

Provo City School District
Policy Series 3000: Students



3214 P1

Non-Discrimination

Section 1 - Definitions

Complainant: An individual or group of individuals making a complaint

Compliance Officer(s): The person or persons designated to handle inquiries and complaints regarding unlawful discrimination, harassment, and retaliation:

For Student Matters

Gary Wilson
Assistant Superintendent
280 West 940 North
Provo, Utah 84604
801-374-4815
garyw@provo.edu

For Employee Matters

Jason Cox
Exec. Director of Human Resources
280 West 940 North
Provo, Utah 84604
801-374-4822
jasonc@provo.edu

Complaint: A claim or report by an aggrieved party or a witness that an individual has engaged in prohibited discrimination, harassment, and/or retaliation.

Discrimination: Conduct including words, gestures, and/or other actions, including actions relating to hiring, promotion, discharge, discipline, assignments, demotion, or termination, that unfairly disadvantages individuals based upon protected characteristics such as age, color, disability, gender, gender identity, national origin, race, religion, sex, sexual orientation and/or any other classification protected by applicable law.

Reprisal: An unlawful use of position to avenge or punish an individual for his or her refusal to consent/submit to an inappropriate request and /or demand. Acts of reprisal may be overt or covert and may take many forms such as:

- A. open hostility to the individual, witnesses, or others involved;
- B. exclusion/ostracism of the individual, witnesses, or others involved;
- C. the creation, or continued existence, of a hostile work environment;
- D. individualized negative remarks that are repeated and malicious; or
- E. special attention to, assignment of alternative duties that are less desirable work assignments, or reductions in pay.

Respondent: The individual named in a complaint as having engaged in or being responsible for a discriminatory, harassing or retaliatory act or omission.

Retaliation: Any form of sanction or adverse treatment, including but not limited to intimidation, reprisal, or harassment of any individual because he or she:

- A. has asserted, or assisted another individual to assert, a complaint in either a formal or informal manner with the district or with any state or federal agency; or
- B. has testified, assisted or participated in any manner in an investigation, proceeding or hearing related to a complaint.

Sexual Harassment: Unwelcome sexual advances, requests for sexual favors, or other verbal or written communications or physical conduct of a sexual nature when:

- A. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, education, academic or professional pursuits, or participation in a district-sponsored program or activity;
- B. such conduct affects or has the purpose of unreasonably interfering with an individual's employment, education or participation in a District-sponsored activity by creating an intimidating, hostile, or offensive working or learning environment; or
- C. such conduct amounts to a violation of state or federal criminal laws, including sexual assault, rape, etc.

Examples of sexual harassment include but are not limited to:

- A. subtly or overtly pressuring another for sexual activity, engaging in sexually motivated physical conduct, including unwelcome touching, pinching, blocking, or brushing against another's body;
- B. using obscene or sexually explicit language or making sexually explicit gestures;
- C. displaying, viewing, printing or transmitting sexually offensive images, objects, or other materials;
- D. using sexually offensive language or slurs, teasing, joking, or making innuendoes about gender-specific traits or characteristics;
- E. engaging in demeaning or derisive conduct based substantially on a person's gender, gender identity, or sexual orientation; or
- F. engaging in any behavior of a romantic or sexual nature between a student and district employee.

Section 2 - Prohibited Conduct

The district prohibits unlawful discrimination, harassment, and retaliation that creates a hostile work or learning environment for other employees or students of the District. Discrimination, harassment, and retaliation are prohibited in all aspects of employment with the District, and by all District students and employees while on all District premises, during District-sponsored activities, using District property.

Sexual conduct between employees and students is expressly prohibited and is considered an especially serious violation of this policy. An employee who engages in sexual activity with a student will face disciplinary action, up to and including termination, and may be subject to civil or criminal penalties.

Any student who engages in prohibited discrimination, harassment, or retaliation, may be subject to discipline up to and including alternative placement. Any employee who engages prohibited discrimination, harassment or retaliation may be subject to discipline up to and including termination.

Supervisors are responsible for taking prompt necessary steps, including appropriate disciplinary action, to ensure and maintain a working and educational environment free of intimidation, coercion, discrimination, harassment, and retaliation.

The district will investigate all complaints of discrimination, harassment, and retaliation, and will take appropriate action to stop violations, prevent recurrence, and remedy any effect of violations.

All district employees are required to cooperate in all proceedings conducted pursuant to these procedures. Failure or refusal to cooperate in, or interference with, any such investigation or proceeding will result in disciplinary action up to and including termination.

The following grievance procedures are available to those who believe they have witnessed or are victims of unlawful discrimination harassment, or retaliation.

