



# **SCHOOL BOARD ACTION REPORT**

**DATE:** October 3, 2017  
**FROM:** Dr. Larry Nyland, Superintendent  
**LEAD STAFF:** Dr. Clover Codd, Assistant Superintendent for Human Resources, [clcodd@seattleschools.org](mailto:clcodd@seattleschools.org); and John Cerqui, Deputy General Counsel, [jcerqui@seattleschools.org](mailto:jcerqui@seattleschools.org)

**For Introduction:** October 18, 2017  
**For Action:** November 1, 2017

## **1. TITLE**

Amend Board Policy No. 5010, Nondiscrimination & Affirmative Action; Adopt New Board Policy No. 5207, Prohibition of Harassment, Intimidation, and Bullying; and Adopt New Board Policy No. 5245, AntiNon-Retaliation

## **2. PURPOSE**

The purpose for this motion is to have standalone policies for (i) Nondiscrimination; (ii) Harassment, Intimidation, and Bullying; and (iii) AntiNon-Retaliation for employees in the 5000 policy series.

## **3. RECOMMENDED MOTION**

I move that the School Board amend Board Policy No. 5010, Nondiscrimination & Affirmative Action,; and adopt Board Policies Nos. 5207, Prohibition of Harassment, Intimidation, and Bullying and 5245, AntiNon-Retaliation, as attached to the Board Action Report.

## **4. BACKGROUND INFORMATION**

### **a. Background**

This Board Action Report amends Board Policy No. 5010, Nondiscrimination & Affirmative Action, to clarify that the District will not discriminate in its hiring for any veteran who was dishonorably discharged solely because of their sexual orientation, or other protected classes.- The Superintendent Procedure has been updated to comply with state regulations and best practices.

This Board Action Report adopts a new Board Policy No. 5207, Prohibition of Harassment, Intimidation, and Bullying, to create a policy in the 5000 series for employees and volunteers, which separates it from the student Harassment, Intimidation, and Bullying policy in the 3000 series. The Superintendent Procedure has been updated to comply with state regulations and best practices and 3207SP.B, the previous adult-focused procedure, will be removed.

Finally, this Board Action Report adopts new Board Policy No. 5245, AntiNon-Retaliation, to create a policy in the 5000 series for employees, which separates it from the previously

generic policy in D51.00. The Superintendent Procedure has been updated to comply with best practices. While parent and citizen complaints are not explicitly addressed in the 5000 series, Policy 4220 “Complaints Concerning Staff of Programs” does provide guidance on where citizen complaints should be filed.

As part of the Phase II of its policy work, staff worked to separate student and staff policies and procedures, with staff policies in the 5000 series and student policies in the 3000 series. The purpose for this motion is to have standalone policies for (i) Nondiscrimination; (ii) Harassment, Intimidation, and Bullying; and (iii) ~~Anti~~Non-Retaliation for employees in the 5000 series. As part of this process, the connected Superintendent procedure for each policy was revised. The Superintendent procedures were amended to better comply with regulatory changes from 2014 and best practices, including:

- Deadlines for filing complaints;
- Alternative Dispute Resolution (“ADR”) options supported by the District;
- Extensions for investigation upon a showing of exceptional circumstances;
- Consistent appeal response times between District policy and state regulations, generally 30 calendar days;
- Language notice requirements for extensions;
- Requirement to forward District responses to OSPI;
- Appeals going to a Hearing Examiner; and
- Board oversight through review of final Hearing Examiner decisions.

Staff discussed the changes to policy and procedure with other staff, school board members, and labor partners.

Changes to these policies and procedures represent a larger effort to create an environment for employees that is more predictable and transparent, and focused on implementing a more collaborative problem solving approach to finding resolutions to workplace conflict. Our goal is to minimize disruption in the workplace, help parties maintain positive working relationships and ensure all employees have a safe and supportive environment in which they work. In addition to these policies and procedures, staff will be revising processes and forms within the Human Resources department to address the filing of complaints so that the type of complaint being filed is clear. Staff will work with the hearing examiners that hold the appeal hearings to develop fair and appropriate hearing processes and establish written guidelines. ~~and guidelines for appeals processes.~~ These administrative guidelines will support our efforts to ensure employees’ perception of processes are fair and transparent. In one year, District staff will report back to the Board, how the new processes are working and determine if modifications need to be made.

Staff continue to work on Phase II policies and this work will include amending Policy No. 3207, Prohibition of Harassment, Intimidation and Bullying, to remove the reference to employees; moving Policy D51.00 and Procedure D51.01, Anti-Retaliation, into a new numbered policy; and creating a separate employee-focused policy for Sexual Harassment (currently Policy No. 3208 in the Student Series).

#### **b. Alternatives**

Not adopt the policy changes. This will continue to create confusion on where staff can locate policies and procedures related to staff complaints and concerns, i.e., in the Student policy section. It would also thwart the attempt to gain common language in the policies and procedures as they relate to appeal timelines, ADR, and complaint deadlines. This is not recommended as the prior policies and procedures were hard for employees to locate and their language did not include current best practices or comply with state regulations.

**c. Research**

The District reviewed WSSDA school policies and procedures.

**5. FISCAL IMPACT/REVENUE SOURCE**

Fiscal impact to this action will depend on the number of complaints filed and investigated internally or externally by the District. The anticipated fiscal impact of this action is less than \$25,000 per year.

The revenue source for this motion is general fund dollars.

Expenditure:  One-time  Annual  Multi-Year  N/A

Revenue:  One-time  Annual  Multi-Year  N/A

**6. COMMUNITY ENGAGEMENT**

With guidance from the District's Community Engagement tool, this action was determined to merit the following tier of community engagement:

Not applicable

Tier 1: Inform

Tier 2: Consult/Involve

Tier 3: Collaborate

The District will post these policy and procedural changes on the web site and will update the training material for new hires to include these new policies. We will also provide training to existing school leaders and managers on these policies and procedures. As mentioned above, staff have consulted with the District's labor partners about these changes.

**7. EQUITY ANALYSIS**

~~While the District's Racial Equity Analysis tool was not applied to these changes as both the non-discrimination and non-retaliation are statutory requirements, We did seek to create a more transparent and inclusive system that offers support to workplace conflict for all employees. For that reason, the District's Racial Equity Analysis tool was used to determine if the proposed changes would enhance or inhibit employees' of color opportunity to fair and equitable treatment~~

during the complaint and resolution process. Current procedures are confusing to access, offer little support for finding resolution, and employees express a perception that they are not consistently applied across the system. The proposed changes will offer dispute resolution supports that may help individuals or groups engaged in conflict to examine pre-judgement, bias and stereotypes. Many conflicts in the work place arise out of misunderstanding or a breakdown in communication. The proposed policies and procedures will support our collective efforts to facilitate resolution by working through these challenges. Additionally, accessing these policies and procedures will be more intuitive and clear – ensuring one does not need to rely on cultural norms and patterns of past practice in order to navigate effectively. The definition of structural racism is the interplay of policies, practices and programs of multiple institutions which leads to adverse outcomes and conditions for people of color compared to members of other racial groups. Providing policies and procedures that are fair and objective, consistent, transparent and support due process for all parties involved will be one explicit action we can take to advance racial equity in our district.

**8. STUDENT BENEFIT**

These policies benefit students by creating a safe working environment for the employees who teach our students.

**9. WHY BOARD ACTION IS NECESSARY**

- Amount of contract initial value or contract amendment exceeds \$250,000 (Policy No. 6220)
- Amount of grant exceeds \$250,000 in a single fiscal year (Policy No. 6114)
- Adopting, amending, or repealing a Board policy
- Formally accepting the completion of a public works project and closing out the contract
- Legal requirement for the School Board to take action on this matter
- Board Policy No. \_\_\_\_\_, [TITLE], provides the Board shall approve this item
- Other: \_\_\_\_\_

**10. POLICY IMPLICATION**

Board Policy No. 5010, Nondiscrimination & Affirmative Action  
Board Policy No. 3207, Prohibition of Harassment, Intimidation, and Bullying  
Board Policy D51.00, Anti-Retaliation

**11. BOARD COMMITTEE RECOMMENDATION**


This motion was discussed at the Audit and Finance Committee on October 9, 2017. The Committee reviewed the motion and moved it forward for consideration.

## 12. TIMELINE FOR IMPLEMENTATION

Upon approval of this motion, the policies will take immediate effect. Thereafter, the policies will be posted on the Board website. Staff will continue the second phase of this work to eliminate redundancies and move D51.00 and D51.01 into a numbered series.

## 13. ATTACHMENTS

- Board Policy No. 5010, Nondiscrimination & Affirmative Action (clean - for approval)
- Board Policy No. 5010, Nondiscrimination & Affirmative Action (redlined – for reference)
  
- NEW Board Policy No. 5207, Prohibition of Harassment, Intimidation, and Bullying (clean - for approval)
- NEW Board Policy No. 5207, Prohibition of Harassment, Intimidation, and Bullying (redlined to show comparison to Policy No. 3207 – for reference)
  
- NEW Board Policy No. 5245, ~~Non~~Anti-Retaliation (clean - for approval)
- NEW Board Policy No. 5245, ~~Non~~Anti-Retaliation (redlined to show comparison to D51.00 – for reference)
  
- Superintendent Procedure 5010SP, Nondiscrimination & Affirmative Action (clean – for reference)
- Superintendent Procedure 5010SP, Nondiscrimination & Affirmative Action (redlined – for reference)
  
- NEW Superintendent Procedure 5207SP, Prohibition of Harassment, Intimidation, and Bullying (clean – for reference)
- NEW Superintendent Procedure 5207SP, Prohibition of Harassment, Intimidation, and Bullying (redlined to show comparison to 3207SP.B – for reference)
  
- NEW Superintendent Procedure 5245SP, ~~Non~~Anti-Retaliation (clean – for reference)
- NEW Superintendent Procedure 5245SP, ~~Non~~Anti-Retaliation (redlined to show comparison to D51.01 – for reference)
  
- Superintendent Procedure 5250SP, Reporting Improper Governmental Actions and Protecting Whistleblowers Against Retaliation (clean – for reference)
- Superintendent Procedure 5250SP, Reporting Improper Governmental Actions and Protecting Whistleblowers Against Retaliation (redlined – for reference)

	<p><b>NONDISCRIMINATION &amp; AFFIRMATIVE ACTION</b></p>	<p>Policy No. 5010</p> <p>DATE</p> <p>Page 1 of 3</p>
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**I. NONDISCRIMINATION**

The District is committed to nondiscrimination in all its education and employment activities. Specifically, the District prohibits discrimination based on 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.

