

Superintendent Procedure 5010SP Employment Discrimination Complaint Process

Approved by: s/ Larry Nyland Date: 1/9/18

Dr. Larry Nyland, Superintendent



I. INTRODUCTION

The District is committed to nondiscrimination in all of its employment activities. Discrimination has no place in District schools or workplace. The Superintendent, in compliance with federal and state regulations and Board Policy 5010, has established this procedure for resolving discrimination complaints filed against a District employee.

Students, parents, employees, or other individuals may use this procedure to file a complaint against a District employee pertaining to discrimination on the basis of sex (gender); race; creed; color; religion; ancestry; national origin; age; economic status; sexual orientation including gender expression or identity; pregnancy; marital status; physical appearance; the presence of any sensory, mental, or physical disability; honorably discharged veteran; veterans dishonorably discharged solely because of their sexual orientation, gender identity, or other protected classification listed in Board Policy 5010; military status; or the use of a trained dog guide or service animal by a person with a disability.

II. INVESTIGATIONS

Complaints of discrimination are serious and will be investigated as described in this procedure.

Designated Investigator – For all formal complaints brought under this procedure, the Superintendent has designated the following office to investigate:

All allegations of employment discrimination: **Human Resources (“HR”)**

HR may refer allegations of discrimination by a staff member against a student to: **Office of Student Civil Rights (“OSCR”)**

If the complaint is against a designated investigator from HR or OSCR, the investigator of the complaint shall be that person’s immediate supervisor or an impartial internal or external investigator.

The District shall, at a minimum, publish an annual notice in a manner that is reasonably calculated to inform all students, parents, and employees of the name, address, and telephone number of the offices designated to investigate complaints under this procedure.

III. COMPLAINTS

Complaints may be in the form of an informal complaint, where a person submits an oral complaint or an unsigned written complaint, or a formal complaint, which shall be in writing and signed. If a complaint is emailed, the District has the right to request that the complainant come in and sign the complaint. If the complainant does not provide a written signature to the complaint after notification, the District may treat the complaint as an informal complaint.

All complaints must be filed within one (1) year after the act, condition, or circumstance that is the subject matter of the complaint. Exceptions to the one (1) year filing requirement will be granted if the complainant was prevented from filing a complaint due to: (a) specific misrepresentations by the District that it had resolved the problem forming the basis of the complaint or (b) withholding of information by the District that was required to be provided under state law related to elimination of unlawful discrimination in public schools or state guidelines under WAC 392-190-005.

Complainants shall be informed that due process requirements may require that the District release all of the information regarding the complaint to the accused, thus the identity of the complainant may not remain confidential. The District will, however, fully implement the non-retaliation provisions contained within District policy to protect both complainants and witnesses.

The complainant and the District may agree to resolve the complaint in lieu of an investigation. The District strongly encourages and supports Alternative Dispute Resolution (“ADR”) processes. The District will establish a fair and neutral process for ADR resolutions to take place, with the goal being a prompt resolution via an impartial facilitator.

- A. Informal Complaint Process – Anyone may use these informal procedures to report and resolve complaints of discrimination. Complaints may be made orally, in writing, and may also be made anonymously. Complainants should understand that an anonymous complaint might not be resolved to the complainant’s satisfaction due to the limitations placed on the investigation by the anonymity. All attempts shall be made to keep the identity of the complainant confidential, although confidentiality cannot be guaranteed.

The District may use a variety of approaches to address informal complaints, including but not limited to, ADR and/or supervisor intervention. The District shall inform the complainant in a timely manner of what corrective measures it took, if any, to eliminate the alleged discriminatory behavior.

- B. Formal Complaint Process – Anyone may initiate a formal complaint of discrimination even if the informal complaint process was initially utilized. All formal complaints shall be in writing; shall be signed by the

complainant; and shall describe the specific acts, conditions, or circumstances alleged to have occurred that constitute discrimination.

When a formal complaint investigation is complete, the investigator will provide the Deputy Superintendent with a full written report of the complaint and the results of the investigation.

The Deputy Superintendent will respond in writing to a formal complaint no later than thirty (30) calendar days following the District's receipt of the complaint, unless otherwise agreed to by the complainant or if exceptional circumstances related to the complaint require an extension of the time limit. If an extension of time is needed, the District will notify the complainant in writing of the reason for the extension and the anticipated response date. Such notice shall be provided in a language the complainant can understand and may require language assistance for complainants with limited-English proficiency, in accordance with Title VI of the Civil Rights Act of 1964. The Deputy Superintendent's written response shall clearly state whether the District:

- (1) Denies the allegations contained in the complaint; or
- (2) Confirms the allegations and lists the corrective measures that the District intends to take to eliminate the discrimination.

The Deputy Superintendent's response shall also include notice of the complainant's right to appeal as set forth in state law and this policy, including an identification of where and to whom the appeal shall be filed. A copy of the response shall also be sent to the Office of Superintendent of Public Instruction ("OSPI").

