

# Superintendent Procedure 3210SP.B Discrimination Complaint Process

Approved by: s/Denise Juneau Date: 10/6/20

Denise Juneau, Superintendent



## A. INTRODUCTION

The District is committed to nondiscrimination in all of its education activities. Discrimination has no place in District schools or workplace. The Superintendent, in compliance with federal and state regulations and Board Policy 3210, has established this procedure for resolving discrimination complaints.

Students, parents, employees, or other individuals may use this procedure to file a complaint pertaining to discrimination against a student or parent/guardian (hereinafter "parent") 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 or military status; or the use of a trained dog guide or service animal by a person with a disability.

## B. RESPONSIBLE DEPARTMENT AND ANNUAL NOTICE

Complaints of discrimination will be taken seriously and will be resolved as described in this procedure.

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

For all complaints brought under this procedure, the Superintendent has designated the Office of Student Civil Rights (OSCR), which is located within the District's Human Resources Department (HR), as the office responsible for the complaint resolution process under this procedure.

If the complaint is against an OSCR and/or HR staff member with responsibilities regarding discrimination complaint resolution, that individual will be recused from having any involvement in processing the complaint and those tasks will be assigned to that person's immediate supervisor\_

The District shall, at a minimum, publish an annual notice in a manner which is reasonably calculated to inform all students, parents, and employees of the department name, office address, and telephone number of the office designated to receive and resolve formal complaints under this procedure.

C. COMPLAINTS AND COMPLAINT RESOLUTION

Complaints may be in the form of an informal complaint, where a person submits an oral complaint or the District receives an anonymous complaint; or a formal complaint, which shall be in writing.

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 year filing requirement will be granted if the complainant was prevented from filing a complaint due to: (a) specific misrepresentation by the school district that it had resolved the problem forming the basis of the complaint or (b) withholding of information by the school 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 anti-retaliation provisions contained within this procedure to protect both complainants and witnesses.

Upon receipt of the complaint, OSCR will effect a timely resolution of the complaint. Methods to resolve the complaint could include but is not limited to a full investigation. The District reserves the right to hire external investigators or mediators at its sole discretion as the necessity arises.

As the District strongly supports Alternative Dispute Resolution (“ADR”) processes, the complainant and the District may agree to resolve a formal complaint via ADR in lieu of an investigation. 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, which can be a District staff member or an external individual hired by the District. Note that it is the District’s position that allegations of sexual harassment (including sexual assault), a form of sex/gender discrimination; and discriminatory harassment (i.e. harassment based on a person’s membership in a protected class) shall not be subject to an option to mediate.

1. Informal Complaint Process – Anyone may use these informal procedures to report and resolve complaints of discrimination. Informal complaints are those made orally or anonymously. Complainants should understand that an anonymous complaint might not be resolved to the complainant’s satisfaction because of due process limitations placed on actions that can be taken based on anonymity of the complainant. 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 timely inform the complainant to the

extent permitted by law of what corrective measures it took to eliminate the alleged discriminatory behavior that is substantiated through an investigation.

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

If the complaint resolution process includes an investigation, when the investigation is completed the full written report of the complaint and the results of the investigation will be submitted as follows:

- When the complaint discrimination and/or retaliation allegations are made against one or more District staff members, the full written report and results of the investigation will be submitted to Chief of Human Resources for the outcome letter.
- When the complaint discrimination allegations are made against a District program, service, or activity, the full written report and results of the investigation will be submitted to Chief of Schools & Continuous Improvement for the outcome letter.

(Hereinafter, Chief of Human Resources or Chief of Schools & Continuous Improvement are designated, “Chief”).

The relevant Chief will respond in writing regarding the outcome of the investigation of 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 Chief’s written response shall clearly state whether the District:

- (1) Denies the allegations contained in the complaint; or
- (2) Confirms the allegations and lists, to the extent permissible by law, the corrective measures that the District intends to take to eliminate substantiated discriminatory conduct.

The Chief’s response shall also include notice of the complainant’s right to appeal as set forth in state law and this procedure, including an identification of where and to whom the appeal shall be filed. A copy of an outcome letter sent to Complainant shall also be sent to the Office of Superintendent of Public Instruction (“OSPI”).

Corrective measures deemed necessary by the Chief, 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 Chief'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.

3. Bargaining Agreements – Nothing in the complaint procedure prohibits the processing of grievances by an employee 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.

D. DISCIPLINE/REMEDIAL ACTION

The District will take prompt, equitable, and remedial action within its authority on formal and informal complaints where discrimination has been substantiated by 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.

E. APPEAL PROCEDURE

Level One

If the Chief denies the allegation(s) of discrimination, the complainant may appeal to the Superintendent by filing a written notice of appeal with the Superintendent as the secretary of the board on or before the tenth (10<sup>th</sup>) calendar day following the date upon which the complainant received the Chief's response. The notice of appeal must include a brief statement explaining the basis for the appeal; the appeal will be considered received only when it contains such a statement. In the event the Chief does not timely respond to a complaint or obtain an extension, the complainant may appeal the Chief's inaction to the Superintendent on or before the tenth (10<sup>th</sup>) calendar day following the expiration of the thirty (30<sup>th</sup>) 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 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 (30<sup>th</sup>) 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.

#### 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 OSPI by the twentieth (20<sup>th</sup>) calendar day following the date upon which the complainant received written final decision. Such appeal shall be in writing, include a concise statement of the parts of the final decision that are being appealed, and the relief requested.

#### F. TRAINING

All District orientation sessions for staff and volunteers shall introduce the elements of this procedure. District staff 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.

#### 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. Staff members found to knowingly report or corroborate false allegations will be subject to appropriate discipline.

H. 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.

I. 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.

J. NOTICE

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

Approved: May 2016

Revised: October 2020, March 2018

Cross Reference: Policy Nos. 2015; 2020; 2030; 2140; 2150; 3207; 3208; 3211; 5010; 5207; 5245  
Superintendent Procedures 3207SP; 3208SP; 3210SP.A; 3211SP; 5010SP; 5207SP; 5245SP