The Superintendent is authorized to designate an employee to serve as the person responsible for affirmative action and nondiscrimination compliance.

**II. NONDISCRIMINATION - EMPLOYMENT**

The District shall provide equal employment opportunity and treatment for all applicants and employees in recruitment, hiring, retention, assignment, transfer, promotion, and training. Such equal employment opportunity shall be provided without discrimination with respect to race; creed; color; religion; ancestry; national origin; age; economic status; gender; 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. The District may look at bona fide occupational qualifications when making hiring decisions.

The District shall comply with all state or national laws, in addition to any Collective Bargaining Agreements (“CBAs”), that may pertain to this subject. This policy shall also be extended to apply to all contractors or vendors serving the District.

**III. AFFIRMATIVE ACTION**

The District, as a recipient of public funds, has an important interest in a work force that closely mirrors that of the diverse students and families who are served

in our schools and shall make employment opportunities known to attract a diverse candidate pool.

In order to achieve the goal of increasing the representation of minority and multilingual staff members in the workforce, especially in certificated personnel, to the extent allowed by law, the District will make aggressive efforts to recruit, hire, and retain a qualified minority and multilingual workforce.

The Superintendent is authorized to develop an Affirmative Action Plan. The Affirmative Action Plan shall not conflict with any CBA.

The Superintendent is directed to employ a variety of short- and long-term strategies to achieve this goal. These strategies may include early recruitment, teacher preparation, targeted recruitment, and relocation incentives.

#### IV. EMPLOYMENT OF PERSONS WITH DISABILITIES

In order to fulfill its commitment of nondiscrimination to those with disabilities, the following conditions shall prevail:

No qualified person with a disability shall, solely by reason of a disability, be subjected to discrimination, and the District shall not limit, segregate, or classify any applicants for employment or any employee in any way that adversely affects his/her opportunities or status because of a disability. This prohibition applies to all aspects of employment from recruitment to promotions and includes fringe benefits and other elements of compensation.

The District shall make reasonable accommodations to the known physical or mental limitations of an otherwise qualified disabled applicant or employee, unless it is clear that an accommodation would impose an undue hardship on the operation of the District program and is not required by law.

#### V. NONDISCRIMINATION FOR MILITARY SERVICE

The District will not discriminate against any person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in a uniformed service, on the basis of that participation in a uniformed service. This includes in initial employment, retention in employment, promotion, or any benefit of employment. The District also will not discriminate against any person who has participated in the enforcement of these rights under state or federal law.

The District will not discriminate against any veteran who was dishonorably discharged solely because of their sexual orientation, ~~or~~ gender identity, or other protected classifications listed in Section I of this policy.

The Superintendent is authorized to develop procedures for this policy, as necessary.

Adopted: April 2012

Revised: DATE

Cross Reference: Policy Nos. 5270; 5407; 2030


Related Superintendent Procedure: 501OSP

Previous Policies: F04.00; D50.00

Legal References: RCW 28A.400.310 Law against discrimination applicable to districts' employment practices; RCW 28A.640.020 Regulations, guidelines to eliminate discrimination – Scope – Sexual harassment policies; RCW 28A.642 Discrimination prohibition; RCW 49.60 Discrimination – Human rights commission; RCW 49.60.030 Freedom from discrimination – Declaration of civil rights; RCW 49.60.180 Unfair practices of employers; RCW 49.60.400 Discrimination, preferential treatment prohibited; RCW 73.16 Employment and Reemployment; WAC 392-190 Equal Education Opportunity – Unlawful Discrimination Prohibited; WAC 392-190-0592 Public school employment – Affirmative action program; 42 USC 2000e1 – 2000e10 Title VII of the Civil Rights Act of 1964; 20 USC § 1681 – 1688; Title IX Educational Amendments of 1972; 42 USC 12101 – 12213 Americans with Disabilities Act; 8 USC § 1324 (IRCA) Immigration Reform and Control Act of 1986; 38 USC §§ 4301-4333 Uniformed Services Employment and Reemployment Rights Act; 29 USC § 794; Vocational Rehabilitation Act of 1973; 34 CFR § 104 Nondiscrimination on the basis of handicap in Programs or activities receiving federal financial assistance

Management Resources: *Policy News*, February 2011; August 2007; June 2001; June 2011



	<p style="text-align: center;">NONDISCRIMINATION &amp; AFFIRMATIVE ACTION</p>	<p style="text-align: center;">Policy No. 5010 <del>April 4, 2012</del> <u>DATE</u> Page 1 of 3</p>
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The District shall comply with all state or national laws, in addition to any ~~collective bargaining agreements~~, Collective Bargaining Agreements (“CBAs”), that may pertain to this subject. This policy shall also be extended to apply to all contractors or vendors serving the District.

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in our schools and shall make employment opportunities known to attract a diverse candidate pool.

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The Superintendent is authorized to develop an Affirmative Action Plan. The Affirmative Action Plan shall not conflict with any ~~collective bargaining agreement~~CBA.

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The District will not discriminate against any veteran who was dishonorably discharged solely because of their sexual orientation, ~~or~~ gender identity, or other protected classifications listed in Section I of this policy.

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Adopted: April 2012

Revised: DATE


Cross Reference: Policy Nos. 5270; 5407; 2030

Related Superintendent Procedure: 5010SP

Previous Policies: F04.00; D50.00

Legal References: RCW 28A.400.310 Law against discrimination applicable to districts' employment practices; RCW 28A.640.020 Regulations, guidelines to eliminate discrimination – Scope – Sexual harassment policies; RCW 28A.642 Discrimination prohibition; RCW 49.60 Discrimination – Human rights commission; RCW 49.60.030 Freedom from discrimination – Declaration of civil rights; RCW 49.60.180 Unfair practices of employers; RCW 49.60.400 Discrimination, preferential treatment prohibited; RCW 73.16 Employment and Reemployment; WAC 392-190 Equal Education Opportunity – Unlawful Discrimination Prohibited; WAC 392-190-0592 Public school employment – Affirmative action program; 42 USC 2000e1 – 2000e10 Title VII of the Civil Rights Act of 1964; 20 USC § 1681 – 1688; Title IX Educational Amendments of 1972; 42 USC 12101 – 12213 Americans with Disabilities Act; 8 USC § 1324 (IRCA) Immigration Reform and Control Act of 1986; 38 USC §§ 4301-4333 Uniformed Services Employment and Reemployment Rights Act; 29 USC § 794; Vocational Rehabilitation Act of 1973; 34 CFR § 104 Nondiscrimination on the basis of handicap in Programs or activities receiving federal financial assistance

Management Resources: *Policy News*, February 2011; August 2007; June 2001; June 2011

	<p>PROHIBITION OF HARASSMENT, INTIMIDATION AND BULLYING</p>	<p>Policy No. 5207</p> <p>DATE Page 1 of 2</p>
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**I. HARASSMENT, INTIMIDATION AND BULLYING DEFINED**

The District is committed to a safe, civil, and equitable work environment for all employees and volunteers. The District desires a work environment that is free from harassment, intimidation, and bullying (“HIB”).

HIB in the workplace refers to repeated, unreasonable actions of an individual (or group) directed towards an employee and/or volunteer (or a group of employees or volunteers) that is intended to intimidate, bully, degrade, or humiliate. This includes written messages or images (including those that are electronically transmitted), verbal comments, or physical acts. To be considered as HIB, the messages, images, comments, or acts must:

- Physically harm an employee or volunteer or damage the employee’s or volunteer’s property; or
- Have the effect of substantially interfering with an employee’s or volunteer’s work environment; or
- Be so severe, persistent, or pervasive that it creates an intimidating or threatening work environment; or
- Have the effect of substantially disrupting the orderly operation of the work place.

Nothing in this section requires that the comments or actions be based on a protected characteristic under the District’s Nondiscrimination & Affirmative Action Policy.

HIB messages, images, comments, or acts motivated by race; creed; color; religion; ancestry; national origin; age; economic status; gender; sexual orientation including gender expression or identity; pregnancy status; marital status; physical appearance; the presence of any sensory, mental, or physical disability; honorably discharged veteran or military status; the use of a trained dog guide or service animal by a person with a disability; or other distinguishing characteristics are investigated under the District’s Non-discrimination policy (Policy No. 5010).

## II. EXAMPLES – BEHAVIORS/EXPRESSIONS

HIB can take many forms including, but not limited to, slurs; rumors; jokes; innuendoes; demeaning comments; drawings; cartoons; pranks; gestures; physical attacks; threats; or other written, oral, physical, or electronically transmitted messages or images.

This policy is not intended to prohibit expression of religious, philosophical, or political views, provided that the expression does not substantially disrupt the work environment. Many behaviors that do not rise to the level of HIB may still be prohibited by other District policies or workplace rules.

## III. COMPLIANCE OFFICER

The Superintendent shall appoint a compliance officer as the primary District contact to receive copies of all formal and informal complaints and ensure policy implementation. The name and contact information for the compliance officer will be communicated throughout the District.

The Superintendent is authorized to develop procedures for this policy, as necessary.