At any point in the process, the Complainant, the Respondent, or any witness, may request assistance in order to ensure their due process rights are being protected. Examples of such requests include, but are not limited to, assistance filling out a complaint form or other necessary paperwork, and provision of translation or interpreter services. Assistance with what claims to assert, what defenses should be raised, what testimony to give, or other content issues will not be provided.

Section 3 – Grievance Procedures

Duty to Report: It is the duty of every student and every employee to report any violations of these procedures or the accompanying board policy.

Confidentiality:

- A. Every effort will be made to protect the confidentiality of all participants in complaint proceedings and investigations; however, absolute confidentiality cannot be guaranteed. In some instances the district's legal obligations, including the need to investigate allegations and take appropriate corrective action, will require the disclosure of certain information.
- B. All individuals involved in complaint or investigation shall refrain from discussing the matter, except with those who have a legal need to know.

Submitting an Initial Complaint

- A. At the school level, the principal is the individual responsible for receiving all complaints of discrimination, sexual harassment, or retaliation.
 1. Any complaint involving students must be immediately referred to the school principal.
 - a. Any district employee who receives a complaint of sexual harassment from a student shall inform the student of the employee's obligation to report the complaint to principal, and then shall immediately notify the principal. Such behavior will also warrant reporting to the appropriate licensing or law enforcement authority.
 - b. Pursuant to state law, when a complaint involves allegations of child abuse, the complaint must immediately be reported to either the Division of Child and Family Services (DCFS) or local law enforcement authority, and the anonymity of both the Complainant and school officials involved in the investigation will be strictly protected.

2. If the complaint involves the principal or another school employee, the Complainant may contact the district's Human Resources Department (HR) at 801-374-4938, 280 West 940 North, Provo, Utah 84604
- B. District employees who are non-school based should report violations involving other employees to their supervisor or HR.
- C. When the Respondent is the Complainant's immediate supervisor, the Complainant should contact the Respondent's supervisor.
- D. When the Respondent is a third-party such as a vendor, visiting speaker, patron, volunteer, etc., the Complainant should contact the principal or HR.

The Initial Complaint

- A. The initial complaint may be submitted either orally or in writing.
 1. A complaint should be made as soon as possible, but preferably not later than thirty (30) days after the incident(s) in order to be effectively investigated and resolved.
 2. It should set forth in plain language the circumstances which the individual believes support the allegation(s) of unlawful behavior, the names of the individual(s) against whom the claim is made, and any remedies that are being sought.
 3. Individuals should provide as much information as possible including any conversation(s) with the Respondent, noting the time, date and place, what was said or done and any other relevant circumstances surrounding the event(s).
- B. Complaint forms may also be used and are available online and in each district building.
- C. Good faith submission of a complaint will not adversely affect the Complainant's future employment, grades, work assignments, or participation in district-sponsored programs or activities.
- D. A student or employee who knowingly files a false report may be subject to civil and/or legal actions as well as district disciplinary action.

Responsibilities and Protocol for Resolving a Complaint

- A. Any principal or supervisor receiving a complaint will first document the complaint in writing.
- B. The principal or supervisor must immediately forward a copy of the written complaint to the District's compliance officers as defined above, and then proceed with the appropriate protocol listed below.
 1. Any complaint alleging a district employee violation against a student or other employee(s) shall be reported immediately to HR. HR will then be responsible for investigating the complaint.
 2. If complaint surrounds a student -to-student issue the Complainant may contact the Assistant Superintendent at 801-374-4815.
 3. Any complaint alleging a third party violation against an employee or student shall be investigated by the principal or supervisor.
 4. Any complaint alleging a student violation against another student shall be investigated by the principal.
 5. Any complaint clearly alleging criminal conduct will be forwarded to local law enforcement for investigation.
 6. Any complaint that happens away from school property but has the potential to disrupt the educational environment of one or more schools will be investigated by the school principal.
- C. A principal or supervisor who does not immediately follow the protocol as indicated above, may be subject to disciplinary action.

- D. HR or the designated principal or supervisor (“Investigator”) shall be responsible for investigating the complaint as outlined in these procedures. Failure to properly investigate a complaint may result in discipline.