Corrective measures deemed necessary by the Deputy Superintendent, in consultation with other appropriate District staff, will be instituted as quickly as possible, but in no event later than thirty (30) calendar days after the Deputy Superintendent's written response, unless the accused is appealing the imposition of discipline and the District is prevented by due process considerations or a lawful order from imposing the discipline until the appeal process is concluded.

- C. Bargaining Agreements – Nothing in the complaint procedure prohibits the processing of grievances by an employee's bargaining representative and/or a member of a bargaining unit pursuant to grievance procedures established at the District level or by a local bargaining agreement.

IV. DISCIPLINE/REMEDIAL ACTION

The District will take prompt, equitable, and remedial action within its authority on formal and informal complaints alleging discrimination that come to the attention of the District. Engaging in discrimination will result in appropriate discipline or other sanctions against offending staff. Others who engage in discrimination on District property or while at District activities may have access

to District property and activities restricted or contracts cancelled, as appropriate. The District affirms its commitment that persons found to have been subjected to discrimination will have appropriate District services made reasonably available to them and adverse consequences of the discrimination shall be reviewed and remedied as appropriate.

V. APPEAL

A. Level One

If the Deputy Superintendent denies the allegations of discrimination, the complainant may appeal to the School Board by filing a written notice of appeal with the Superintendent as the secretary of the board on or before the tenth (10th) calendar day following the date upon which the complainant received the Deputy Superintendent's response. In the event the Deputy Superintendent does not respond to a complaint within 30 days or request an extension, the complainant may appeal the Deputy Superintendent's inaction to the School Board by filing a written notice of appeal with the Superintendent as the secretary of the board on or before the tenth (10th) calendar day following the expiration of the thirty (30th) calendar day response period specified above. Upon receipt of a timely appeal, the Superintendent shall appoint a neutral hearing examiner hired by the District to hear the matter and issue findings of fact and a recommended decision.

The appeal shall be based on the facts previously raised by the complainant and/or investigated by the District. The complainant, District staff, and the person or persons who is/are alleged to have violated this procedure shall have the right to present such witnesses and testimony to the Hearing Examiner as the Hearing Examiner deems relevant and material. This hearing shall be recorded.

The Hearing Examiner's findings of fact and recommended decision will be transmitted to the School Board for a closed record review. The Board shall not accept new information, written or oral, regarding the appeal, and will confine its review to the Hearing Examiner's decision and record from the hearing. Upon such review, the School Board may either adopt the decision or issue a different decision based on the facts found by the Hearing Examiner. The Board may also provide direction to the Superintendent regarding organizational or policy improvements it deems necessary based on the issues identified during the appeal. The Board's decision will be communicated to the complainant and other parties on or before the thirtieth (30th) calendar day from the date the District received the appeal. The written decision shall include notice of the complainant's right to appeal to OSPI as set forth below. The appeal decision must also be sent to OSPI.

If the Board has not conducted its review of the Hearing Examiner's decision and issued the Board's final decision within 30 days of the date the appeal was filed, the Hearing Examiner's decision will be considered the final decision of the District. In such event, however, the Board may still provide direction to the Superintendent regarding organizational or policy improvements it deems necessary based on the issues identified during the appeal. The District will notify the appellant in writing that the Hearing Examiner's decision is the final

decision of the District and shall include notice of the complainant's right to appeal to OSPI as set forth below.

B. Level Two

If a complainant remains aggrieved as a result of the final decision under a Level One appeal in resolving a complaint, the complainant may appeal to OSPI by filing a written notice of appeal with the OSPI by the twentieth (20th) calendar day following the date upon which the complainant received the written decision by the Superintendent or his or her designee. Such appeal shall be in writing, include a concise statement of the parts of the Superintendent's decision that is being appealed, and the relief requested.

VI. TRAINING AND PREVENTION/INTERVENTION

All District orientation sessions for employees and volunteers shall introduce the elements of this procedure. District employees and volunteers will be provided information on recognizing and preventing discrimination and shall be fully informed of the formal and informal complaint processes and their roles and responsibilities under this procedure.

VII. RETALIATION/FALSE REPORTING

No employee or volunteer may engage in reprisal or retaliation against a victim, witness, or other person who brings forward information about an act of discrimination. Reprisal or retaliation is prohibited and will result in appropriate discipline.

It is a violation of this procedure to knowingly report false allegations of discrimination. Person found to knowingly report or corroborate false allegations will be subject to appropriate discipline.

VIII. OTHER LAWS

Nothing in this procedure is intended to prohibit any complainant from exercising their rights under any complaint procedure in Federal or State laws.

IX. OTHER DISTRICT POLICIES AND PROCEDURES

Nothing in this procedure is intended to prohibit discipline or remedial action for inappropriate behaviors that do not rise to the level of discrimination as defined herein, but which are or may be prohibited by other District rules.

X. NOTICE

Any notice required under this procedure must be provided in a language understood by the complainant.

Approved: May 2016

Revised: January 2018

Cross Reference: 2015; 2020; 2030; 2140; 2150; 5010; Superintendent Procedure 3210SP.A