Adopted: DATE

Revised:

Cross Reference: Policy Nos. D51.00; 3200; 3208; 3210; 3240; 3241

Related Superintendent Procedure: 3207SP.A; 3208SP

Previous Policies: 3207

Legal References: RCW 28A.300.285 Harassment, intimidation and bullying prevention policies and procedures – Model policy and procedure – Training materials – Posting on web site – Rules – Advisory committee

Management Resources: *Policy News*, December 2010; April 2008; April 2002



PROHIBITION OF  
HARASSMENT,  
INTIMIDATION AND  
BULLYING

Policy No. ~~3207~~5207

~~December 7, 2011~~  
DATE

Page 1 of 4

I. HARASSMENT, INTIMIDATION AND BULLYING DEFINED

The ~~district~~District is committed to a safe, civil, and equitable work environment for all ~~students, employees, parents/legal guardians, and volunteers and patrons.~~ The District desires a work environment that is free from harassment, intimidation ~~or, and~~ bullying. ~~To ensure~~ (“HIB”).

HIB in the workplace refers to repeated, unreasonable actions of an individual (or group) directed towards an employee and/or volunteer (or a group of employees or volunteers) that the entire Seattle Public Schools community is educated or can work in a safe and nurturing environment, the following beliefs support this policy:

- ~~• A belief that a positive school climate built on the principles of “acceptance” and “respect” is conducive to learning and thus allows students or adults intended to do their best both cognitively and emotionally.~~
- ~~• A belief that the district has the opportunity to create safe and positive education and work environments through the implementation of policy and procedure.~~
- ~~• A belief that students, staff, parents, and the community have a vested interest in, and should work together to promote, healthy social, emotional, and learning outcomes.~~

“Harassment, intimidation or bullying” means any intentionally intimidate, bully, degrade, or humiliate. This includes written ~~message~~messages or ~~image~~images (including those that are electronically transmitted), ~~or~~ verbal comments, or physical act. ~~These include, but are not limited to, acts shown to. To be considered as HIB, the messages, images, comments, or acts must:~~

- Physically harm an employee or volunteer or damage the employee’s or volunteer’s property; or
- Have the effect of substantially interfering with an employee’s or volunteer’s work environment; or

Board Policy No.  
5207

~~3207~~

- Be so severe, persistent, or pervasive that it creates an intimidating or threatening work environment; or
- Have the effect of substantially disrupting the orderly operation of the work place.

Nothing in this section requires that the comments or actions be based on a protected characteristic under the District’s Nondiscrimination & Affirmative Action Policy.

HIB messages, images, comments, or acts motivated by race; creed; color; religion; ancestry; national origin; age; economic status; gender; sexual orientation including gender expression or identity; pregnancy status; 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; or other distinguishing characteristics, ~~when an act:~~ are investigated under the District’s Non-discrimination policy (Policy No. 5010).

- ~~Physically harms a student or adult or damages the student’s or adult’s property; or~~
- ~~Has the effect of substantially interfering with a student’s education or the adult’s work environment; or~~
- ~~Is so severe, persistent or pervasive that it creates an intimidating or threatening educational or work environment; or~~
- ~~Has the effect of substantially disrupting the orderly operation of the school or work place.~~

~~Nothing in this section requires the affected student or adult to actually possess a characteristic that is a basis for the harassment, intimidation or bullying.~~

~~“Other distinguishing characteristics” can include, but are not limited to, physical appearance, clothing or other apparel, socioeconomic status or weight.~~

~~“Intentional acts” refers to the individual’s choice to engage in the act rather than the ultimate impact of the action(s).~~

Behaviors/Expressions

Harassment, intimidation or bullying

II. EXAMPLES – BEHAVIORS/EXPRESSIONS

HIB can take many forms including, but not limited to, slurs; rumors; jokes; innuendoes; demeaning comments; drawings; cartoons; pranks; gestures; physical attacks; threats; or other written, oral, physical, or electronically transmitted messages or images.

This policy is not intended to prohibit expression of religious, philosophical, or political views, provided that the expression does not substantially disrupt the educational work environment. Many behaviors that do not rise to the level of ~~harassment, intimidation or bullying~~ HIB may still be prohibited by other ~~district~~ District policies or ~~building, classroom or program~~ workplace rules.

### Training

~~This policy is a component of the district's responsibility to create and maintain a safe, civil, respectful and inclusive learning community and shall be implemented in conjunction with comprehensive training of staff and volunteers.~~

### Prevention

~~The district will provide students with strategies aimed at preventing harassment, intimidation and bullying. In its efforts to train students, the district will seek partnerships with families, law enforcement and other community agencies.~~

### Interventions

~~Interventions are designed to remediate the impact on the targeted student(s) and others impacted by the violation, to change the behavior of the perpetrator and to restore a positive school climate.~~

~~The district shall consider the frequency of incidents, developmental age of the student and severity of the conduct in determining intervention strategies. Interventions may include counseling, correcting behavior and discipline, law enforcement referrals, and other remedies or responses as appropriate.~~

### Retaliation/False Allegations

~~Retaliation is prohibited and will result in appropriate discipline. It is a violation of this policy to threaten or harm someone for reporting harassment, intimidation or bullying.~~

~~It is also a violation of district policy to knowingly report false allegations of harassment, intimidation and bullying. Students or employees will not be disciplined for making a report in good faith. However, persons found to knowingly report or corroborate false allegations will be subject to appropriate discipline.~~

### Compliance Officer

## III. COMPLIANCE OFFICER

Board Policy No.  
5207

3207



The Superintendent shall appoint a compliance officer as the primary ~~district~~District contact to receive copies of all formal and informal complaints and ensure policy implementation. The name and contact information for the compliance officer will be communicated throughout the ~~district~~District.

The Superintendent is authorized to develop procedures for this policy, as necessary.

Adopted: ~~December 2011~~DATE

Revised:

Cross Reference: Policy Nos. ~~D50.00~~; D51.00; ~~F11.00~~; 3200; 3208; 3210; 3240; 3241

Related Superintendent Procedure: 3207SP.A; ~~3207SP.B~~; 3208SP

Previous Policies: 3207

Legal References: RCW 28A.300.285 Harassment, intimidation and bullying prevention policies and procedures – Model policy and procedure – Training materials – Posting on web site – Rules – Advisory committee

Management Resources: *Policy News*, December 2010; April 2008; April 2002

Board Policy No.

5207

~~3207~~

 <p>SEATTLE PUBLIC SCHOOLS</p>	<p><b>NONANTI- RETALIATION</b></p>	<p>Policy No. 5245</p> <p>DATE</p> <p>Page 1 of 1</p>
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I. **NONANTI-RETALIATION**

It is the policy of the Seattle School Board that employees be protected from retaliation for reporting, in good faith, violations or suspected violations of District policies or procedures or for engaging in protected activities. Protected activities shall be defined in a Superintendent Procedure, but will include, at a minimum, the filing of a complaint; referring a matter for investigation; participating in an investigation; participating in a hearing or trial; requesting union representation; filing a grievance; or advocating for legal rights on behalf of a student, family, or other employee.

Retaliation for reporting violations of federal, state, or local laws is governed by Board Policy No. 5250 (Reporting Improper Governmental Action and Protecting Whistleblowers Against Retaliation). Retaliation for reporting unlawful discrimination or sex harassment is governed by Board Policy No. 5010 (Non-Discrimination and Affirmative Action).

II. **COMPLIANCE OFFICER**

The Superintendent shall appoint a compliance officer as the primary District contact to receive copies of all formal and informal complaints and ensure policy implementation. The name and contact information for the compliance officer will be communicated throughout the District.

Adopted: DATE

Revised:

Cross Reference:

Related Superintendent Procedure: 5245SP

Previous Policies: C11.00, D51.00

Legal References: Section 504 of the Rehabilitation Act of 1973; Title VI of the Civil Rights Act of 1964; Title II of the American Disabilities Act of 1990

Management Resources:

	<del>ANTI-NON ANTI-</del> <b>RETALIATION POLICY</b>	Policy <del>D51.00</del> <u>No. 5245</u>  <del>May 2005</del>  <u>DATE</u>  Page 1 of 2
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Policy

I. ~~NON ANTI-~~RETALIATION

It is the policy of the Seattle School Board ~~to protect students, parents and that~~ employees be protected from retaliation for reporting, in good faith actions in filing a disability discrimination complaint, violations or suspected violations of District policies or procedures or for engaging in protected activities. Protected activities shall be defined in a Superintendent Procedure, but will include, at a minimum, the filing of a complaint; referring a matter for investigation or complaint; participating in any manner in an investigation of; participating in a complaint or hearing procedures; or representing or serving as an advocate trial; requesting union representation; filing a grievance; or advocating for legal rights on behalf of their rights or the rights of a student, family, or other disabled person(s). ~~In accordance with this policy and the accompanying procedures every reasonable effort will be made to stop retaliation immediately, to conduct a complete and thorough investigation~~ employee.

Retaliation for reporting violations of alleged acts federal, state, or local laws is governed by Board Policy No. 5250 (Reporting Improper Governmental Action and Protecting Whistleblowers Against Retaliation). Retaliation for reporting unlawful discrimination or sex harassment is governed by Board Policy No. 5010 (Non-Discrimination and Affirmative Action).

II. COMPLIANCE OFFICER

The Superintendent shall appoint a compliance officer as the primary District contact to receive copies of retaliation in a timely manner, all formal and informal complaints and to provide prompt corrective action if retaliation is found to have occurred, ensure policy implementation. The name and contact information for the compliance officer will be communicated throughout the District.