First Level Investigation and Response

A. Initial investigation

1. The district may take steps to protect the Complainant, students, and other employees during an investigation.
2. An investigation may consist of personal interviews with the Complainant, Respondent, and others who have knowledge of the alleged incident or circumstances giving rise to the complaint.
3. The investigation may also consist of any other methods and documents deemed pertinent by the Investigator.
4. The extent of the investigation will be determined based on the nature of the allegations, the context and circumstances surrounding the alleged violation, the relationship between the parties, and the history of the parties involved.
5. At the beginning of the investigation the Investigator shall disclose his or her neutrality as opposed to being an advocate for any party.
6. At a minimum, the Investigator will immediately:
 - a. notify the Complainant of his or her right to have someone translate or interpret during the interview;
 - b. notify the Complainant of his or her right to have someone of the same gender conduct or be present during the interview;
 - c. interview the Complainant and document the conversation;
 - d. instruct the Complainant to have no contact or communication regarding the complaint with the Respondent;
 - e. ask the Complainant specifically what action he or she wants taken in order to resolve the complaint.
 - f. inform the Respondent that a complaint has been filed against him or her;
 - g. inform the Respondent that if the objectionable conduct has occurred, it must cease immediately;
 - h. provide the Respondent with a copy of these procedures;
 - i. inform the Respondent of his or her rights and responsibilities during the investigation;
 - j. notify the Respondent that he or she will be afforded a full and complete opportunity to respond to the allegations;
 - k. instruct the Respondent to have no contact or communication regarding the complaint with Complainant, and to not take any retaliatory action against the Complainant; and
 - l. document the conversation with the Respondent.
7. The Respondent shall submit a written answer to the Investigator.
 - a. The answer shall include:
 - i. an admission or denial of each allegation in the complaint;
 - ii. a statement as to the extent to which the complaint has merit;
 - iii. an acceptance or rejection of the relief or action requested in the complaint, if any; and
 - iv. any other information the Respondent deems relevant.

- b. If the Respondent admits all or part of the allegation in the complaint, appropriate disciplinary action will be coordinated by the Investigator and the appropriate district administrator, the executive director of HR, and/or the Assistant Superintendent.
 - i. at a minimum, for an employee, a written reprimand shall be issued to the Respondent and a copy placed in the Respondent's file.
 - c. If the Respondent denies the allegations, the Investigator shall meet with the Complainant to discuss whether the investigation should proceed informally or formally.
 - i. consideration will be given to the Complainant's requests regarding the investigation process; however, the Investigator reserves the right to override the Complainant's preference in handling a complaint.
8. A request for the matter to be resolved through a formal process may be made at any time.
- B. Informal process
1. The complaint may be handled informally if the Complainant seeks to resolve the issues directly with the individual(s) involved or through appropriate district employees.
 2. The appropriate Investigator will use his or her best efforts to resolve the complaint through mediation and negotiation with all parties.
 3. If satisfactory resolution is reached informally, no further action will be taken and the matter will be considered closed.
 - a. The Investigator shall inform the district's compliance officer in writing that the matter has been resolved informally, and include any relevant information regarding the resolution.
 4. If, however, the behavior warrants any sanction above a verbal warning, the executive director of HR must be involved in determining appropriate discipline and reviewing any gathered documentation.
 5. If the Complainant is not satisfied with the outcome of the informal process, the Complainant may request that the complaint be handled formally.
- C. Formal process
1. The investigation in a formal process will also include interviews with any other individual believed to have pertinent information.
 2. The Investigator will interview the Respondent regarding the complaint, his or her answer witness statements, and other gathered information. All witnesses will have the opportunity to review, edit, and acknowledge by signature the accuracy of their own written statements or accountings of their interviews.
 3. The Investigator should attempt to keep the parties and district compliance officer informed of the progress of the investigation.
 4. Within Fifteen (15) working days of receipt of the complaint, unless a longer period of time is deemed necessary, the Investigator shall complete his or her investigation and coordinate a response with the appropriate district administrator as outlined below.
 - a. In incidents involving student violations against another student, the complaint, along with the written documentation of the investigation, shall be forwarded to the assistant superintendent.
 - b. In all other circumstances, the complaint, along with the written documentation of the investigation, shall be forwarded to the executive director of HR.

5. Within five (5) working days of receiving documentation from an Investigator, the appropriate director will review the documentation and meet with the Investigator to determine and initiate an action based on the investigative results.
6. Within fifteen (15) working days of the conclusion of the investigation, unless a longer period of time is deemed necessary, the appropriate director will provide a written Complaint Summary to the Complainant and Respondent. The Complaint Summary will summarize the complaint, response, evidence adduced from the investigations, and the findings. The findings will include a concluding judgment as to whether or not a violation of board policy or these procedures has occurred.
7. If an allegation is found to be substantiated in whole or in part, the appropriate director will determine and implement corrective discipline and remedial steps necessary to eliminate the effects of the discrimination, harassment, or retaliation.
8. The appropriate director will then inform the Complainant;
 - a. Whether or not appropriate action will be or has been taken; and
 - b. That he or she should immediately report any further objectionable behavior or retaliatory actions.

