.

Appeals

The complainant may appeal the investigation findings, in writing, to the Board of Education, within 10 calendar days of the date of the written investigation findings were issued to the complainant.

Upon receipt of the written appeal, the Board will review the investigation findings to determine whether sufficient evidence was gathered to support the investigation findings under the preponderance of the evidence standard. If the Board decides not to accept the appeal, or if there has been no request to appeal the investigation findings to the Board, the investigation findings shall be final.

If the Board decides to accept the appeal, prior to the Board meeting, during which the Board will further consider the complaint, the Superintendent or designee shall provide the Board with all documents related to the complaint, including the written investigation findings. The Board may, but is not required to, consider supplemental evidence from the complainant or respondent.

(cf. 1312.1 - Complaints Concerning District Employees)

(cf. 9321 - Closed Session Purposes and Agendas)

Other Remedies

In addition to filing a complaint with the District, a complainant may file a complaint with either the California Department of Fair Employment and Housing (DFEH) or the Equal Employment Opportunity Commission (EEOC). The time limits for filing such complaints are as follows:
1. For filing a complaint with DFEH alleging a violation of Government Code sections 12940-12952, within three years of the alleged discriminatory act(s), unless an exception exists pursuant to Government Code section 12960.

2. For filing a complaint with EEOC, within 180 calendar days of the alleged discriminatory act(s) (42 U.S.C. § 2000e-5).

3. For filing a complaint with EEOC after first filing a complaint with DFEH, within 300 calendar days of the alleged discriminatory act(s) or within 30 calendar days after the termination of proceedings by DFEH, whichever is earlier (42 U.S.C. § 2000e-5).