~~Adopted: May 2005~~

Adopted: DATE

Revised:

Cross Reference:

Related Superintendent Procedure: 5245SP

Previous Policies: C11.00, D51.00

Legal References: Section 504 of the Rehabilitation Act of 1973; Title VI of the Civil Rights Act of 1964; Title II of the American Disabilities Act of 1990

Management Resources:

# Superintendent Procedure 5010SP Discrimination Complaint Process



Approved by: \_\_\_\_\_ Date: \_\_\_\_\_

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 or 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 ~~timely~~ 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 ~~Superintendent~~School Board 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 Deputy Superintendent's response. In the event the Deputy Superintendent does not ~~timely~~ respond to a complaint within 30 days or obtain 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 (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 ~~copy the School Board and delegate hearing and deciding the appeal to~~ 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 ~~Superintendent is required to have~~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, remand the decision for further fact-finding by the Hearing Examiner~~hold this factual hearing and,~~ or adopt a different decision based on the facts found by the Hearing Examiner. The Board may also provide a written appeal decision 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, unless otherwise agreed to by the complainant- or when extenuating circumstances exist. 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.

~~To ensure appropriate School Board oversight and governance, the Superintendent will provide a copy of the Hearing Examiner's final decision, along with all relevant complaint material to the Board and the Superintendent will hold an appropriate executive session or closed session meeting with the School Board to discuss the findings and its personnel and legal implications on the District.~~

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 ~~Superintendent's 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 (20<sup>th</sup>) 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: DATE

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

# Superintendent Procedure ~~3210SP.B and~~ 5010SP Discrimination Complaint Process

Approved by: \_\_\_\_\_ Date: \_\_\_\_\_

Dr. Larry Nyland, Superintendent



## AI. INTRODUCTION

~~Seattle Public Schools (“The District”)~~ is committed to nondiscrimination in all of its ~~education and~~ employment activities. Discrimination has no place in District schools or workplace. The Superintendent, in compliance with federal and state regulations and Board Policy 5010 ~~and Policy 3210~~, 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 or military status; or the use of a trained dog guide or service animal by a person with a disability.

## BII. INVESTIGATIONS

Complaints of discrimination ~~will be taken seriously~~ 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:

~~When a District staff member or applicant alleges~~ All allegations of employment discrimination: **Human Resources (“HR”)**

~~When a student, parent, or other individual alleges~~ 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 ~~which~~ that is reasonably calculated to inform all students, parents, and employees of the

name, ~~office~~ address, and telephone number of the offices designated to investigate complaints under this ~~policy~~ procedure.

### CIII. 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. ~~1~~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.

~~2~~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 ~~set forth~~ describe the specific acts, conditions, or circumstances alleged to have occurred that constitute discrimination.

~~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 District policy to protect both complainants and witnesses.~~

~~Upon receipt of the complaint, an investigator from HR or OSCR will investigate the allegations and effect a prompt resolution of the complaint. When ~~the~~ 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.~~ 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 ~~to the school board~~ 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.

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

##### A. Level One

If ~~a complainant remains aggrieved as a result of the action or inaction of the~~ Deputy Superintendent denies the allegations of discrimination, the complainant may appeal to the School Board (~~“Board”~~) by filing a written notice of appeal with the ~~Secretary of Superintendent as the School Board, who shall direct it to~~ secretary of the Board Office, board on or before the tenth (10<sup>th</sup>) calendar day following the date upon which the complainant received the Deputy Superintendent's response. In the event the Deputy Superintendent does not ~~timely~~ respond to a complaint within 30 days or request an extension, the ~~complainant's~~ complainant may appeal ~~shall be filed with the Secretary of 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 (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.

~~—An~~ The appeal before the Board shall be heard based on the facts previously raised by the complainant and/or before the twentieth (20<sup>th</sup>) calendar day following the filing of the written notice of appeal, unless otherwise agreed to

investigated by the District. The complainant, District staff, and the Superintendent, person or for good cause. Both parties persons who is/are alleged to have violated this procedure shall ~~be allowed~~ have the right to present such witnesses and testimony to the Hearing Examiner as the ~~Board~~ Hearing Examiner deems relevant and material. ~~Unless otherwise agreed to by the complainant and the Superintendent, or for good cause, the Board shall render a written decision on or before the tenth (10<sup>th</sup>) calendar day following the termination of the~~ 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, remand the decision for further fact-finding by the Hearing Examiner, or adopt a different decision based on the facts found by the Hearing Examiner. The Board may also provide a copy to all parties involved. 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, unless otherwise agreed to by the complainant or when extenuating circumstances exist. The written decision shall include notice of the complainant's right to appeal to ~~the Office~~ 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 Superintendent 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 ~~Public Instruction~~ 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 ~~Board's~~ final decision under a Level One appeal in resolving a complaint, the complainant may ~~appeal to the Office of the Superintendent of Public Instruction~~ OSPI by filing a written notice of appeal with the ~~Superintendent of Public Instruction~~ OSPI by the twentieth (20<sup>th</sup>) calendar day following the date upon which the complainant received the written ~~notice of the Board's~~ decision. by the Superintendent or his or her designee. Such appeal shall be in writing, include a concise statement of the ~~Board's~~ parts of the Superintendent's decision that is being appealed, and the relief requested.

## FVI. TRAINING AND PREVENTION/INTERVENTION

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

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



# Superintendent Procedure 5207SP Prohibition of Harassment, Intimidation & Bullying



Approved by: \_\_\_\_\_ Date: \_\_\_\_\_

Dr. Larry Nyland, Superintendent

## I. INTRODUCTION

The District is committed to creating a safe, civil, and supportive work environment. Creating this environment is a part of our responsibility to provide an appropriate working environment for our employees and volunteers. Harassment, intimidation, or bullying (“HIB”) is conduct that disrupts an employee’s or volunteer’s ability to work and the District’s ability to create a safe working environment. This conduct has no place in the District. We commend our teachers, staff, administrators, and other adults throughout the District who demonstrate appropriate behavior and treat others with civility and respect. This procedure applies to all instances where an employee or volunteer is harassed, intimidated, or bullied on District property or at District-sponsored events, including incidents that occur adult-to-adult or student-to-adult.

## II. INVESTIGATIONS

All complaints of HIB will be taken seriously and will be investigated. This section outlines the investigations that may take place.

Designated Compliance Officer

For all formal and informal complaints brought under this procedure, the Superintendent has designated the following office to receive, process, and assign complaints:

Human Resources (“HR”)  
**(206) 252-0282**

If the designated investigator from HR is the person who is allegedly harassing, intimidating, or bullying the complainant, the investigator shall be that alleged harasser’s immediate supervisor or an impartial internal or external investigator.

## III. COMPLAINTS

There are two types of HIB complaints that an employee or volunteer can file with the District. The first type of complaint alleges HIB toward an employee or volunteer based on a protected class listed in School Board Policy 5010. A complaint that alleges HIB based on a protected class shall be investigated and responded to as described in

Superintendent Procedure 5010SP. The second type of complaint includes all other allegations of HIB toward an employee or volunteer. This procedure applies to the second type of complaints.

Complaints of HIB under this procedure 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.

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 nonretaliation 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 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

Informal complaints may be made orally or in writing and may also be made anonymously. A complainant 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.

Employees are responsible for receiving informal complaints of HIB and forwarding them to the alleged harasser's director, building administrator, and/or program/department manager or supervisor, unless that individual is the subject of the complaint, in which case the complaint shall be turned over to HR.

A director, building administrator, and/or program/department manager or supervisor (as appropriate to the alleged harasser's position) may investigate an informal complaint, or it may be handled by HR, which is required if the immediate supervisor is the subject of the complaint. The investigation shall include, at a minimum, discussions with adults who have knowledge of the alleged incident, a review of any previous complaints involving either the complainant or the alleged harasser, and an opportunity for both the complainant and alleged harasser to comment on the allegations. The investigator may determine that other steps must be taken before the investigation is complete. All attempts shall be made to keep the identity of the complainant and the alleged harasser confidential, although confidentiality

cannot be guaranteed. No appeal may be made from the findings or conclusions of an informal complaint.

Informal remedies include an opportunity for the investigator to explain to the alleged harasser that his or her conduct is unwelcome, offensive, or inappropriate, either in writing or face-to-face; a statement from HR to the alleged harasser that the alleged conduct is not appropriate and could lead to discipline; a review of this Policy and Procedure with building/department staff without identifying the complainant; and/or disciplinary or remedial action.

#### B. Formal Complaint Process

Anyone may initiate a formal complaint of HIB, even if the informal complaint process is being utilized. A formal complaint must be submitted to HR. HR may investigate the allegation or assign the investigation to a director, building administrator, program/department manager or supervisor (as appropriate to the alleged harasser's and complainant's positions), or to an outside investigator.

1. All formal complaints shall be in writing; shall be signed by the complainant; and shall set forth the specific acts, conditions, or circumstances alleged to have occurred that constitute HIB. HR may draft the complaint, based on the report of the complainant, for the complainant to review and sign.
2. When the investigation is completed, HR shall prepare a written report containing the results of the investigation. HR shall attempt to complete the investigation of all HIB complaints filed under this procedure within sixty (60) days. After the investigation is completed, HR shall respond in writing to the complainant stating:
  - a. The District denies the allegations; or
  - b. Confirms the allegations and lists the corrective measures that the District intends to take.
3. Corrective measures deemed necessary by HR, in consultation with other appropriate District staff, will be instituted as quickly as possible, but no later than thirty (30) days after the written response is issued, 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 this 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 by an applicable collective bargaining agreement ("CBA").

### IV. DISCIPLINE/REMEDIAL ACTION

The District will take prompt, equitable, and remedial action within its authority on formal and informal complaints alleging HIB that come to the attention of the District. Engaging in HIB will result in appropriate discipline or other sanctions against offending employees. Others who engage in HIB on District property or at District activities may have access to District property and District activities restricted, as appropriate. Persons found to have been subjected to HIB will have appropriate District services made reasonably available to them and adverse consequences of the harassment shall be reviewed and remedied as appropriate.