Second Level Review

- A. Complainants who are not satisfied with the outcome of the first level investigation and response may file a request for review with the compliance officer, or if the complaint is against the compliance officer, with the assistant superintendent (referred to collectively hereafter as “second level reviewer”).
- B. Requests filed with the second level reviewer shall be in writing and contain the following information:
 1. Complainant’s name, home address, telephone number, and school or work location;
 2. A brief description of the alleged discrimination, harassment, or civil rights violation including the date, place and time;
 3. Name of Respondent(s), if known;
 4. A brief description of the actions/efforts that have already occurred to address the issue; and
 5. Any other relevant information
- C. The Complainant may also include a statement of requested relief or corrective action.
- D. Alternate methods of filing a request will be made available to individuals with disabilities unable to file written requests.
- E. The request shall be made as soon as possible, but preferably not later than sixty (60) days after the incident(s) in order to be effectively investigated and resolved.
- F. Review processing:
 1. Within ten (10) working days after receipt of the request, the second level reviewer, or his or her designee, will meet with the Complainant to discuss the request and possible resolutions.
 2. The second level reviewer will review the appropriateness of any first level investigation, response, Complaint Summary, and corrective action taken, if any.
 - a. The second level reviewer may take any additional steps he or she deems necessary in order to resolve the request such as re-interviewing other pertinent individuals.
 3. Within fifteen (15) business days after the initial meeting, the second level reviewer, the decision may be appealed to the designated appeals officer.

Final Review

- A. If the Complainant is not satisfied with the decision of the second level reviewer, the decision may be appealed to the superintendent. The superintendent may choose to designate a hearing officer to consider this appeal in his or her stead.
- B. The appeal to the superintendent or designee must be made in writing, and mailed or delivered in person to the superintendent within ten (10) work days from the date of the second level reviewer's written decision. The superintendent or designee will review the matter, and may, in his or her sole discretion, request additional information or documentation.
- C. The superintendent or designee will render a decision on the appeal within fifteen (15) days of receipt of the appeal, unless a longer period of time is deemed necessary.
- D. This decision shall serve as final administrative action in the matter.

Responsibility for Dissemination of Policy

- A. Principals and supervisors will take appropriate actions to reinforce this policy and these procedures by:
 - 1. providing annual employee in-service; with documentation and employee signatures;
 - 2. including a summary of this policy in employee handbooks;
 - 3. insuring that by October 1 of each year every student receives an age-appropriate explanation of the policy and is given the opportunity to discuss the policy in a classroom setting; and
 - 4. notifying parents and guardians of this policy by October 1 of each year either by including it in the student handbook or by sending a notice to student homes.
- B. A summary of these procedures and related materials shall be posted in a prominent place in each district facility.

Records

- A. Records of discrimination or harassment complaints shall be maintained by the compliance officer, or his or her designee. The records will be kept in a separate and confidential file as required by the Governmental Records and Access Management Act.
- B. The release of information regarding the specific disciplinary action imposed on a student or employee must meet the requirements of the applicable state and federal laws.
- C. Information gathered developed, and documented in the investigation will be regarded as a protected record.
- D. If the Complainant is an employee, no record of the complaint shall be kept in the Complainant's personnel file.
- E. If there appears to be no foundation to the allegation(s), no record will be placed in the Respondent's personnel file.
- F. Records of initial complaints and investigations shall be retained for at least one year.
- G. Records of district level investigations shall be retained for at least three years.

District Equity Office

- A. All questions related to discrimination, harassment, and retaliation should be directed to the compliance officers, Gary Wilson, 801-374-4815 or Jason Cox 801-374-4822.
- B. The compliance officers serve as a resource to the district to provide information, counseling, training, and advice regarding discrimination, harassment, and retaliation. Individuals are encouraged to discuss their concerns or complaint with the district's compliance officers in order to clarify whether discrimination may be occurring and to determine his or her options, including the pursuit of more formal action.
- C. The compliance officers can also provide information relating to any external remedies which may be available to the Complainant.

Outside Reporting Procedures

- A. Nothing in this policy shall prohibit an individual from filing a discrimination or harassment claim with the Utah Anti-Discrimination and Labor Division (UALD), 160 East 300 South, 3rd Floor, P.O. Box 146600, Salt Lake City, Utah 84114-6600. An employee has a maximum of one-hundred and eighty (180) calendar days from the alleged date of discrimination to file a claim with the UALD.
- B. If concerns cannot be resolved at the school or district level, discrimination complaints may be filed with the Office of Civil Rights, Region VIII, U.S. Department of Education, Federal Building, Suite 310, 1244 Speer Boulevard, Denver, Colorado, 80204-3582.

Training

- A. All new employees shall receive information about these procedures and the related policy at an employee orientation. All other employees shall be provided information on a regular basis regarding these procedures, and the district's commitment to providing a learning and working environment free from discrimination, harassment, and retaliation.
- B. Principals in each school are responsible for informing students and training staff on these procedures.

Adopted: January 11, 2016