#### V. APPEAL

If a formal complaint was filed and the complainant disagrees with the conclusions made by HR, the complainant may appeal to the Deputy Superintendent by filing a written notice of appeal with the Deputy Superintendent on or before the tenth (10th) day following the date upon which the complainant received HR's response. The Deputy Superintendent may hear the appeal or delegate the appeal to his or her designee. The Deputy Superintendent may not delegate appeals involving allegations of HIB by an Associate or Assistant Superintendent, an Executive Director, Chief, or Director, or a Building Principal or Assistant Principal. District employees and the complainant shall have the opportunity to submit written materials to the Deputy Superintendent or his or her designee. The appeal is reviewed based on these written materials.

The Deputy Superintendent or his or her designee will make a decision on the appeal within thirty (30) days of receiving the written notice of appeal.

If the complainant remains aggrieved by the Deputy Superintendent's or designee's decision, an appeal may be taken to King County Superior Court under the timelines and requirements contained in RCW 28A.645.

#### VI. TRAINING AND PREVENTION/INTERVENTION

All District orientation sessions for employees and volunteers shall introduce the elements of Policy 5207 and this Procedure. The District will provide employees and volunteers with information on recognizing and preventing HIB and shall provide a copy of the policy and this procedure to staff in its orientation materials.

#### VII. RETALIATION

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 retaliation. Reprisal or retaliation is prohibited and will result in appropriate discipline.

It is a violation of District policy and procedure to knowingly report false allegations of retaliation. Persons found to knowingly report or corroborate false allegations will be subject to appropriate discipline.

#### VIII. OTHER LAWS

Nothing in this procedure precludes any complainant from exercising their rights under the procedures outlined 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 HIB as defined herein, but which are or may be prohibited by other District rules.

X. DISCLAIMER OF LIABILITY

Pursuant to established School Board Policy, nothing in this policy or procedure shall be construed to provide a private right of action in the courts.

Approved: DATE

Revised:

Cross Reference: Policy Nos. 3207; 3208; D51.00; 3200; 3210; 3240; 3207SP.A; 3208SP; RCW 28A.600.480

Superintendent Procedure ~~3207SP.B~~5207SP  
**Prohibition of Harassment, Intimidation & Bullying—Adults**



Approved by: \_\_\_\_\_ Date: \_\_\_\_\_

Dr. Larry Nyland, Superintendent

I. INTRODUCTION

~~Seattle Public Schools (“SPS”)~~The District is committed to creating a safe, civil, and supportive ~~schools~~work environment. Creating this environment is a part of our responsibility to provide an appropriate working environment for our ~~school community, employees and volunteers.~~ Harassment, intimidation, or bullying (“HIB”) is conduct that disrupts ~~a staff~~an employee’s or volunteer’s ability to work, and the ~~school’s~~District’s ability to create a safe working environment. This conduct has no place in ~~SPS~~the District. We commend our teachers, staff, administrators, and other adults ~~in~~throughout the ~~school community~~District who demonstrate appropriate behavior and treat others with civility and respect. This procedure applies to all instances where ~~the adult~~an employee or volunteer is harassed, intimidated, or bullied on District property or at District-sponsored events, including incidents that occur adult ~~to adult~~ or student ~~to adult~~.

II. INVESTIGATIONS

All complaints of ~~harassment, intimidation, or bullying,~~HIB will be taken seriously and will be investigated. This section outlines the investigations that may take place.

A. — Designated ~~Investigator~~Compliance Officer

For all formal and informal complaints brought under this procedure, the Superintendent has designated the following office to receive, process, and assign complaints:

————— Human Resources (“HR”)  
————— **(206) 252-0282**

If the designated investigator from HR is the person who is allegedly harassing, intimidating, or bullying the complainant, the investigator shall be that alleged harasser’s immediate supervisor or an impartial internal or external investigator.

III. COMPLAINTS

There are two types of ~~harassment, intimidation, and bullying~~HIB complaints that an ~~adult~~employee or volunteer can file with the District. The first type of complaint alleges ~~harassment, intimidation, and bullying~~HIB toward an ~~adult~~employee or volunteer based on a protected class listed in School Board Policy 5010. A complaint that alleges ~~harassment, intimidation, and bullying~~HIB based on a protected class shall be investigated and responded to as described in Superintendent Procedure 5010SP. -The second type of complaint includes all other allegations of ~~harassment, intimidation, and bullying~~HIB toward an ~~adult~~-employee or volunteer. This procedure applies to the second type of complaints.

Complaints of ~~harassment, intimidation, and bullying~~HIB under this procedure may be in the form of an informal ~~or formal~~ complaint. ~~An informal complaint is~~, where a person submits an oral complaint or an unsigned written complaint. ~~A, or a formal complaint must, 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.

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 nonretaliation 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 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

Informal complaints may be made orally or in writing; and may also be made anonymously. A complainant 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 staff~~Employees are responsible for receiving informal complaints of ~~harassment, intimidation, or bullying~~HIB and forwarding them to the alleged harasser's director, building administrator, and/or program/department manager or supervisor, unless that individual is the subject of the complaint, in which case the complaint shall be turned over to HR.

A director, building administrator, and/or program/department manager or supervisor (as appropriate to the alleged harasser's position) may investigate an informal complaint, or it may be handled by HR, which is required if the

immediate supervisor is the subject of the complaint. The investigation shall include, at a minimum, discussions with ~~students or~~ adults who have knowledge of the alleged incident, a review of any previous complaints involving either the complainant or the alleged harasser, and an opportunity for both the complainant and alleged harasser to comment on the allegations. The investigator may determine that other steps must be taken before the investigation is complete. All attempts shall be made to keep the identity of the complainant and the alleged harasser confidential, although confidentiality cannot be guaranteed. No appeal may be made from the findings or conclusions of an informal complaint.

Informal remedies include an opportunity for the investigator to explain to the alleged harasser that his or her conduct is unwelcome, offensive, or inappropriate, either in writing or face-to-face; a statement from HR to the alleged harasser that the alleged conduct is not appropriate and could lead to discipline; a review of this Policy and Procedure with building/department staff without identifying the complainant; and/or disciplinary or remedial action.

#### B. Formal Complaint Process

Anyone may initiate a formal complaint of ~~harassment, intimidation, or bullying~~HIB, even if the informal complaint process is being utilized. A formal complaint must be submitted to HR. HR may investigate the allegation or assign the investigation to a director, building administrator, program/department manager or supervisor (as appropriate to the alleged harasser's and complainant's positions), or to an outside investigator.

~~Complainants shall be informed that due process requirements may require that SPS release all of the information that SPS has to the accused, thus the identity of the complainant may not remain confidential. SPS will, however, fully implement the anti-retaliation provisions of the Policy and Procedure to protect complainants and witnesses.~~

1. All formal complaints shall be in writing; shall be signed by the complainant; and shall set forth the specific acts, conditions, or circumstances alleged to have occurred that constitute ~~harassment, intimidation, or bullying~~HIB. HR may draft the complaint, based on the report of the complainant, for the complainant to review and sign.
2. When the investigation is completed, HR shall prepare a written report containing the results of the investigation. HR shall attempt to complete the investigation of all ~~harassment, intimidation, and bullying~~HIB complaints filed under this procedure within sixty (60) days. After the investigation is completed, HR shall respond in writing to the complainant stating:
  - a. ~~SPS~~The District denies the allegations; or
  - b. Confirms the allegations and lists the corrective measures that ~~SPS~~the District intends to take.
3. Corrective measures deemed necessary by HR, in consultation with other appropriate ~~SPS~~District staff, will be instituted as quickly as possible, but no



later than thirty (30) days after the written response is issued, unless the accused is appealing the imposition of discipline and ~~SPS~~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 this 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 ~~school district~~District level by an applicable collective bargaining agreement: (“CBA”).

## IV. DISCIPLINE/REMEDIAL ACTION

~~SPS~~The District will take prompt, equitable, and remedial action within its authority on formal and informal complaints alleging ~~harassment, intimidation, or bullying~~HIB that come to the attention of ~~SPS~~the District. Engaging in ~~harassment, intimidation, or bullying~~HIB will result in appropriate discipline or other sanctions against offending ~~staff~~employees. Others who engage in ~~harassment~~HIB on ~~school~~District property or at ~~school~~District activities may have access to ~~school~~District property and District activities restricted, as appropriate. Persons found to have been subjected to ~~harassment, intimidation, or bullying~~HIB will have appropriate ~~SPS~~District services made reasonably available to them; and adverse consequences of the harassment shall be reviewed and remedied as appropriate.

## V. APPEAL

If a formal complaint was filed and the complainant disagrees with the conclusions made by HR, the complainant may appeal to the Deputy Superintendent -by filing a written notice of appeal with the Deputy Superintendent- on or before the tenth (10th) day following the date upon which the complainant received HR’s response. The Deputy Superintendent may hear the appeal or delegate the appeal to his or her designee. The Deputy Superintendent may not delegate appeals involving allegations of ~~harassment, intimidation, and bullying~~HIB by an Associate or Assistant Superintendent, an Executive Director, and Chief, or Director, or a Building Principal or Assistant Principal ~~to only the Deputy Superintendent. SPS staff.~~ District employees and the complainant shall have the opportunity to submit written materials to the Deputy Superintendent or his or her designee. The appeal is reviewed based on these written materials.

The Deputy Superintendent or his or her designee will make a decision on the appeal within ~~twenty (20)~~thirty (30) days of receiving the written notice of appeal.

If the complainant remains aggrieved by the Deputy Superintendent’s or designee’s decision, an appeal may be taken to King County Superior Court under the timelines and requirements contained in RCW 28A.645.

## VI. TRAINING AND PREVENTION/INTERVENTION

All ~~SPS~~District orientation sessions for ~~staff~~employees and volunteers shall introduce the elements of Policy ~~32075207~~ and this Procedure. ~~Staff~~The District will ~~be provided~~provide a copy ~~employees and volunteers~~ with information on recognizing and preventing ~~harassment, intimidation, or bullying,~~HIB and shall ~~be fully informed~~provide a copy of the formal and informal complaint processes and their roles and responsibilities under policy and this Policy and Procedure. Staff shall be reminded of their legal responsibility to report suspected child abuse and how that responsibility may be implicated by some ~~allegations of harassment, intimidation, or bullying,~~procedure to staff in its orientation materials.

## VII. IMMUNITY/RETALIATION

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

~~A school employee, student, or volunteer who promptly reports an incident of harassment, intimidation, or bullying to an appropriate school official, and who makes this report in compliance with the procedures in this Policy and Procedure, is immune from a cause of action for damages arising from any failure to remedy the reported incident.~~

It is a violation of ~~SPS~~District policy and procedure to knowingly report false allegations of ~~harassment~~retaliation. Persons found to knowingly report or corroborate false allegations will be subject to appropriate discipline.

## VIII. OTHER LAWS

Nothing in this ~~Policy or Procedure~~procedure precludes any complainant from exercising their rights under the procedures outlined in Federal or State laws.

## IX. OTHER ~~SPS~~DISTRICT POLICIES AND PROCEDURES

Nothing in this ~~Policy or Procedure~~procedure is intended to prohibit discipline or remedial action for inappropriate behaviors that do not rise to the level of ~~harassment, intimidation, or bullying~~HIB as defined herein, but which are or may be prohibited by other ~~SPS or school~~District rules.

## X. DISCLAIMER OF LIABILITY

Pursuant to established School Board Policy, nothing in this ~~Policy~~policy or ~~Procedure~~procedure shall be construed to provide a private right of action in the courts.

Approved: ~~December 2011~~DATE

Revised: ~~March 2014~~

Cross Reference: Policy Nos. 3207; 3208; D51.00; 3200; 3210; 3240; 3207SP.A; 3208SP; RCW 28A.600.480

# Superintendent Procedure 5245SP

## **NonAnti-Retaliation**



Approved by: \_\_\_\_\_ Date: \_\_\_\_\_

Dr. Larry Nyland, Superintendent

### I. INTRODUCTION

The District prohibits retaliation against employees who have: (i) reported violations or suspected violations of District policies or procedures or (ii) engaged in protected activities. The District will take prompt, equitable, and remedial action within its authority on known reports, complaints, and grievances alleging retaliation.

### II. DEFINITIONS

As used in Board Policy No. 5245 and this procedure, the following terms shall have the meanings indicated.

1. “Retaliation” means any “retaliatory action” taken because an employee has, in good-faith (a) reported violations or suspected violations of District policies or procedures or (b) has engaged in protected activities.
2. “Retaliatory action” means: (a) a significant adverse change in an employee’s employment status or the terms and conditions of employment, including denial of adequate employees to perform duties, frequent employee changes, frequent and undesirable office changes, refusal to assign meaningful work, unwarranted and unsubstantiated letters of reprimand, unwarranted or unsubstantiated performance evaluations, demotion, transfer, reassignment, reduction in pay, denial of a promotion, suspension, dismissal, or any other disciplinary action; (b) hostile actions by one employee towards another employee that were encouraged by a supervisor or senior District manager or official; (or) significantly impacting the educational setting or work environment for an employee’s immediate family member.
3. “Protected activities” means filing a complaint, referring a matter for investigation, participating in any manner in an investigation of a complaint, participating in litigation or a hearing, requesting union representation, performing required job duties, filing a grievance, or advocating for your legal rights or the legal rights of a student or other employee.

### III. COMPLAINTS

All complaints must be filed within one (1) year after the act, condition, or circumstance that is the subject matter of the complaint. Complaints may be submitted orally or in writing. If the complaint raises retaliation based on a complaint of discrimination, the District will investigate the complaint under the Non-Discrimination procedures.

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 nonretaliation 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 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.

#### IV. COMPLAINT PROCEDURE

Complaints of retaliation by an employee must be filed with or referred to:

The Assistant Superintendent for Human Resources  
(206) 252-0027

The Assistant Superintendent for Human Resources or designee shall receive and respond to complaints alleging retaliation.

The Assistant Superintendent for Human Resources or designee shall ***promptly*** begin the investigative process and determine whether a full investigation is warranted. The complainant will be notified in writing if a full investigation is not warranted. This procedure may be held in abeyance if a collective bargaining agreement (“CBA”) process for resolving allegations of retaliation are being utilized. No appeal may be made internally of a determination to not conduct a formal investigation.

When a full investigation is warranted, the Assistant Superintendent for Human Resources or designee will assign the complaint to an investigator to acquire information from appropriate sources and conduct an impartial investigation. When the investigation is completed, the investigator shall prepare a written report and provide the report to the Assistant Superintendent for Human Resources or designee for review and a decision. No later than thirty (30) calendar days after the report has been finalized, an outcome letter will be issued to the complainant.

Corrective measures deemed necessary by the Assistant Superintendent for Human Resources or designee will be instituted promptly. Appropriate corrective measures may include disciplinary action for any District employee found to have engaged in acts of retaliation in violation of the non-retaliation policy.

#### V. DISCIPLINE/REMEDIAL ACTION

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

services made reasonably available to them and adverse consequences of the harassment shall be reviewed and remedied as appropriate.

#### VI. APPEAL

If the District finds that retaliation did not occur, the complainant may appeal that decision to the Deputy Superintendent by filing a written notice of appeal on or before the tenth (10<sup>th</sup>) calendar day following the date upon which the complainant received the Assistant Superintendent for Human Resources or designee's response. The Deputy Superintendent may hear the appeal or delegate the appeal to his or her designee. The Deputy Superintendent may not delegate appeals involving allegations of retaliation by an Associate or Assistant Superintendent, an Executive Director, Chief, Director, or Building Principal or Assistant Principal. District employees and the complainant shall have the opportunity to submit written materials to the Deputy Superintendent or his or her designee. A final decision will be based on a paper review and shall be issued within thirty (30) calendar days following the filing of the written notice of appeal. Any appeal of the Deputy Superintendent's or designee's decision shall be made to King County Superior Court under the terms and timelines contained in RCW 28A.645.

#### VII. TRAINING AND PREVENTION/INTERVENTION

The District will provide employees with information on recognizing and preventing retaliation and shall provide a copy of the policy and this procedure to staff in its orientation materials.

#### VIII. RETALIATION

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 retaliation. Reprisal or retaliation is prohibited and will result in appropriate discipline.

It is a violation of District policy and procedure to knowingly report false allegations of retaliation. Persons found to knowingly report or corroborate false allegations will be subject to appropriate discipline.

#### IX. OTHER LAWS

Nothing in this procedure precludes any complainant from exercising their rights under the procedures outlined in Federal or State laws.

#### X. 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 retaliation as defined herein, but which are or may be prohibited by other District rules.

#### XI. DISCLAIMER OF LIABILITY

Pursuant to established School Board Policy, nothing in this policy or procedure shall be construed to provide a private right of action in the courts.

Approved: DATE  
Revised:  
Cross Reference: School Board Policy No. 5245

Superintendent Procedure 5245SP  
**Non**Anti-Retaliation



Approved by: \_\_\_\_\_ Date: \_\_\_\_\_

Dr. Larry Nyland, Superintendent

Definitions:

I. INTRODUCTION

The District prohibits retaliation against employees who have: (i) reported violations or suspected violations of District policies or procedures or (ii) engaged in protected activities. The District will take prompt, equitable, and remedial action within its authority on known reports, complaints, and grievances alleging retaliation.

II. DEFINITIONS

As used in Board Policy No. 5245 and this ~~policy and procedures~~ procedure, the following terms shall have the meanings indicated.

~~1.~~ 1. —“Retaliation” means any “retaliatory action” taken because ~~a parent, student, or an~~ employee has, in good-faith (a) reported violations or suspected violations of District policies or procedures or (b) has engaged in protected activities ~~and that negatively impacts any of.~~

~~1.2.~~ 2. —“Retaliatory action” means: (a) a significant adverse change in an employee’s employment status or the ~~following:~~ terms and conditions of employment, including denial of adequate employees to perform duties, frequent employee changes, frequent and undesirable office changes, refusal to assign meaningful work, unwarranted and unsubstantiated letters of reprimand, unwarranted or unsubstantiated performance evaluations, demotion, transfer, reassignment, reduction in pay, denial of a promotion, suspension, dismissal, or any other disciplinary action; (b) hostile actions by one employee towards another employee that were encouraged by a supervisor or senior District manager or official; (or) significantly impacting the educational setting or work environment for an employee’s immediate family member.

- ~~a. Significant terms or conditions of District employee’s employment (such as discipline, salary, demotion, termination, annual evaluation)~~
- ~~b. Educational progress (such as grades, entry or advancement through an educational program, suspension, expulsion)~~
- ~~c. Working/learning environment (such as harassment, intimidation, threats, coercion, or hostile environment):~~

~~2.~~ \_\_\_\_\_



~~2.3.~~ “Protected activities” means filing a disability discrimination complaint, referring a matter for investigation or complaint, participating in any manner in an investigation of a complaint or hearing procedures; or representing or serving as an advocate on behalf of the rights of a disabled person(s), participating in litigation or a hearing, requesting union representation, performing required job duties, filing a grievance, or advocating for your legal rights or the legal rights of a student or other employee.

#### STATEMENT:

~~Seattle Public Schools prohibits retaliation against parents, students and employees who engage in protected activities. Seattle Public Schools will take prompt, equitable and remedial action within its authority on reports, complaints, and grievances alleging retaliation that come to the attention of the District.~~

#### III. RETALIATION COMPLAINTS

All complaints must be filed within one (1) year after the act, condition, or circumstance that is the subject matter of the complaint. Complaints may be submitted orally or in writing. If the complaint raises retaliation based on a complaint of discrimination, the District will investigate the complaint under the Non-Discrimination procedures.

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 nonretaliation 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 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.

#### III.IV. COMPLAINT PROCEDURE:

~~To facilitate resolution or investigation, complaints should be brought forward within thirty days, or as soon as possible, after the alleged act. Complaints of retaliation. Allegations shall be in writing, and~~ by an employee must be filed with or referred to:

~~The Office of Equal Employment Opportunity (EEO)~~  
The Assistant Superintendent for Human Resources  
(206) 252-0027

~~The Manager of Equal Employment Opportunity or other designee of the~~Assistant Superintendent for Human Resources or designee shall receive and respond to complaints alleging retaliation.

~~The Manager of Equal Employment Opportunity~~The Assistant Superintendent for Human Resources or designee shall ***promptly*** begin the investigative process and determine whether a full investigation is warranted. The complainant will be notified in writing if ~~an~~a full investigation is not warranted. This procedure may be held in abeyance if a collective bargaining agreement (“CBA”) process for resolving allegations of retaliation are being utilized. No appeal may be made internally of ~~this~~a determination to not conduct a formal investigation.

When a full investigation is warranted, the ~~Manager of Equal Employment Opportunity~~Assistant Superintendent for Human Resources or designee will assign the complaint to an investigator to acquire information from appropriate sources and conduct an impartial investigation of the allegation. When the investigation is completed, the ~~Superintendent’s designee~~investigator shall ~~compile~~prepare a written report ~~of the grievance~~ and provide the report to the results of the investigation for theAssistant Superintendent and/or Human Resources or designee. for review and a decision. No later than thirty (30) calendar days after the report has been ~~written~~the ~~Manager of Equal Employment Opportunity or designee will provide the finalized, an outcome letter will be issued to the complainant with a written investigative summary.~~No appeal may be made internally of Seattle Public Schools’ findings.

Corrective measures deemed necessary by the Assistant Superintendent and/or Human Resources or designee will be instituted ~~as quickly as possible.~~promptly. Appropriate corrective measures may include disciplinary action for any District employee found to have engaged in acts of retaliation in violation of the ~~anti~~non-retaliation policy.

#### CONFIDENTIALITY:

~~Those involved in investigating a complaint alleging retaliation shall refrain from disclosing information about the case to anyone who does not have legitimate need or right to know.~~

#### RECORDS:

~~The EEO shall maintain records of complaints filed pursuant to these procedures for three years from date the complaint was filed.~~

#### V. DISCIPLINE/REMEDIAL ACTION

The District will take prompt, equitable, and remedial action within its authority on formal and informal complaints alleging HIB that come to the attention of the District. Engaging in HIB will result in appropriate discipline or other sanctions against offending employees. Others who engage in HIB on District property or at District activities may have access to District property and District activities restricted, as appropriate. Persons found to have been subjected to HIB will have appropriate District services made reasonably available to them and adverse consequences of the harassment shall be reviewed and remedied as appropriate.

#### VI. APPEAL

If the District finds that retaliation did not occur, the complainant may appeal that decision to the Deputy Superintendent by filing a written notice of appeal on or before the tenth (10<sup>th</sup>) calendar day following the date upon which the complainant received the Assistant Superintendent for Human Resources or designee's response. The Deputy Superintendent may hear the appeal or delegate the appeal to his or her designee. The Deputy Superintendent may not delegate appeals involving allegations of retaliation by an Associate or Assistant Superintendent, an Executive Director, Chief, Director, or Building Principal or Assistant Principal. District employees and the complainant shall have the opportunity to submit written materials to the Deputy Superintendent or his or her designee. A final decision will be based on a paper review and shall be issued within thirty (30) calendar days following the filing of the written notice of appeal. Any appeal of the Deputy Superintendent's or designee's decision shall be made to King County Superior Court under the terms and timelines contained in RCW 28A.645.

#### VII. TRAINING AND PREVENTION/INTERVENTION

The District will provide employees with information on recognizing and preventing retaliation and shall provide a copy of the policy and this procedure to staff in its orientation materials.

#### VIII. RETALIATION

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 retaliation. Reprisal or retaliation is prohibited and will result in appropriate discipline.

It is a violation of District policy and procedure to knowingly report false allegations of retaliation. Persons found to knowingly report or corroborate false allegations will be subject to appropriate discipline.

#### IX. OTHER LAWS

Nothing in this procedure precludes any complainant from exercising their rights under the procedures outlined in Federal or State laws.

#### X. 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 retaliation as defined herein, but which are or may be prohibited by other District rules.

#### XI. DISCLAIMER OF LIABILITY

Pursuant to established School Board Policy, nothing in this policy or procedure shall be construed to provide a private right of action in the courts.

Approved: DATE

Revised:  
Cross Reference: School Board Policy No. 5245

# Superintendent Procedure 5250SP Reporting Improper Governmental Actions and Protecting Whistleblowers Against Retaliation



Approved by: \_\_\_\_\_ Date: \_\_\_\_\_

Dr. Larry Nyland, Superintendent

## I. INTRODUCTION

It is in the public interest to encourage District employees to report instances of improper governmental action in order to give the District the opportunity to take corrective action. The most effective way to encourage public employees to report improper governmental action is to provide an effective whistleblower protection program that includes a clear reporting process and effective protection from retaliation. This procedure is intended to maintain an effective District whistleblower program that meets the intent of Chapter 42.41 RCW, “Local Government Whistleblower Protection.”

## II. SUMMARY

This procedure:

- Explains how, when, and to whom employees should report concerns about improper governmental actions by District officials or employees;
- Provides for the thorough and impartial investigation of those reports and for the communication of the results to the reporting employee and to those District officials or employees who have authority to take appropriate corrective action;
- Prohibits retaliation against employees who in good faith make such reports or cooperate in the investigation of those reports and informs them how to file a complaint if they believe retaliation has occurred;
- Provides for the thorough and independent investigation of retaliation complaints and for the communication of the results to the complaining employee and to those District officials or employees who have authority to remedy retaliation found in those investigations; and,
- Explains how an employee who is not satisfied with the District's response to a retaliation complaint may request a hearing to adjudicate their complaint.

## III. DEFINITIONS

The following defined terms are used in the Procedure. (Defined terms are capitalized when they are used in this Procedure).

- A. “Adverse change” means an involuntary change in an employee’s terms and conditions of employment. It includes, but is not limited to, denial of adequate employees to perform duties; frequent employee changes;

frequent and undesirable office changes or changes in the physical location of the employee's workplace or a change in the basic nature of the employee's job; refusal to assign meaningful work; unsubstantiated letters of reprimand or unsatisfactory performance evaluations; demotion; reduction in pay; denial of promotion, transfer or reassignment; suspension or dismissal or other disciplinary action; a supervisor or superior behaving in or encouraging coworkers to behave in a hostile manner toward the employee; or any other significant action that is inconsistent compared to actions taken before the employee engaged in conduct protected by this procedure or compared to other employees who have not engaged in conduct protected by this procedure.

- B. "District Employee" or "Employee" means every individual who is, or was at the time the relevant actions were taken, appointed to a permanent, temporary, or intermittent position of employment with the District;
- C. "District Investigator" means a District employee or contractor authorized to conduct an investigation under this procedure.
- D. "District Official" means a member of the District Board of Directors;
- E. "Ethics Officer" means the District's designated Ethics Officer and his or her authorized staff (currently the Ethics Officer);
- F. "Good Faith" means having a reasonable basis to believe the information provided is accurate;
- G. "Gross Waste of Public Funds or Resources" means:
  - 1) To spend or use District funds or resources, or to allow the use of District funds or resources, in a manner grossly deviating from the standard of care or competence that a reasonable person would observe in the same situation; or,
  - 2) The non-collection of a debt or other obligation owed the District when the non-collection is done in a manner grossly deviating from the standard of care or competence that a reasonable person would observe in the same situation.
- H. "Improper Governmental Action" means any action by a District official or employee undertaken in the performance of official duties, whether or not the action is within the scope of employment, that:
  - 1) Violates any federal, state, or local statute or rule;
  - 2) Is an abuse of authority;
  - 3) Is of substantial and specific danger to the public health or safety; or,
  - 4) Results in a Gross Waste of Public Funds or Resources.

"Improper Governmental Action" excludes personnel matters, including but not limited to, employee grievances, complaints, appointments, promotions, transfers, assignments, reassignments, reinstatements, restorations, reemployments, performance evaluations, reductions in pay, dismissals, suspensions, demotions, reprimands, or alleged violations of collective bargaining civil service laws, or collective bargaining agreements ("CBA").

- I. "Retaliate" and "Retaliation" each mean to make, or use one's authority to make, an Adverse Change in an Employee's terms or conditions of employment if one of the following employee actions was a contributing factor in the District's decision to make the Adverse Change:

The employee has in Good Faith, or is perceived to have:

- 1) Timely reported under this procedure an Improper Governmental Action by another employee or District official;
  - 2) Co-operated in an investigation conducted under this procedure;
  - 3) Testified in a proceeding resulting from an investigation conducted under this procedure; or,
  - 4) Provided information about an Improper Governmental Action to someone outside the District:
    - i. at least 60 days after the District Investigator or the Ethics Officer has issued an investigative report finding that an Improper Governmental Action occurred; or,
    - ii. if no investigative report has yet been issued, at least 120 days after the original report of an Improper Governmental Action was filed.
- J. “Superintendent” means the Superintendent of the District or his or her designee.

#### **IV. CONFIDENTIALITY PROVISIONS**

- A. Anonymous Reports of Improper Governmental Action. The District and the Ethics Officer shall accept and, to the extent practicable, investigate anonymous reports of Improper Governmental Action.
- B. Identity of a Reporting Employee. A District Investigator and the Ethics Officer shall not disclose the identity of an employee who reported an Improper Governmental Action unless the disclosure is required by law or the employee authorizes the disclosure in writing.
- C. Identity of Witnesses. During the pendency of an Improper Governmental Action or Retaliation investigation, a District Investigator and the Ethics Officer shall make their best efforts to not disclose the identity of a witness who requests confidentiality unless the disclosure is required by law or the witness authorizes the disclosure.

#### **V. PROCEDURES FOR REPORTING IMPROPER GOVERNMENTAL ACTION**

- A. Where to Report: A District Employee who becomes aware of an Improper Governmental Action:
  - 1) Is encouraged to report such actions first to their supervisor or to a management employee in their chain of command;
  - 2) May report such actions directly to the District Human Resources (“HR”) Department or to the Ethics Officer;
  - 3) May, if the employee reasonably believes that a crime is about to be committed, report such actions directly to any law enforcement agency; and,
  - 4) May, if the employee reasonably believes emergency circumstances exist that if not immediately changed may cause damage to persons or property, report such actions directly to an appropriate government agency or other person with the authority to address such emergencies. This includes appropriate reporting to Child Protective Services. Emergency circumstances under this

subsection do not include when prompt attention and reporting by the employee could have avoided the perceived emergency.

- B. **When to Report:** In order to be timely, a report of Improper Governmental Action must be filed within one (1) year after the occurrence of the alleged improper action, or within one (1) year after a reasonable person similarly situated to the reporting employee would have become aware of the action. The District or the Ethics Officer may investigate an untimely filed report if they determine that doing so is in the public interest.

## **VI. INVESTIGATIONS OF IMPROPER GOVERNMENTAL ACTIONS**

- A. The District shall investigate, or cause to be investigated, reports of conduct that, if true, would constitute an Improper Governmental Action. District supervisors or other management employees shall, upon receiving such a report, take prompt action to assist the District in properly investigating the report. The investigation may be conducted by a District Investigator or by the Ethics Officer.
- B. **Ethics Officer Investigations.**
  - 1) The Ethics Officer may investigate reports of Improper Governmental Action either filed with or referred to the Ethics Officer. The Ethics Officer shall endeavor to complete the investigation within ninety (90) days.
  - 2) The Ethics Officer may also refer such reports to District management or to another governmental agency that has jurisdiction to investigate such matters.
  - 3) The Ethics Officer may close an investigation if he or she determines that no further action is warranted and shall notify the District and the reporting employee.

## **VII. REPORTS OF INVESTIGATIONS OF IMPROPER GOVERNMENTAL ACTIONS**

- A. The District investigator or the Ethics Officer shall, upon completing an investigation, issue a report summarizing the facts and determining whether an Improper Governmental Action occurred. The District Investigator or the Ethics Officer may submit a draft report for review and comment prior to issuing a final report.
- B. **A copy of the final report:**
  - 1) Shall be provided to the reporting employee, the appropriate Assistant Superintendent, and the District General Counsel; and,
  - 2) May be provided to the Superintendent and/or the School Board President.
- C. **District Response:** The Ethics Officer may request that the District respond to the investigative report. If the Ethics Officer determines that the District's response is inadequate, the Ethics Officer shall report that determination to the Superintendent and to the School Board.

## **VIII. RETALIATION PROHIBITED**



It is a violation of this procedure for any District Official or employee to Retaliate against any Employee.

## **IX. RETALIATION COMPLAINTS**

- A. When to File. In order to be timely, an employee's Retaliation complaint must be filed within 180 days after the Adverse Change alleged to constitute Retaliation occurred, or within 180 days after a reasonable person similarly situated to the employee should have become aware that the Adverse Change occurred.
- B. Where to File: The complaint shall be filed with the Ethics Officer or the Assistant Superintendent for Human Resources. Complaints filed with the Assistant Superintendent for Human Resources shall be forwarded to the Ethics Officer within five (5) business days.
- C. Contents of the Complaint. The complaint shall identify in writing:
  - 1) The Adverse Change(s) alleged to constitute Retaliation and the date(s) it occurred;
  - 2) The District Official(s), or Employee(s) who made the Adverse Change or Changes;
  - 3) The employee's original report of an Improper Governmental Action or other conduct that qualifies the employee for nonretaliation protection under this procedure; and,
  - 4) If the original report was not made in writing to the Ethics Officer or Assistant Superintendent for Human Resources, appropriate independent evidence that the employee made such a report on a timely basis.

## **X. RETALIATION COMPLAINTS – INVESTIGATIONS**

- A. The Ethics Officer shall investigate all timely retaliation complaints alleging facts that, if true, would constitute Retaliation in violation of this procedure. The Ethics Officer shall endeavor to complete the investigation within ninety (90) days.
- B. The Ethics Officer shall notify the Assistant Superintendent for Human Resources of the name(s) of any employee(s) alleged to be responsible for retaliatory activity and the Assistant Superintendent for Human Resources shall notify such employee(s) within a reasonable time of the existence of the investigation and the allegations made, which shall not be more than twenty (21) days after the commencement of the investigation.
- C. The Ethics Officer may refer a complaint to District management, through the General Counsel's office, at the discretion of the Ethics Officer. The Ethics Officer will not divulge the identity of the Cooperating Employee without a written waiver of confidentiality by the employee. The responsible department head shall respond to the Ethics Officer within ninety (90) days, including identification of any appropriate corrective action.

## **XI. RETALIATION COMPLAINTS – INVESTIGATION REPORTS**

- A. The Ethics Officer shall issue a written report summarizing the facts and determining whether Retaliation occurred. The Ethics Officer may submit a draft report for review and comment prior to issuing the final report.
- B. If the final report finds no retaliation occurred, the Ethics Officer shall dismiss the complaint and inform the District, the complaining employee and any employee alleged to have engaged in retaliation.
- C. If the final report finds retaliation occurred, the Ethics Officer's report:
  - 1) Shall summarize the facts upon which the finding is based;
  - 2) May identify any District employee(s) the Ethics Officer found responsible for retaliation;
  - 3) May recommend District action to address the retaliation;
  - 4) Shall be provided to the complaining employee, any employee found to be responsible for retaliation, the appropriate Assistant Superintendent, Superintendent, and the District General Counsel; and,
  - 5) May be provided to the Superintendent and/or the School Board President.

## **XII. DISTRICT RESPONSE TO REPORT FINDING RETALIATION**

If the Ethics Officer finds retaliation in violation of this procedure, the Assistant Superintendent(s) for the department(s) involved shall respond to the Ethics Officer and complaining employee in writing not more than 30 days after the final report is issued:

- 1) Describing the actions the District will take to correct the retaliation; or,
- 2) Notifying the Ethics Officer that the matter has been resolved with the complaining employee.

## **XIII. EMPLOYEE'S APPEAL, HEARING, AND REMEDIES**

- A. A complaining employee or an employee found responsible for retaliation, who is dissatisfied with the Ethics Officer's report or the District's response may submit a written request for an appeal hearing before the Deputy Superintendent.
- B. In order to be timely, a written request must be sent to the District General Counsel not more than thirty (30) calendar days after:
  - 1) The Ethics Officer issues a report finding no retaliation; or,
  - 2) The response in paragraph 12 is provided or the deadline for doing so has passed. Such written request shall specify the alleged retaliatory action and the relief requested.
- C. The Deputy Superintendent shall convene an appeal hearing within thirty (30) days of receipt of the written request, at which time the complaining employee and any employee found responsible for retaliation shall be permitted to make written and oral presentations. Relief that may be granted is set forth in RCW 42.41.040(7). Any disciplinary action against an employee found to have been responsible for retaliation shall be addressed through separate procedures, including CBAs, if appropriate. The Deputy Superintendent shall issue a written decision not later than thirty (30) days after the completion of the hearing.

- D. A complaining employee or an employee found responsible for retaliation who is dissatisfied with the decision of the Deputy Superintendent may request an administrative hearing before the state office of administrative hearings pursuant to RCW 42.41.040 to establish that a retaliatory action occurred and to obtain appropriate relief as defined in RCW 42.41.040(7). In order to be timely, a written request must be sent to the District General Counsel not more than thirty (30) calendar days after receipt of the decision of the Deputy Superintendent. Within fifteen (15) working days of receipt of a timely request for a hearing, the District shall apply to the state office of administrative hearings for an adjudicative proceeding before an administrative law judge as provided in RCW 42.41.040.

#### **XIV. INTIMIDATION PROHIBITED**

It is a violation of this procedure for any District Official or Employee to use his or her official authority or influence, directly or indirectly, to threaten, intimidate, or coerce an employee for the purpose of interfering with that employee's right to report or disclose information concerning an Improper Governmental Action under this procedure.

#### **XV. RELATIONSHIP TO COLLECTIVE BARGAINING**

Nothing in this procedure is intended to diminish existing employee rights under any CBA.

Approved: July 2013

Revised: DATE

Cross Reference: Policy No. 5250

# Superintendent Procedure 5250SP

## Reporting Improper Governmental Actions and Protecting Whistleblowers Against Retaliation

Approved by: \_\_\_\_\_ Date: \_\_\_\_\_

Dr. Larry Nyland, Superintendent



### ~~1.~~ **Purpose**

#### I. INTRODUCTION

It is in the public interest to encourage District employees to report instances of improper governmental action in order to give the District the opportunity to take corrective action. The most effective way to encourage public employees to report improper governmental action is to provide an effective whistleblower protection program that includes a clear reporting process and effective protection from retaliation. This procedure is intended to maintain an effective District whistleblower program that meets the intent of Chapter 42.41 RCW, "Local Government Whistleblower Protection."

#### II. SUMMARY

This procedure:

- Explains how, when, and to whom employees should report concerns about improper governmental actions by District officials or employees;
- Provides for the thorough and impartial investigation of those reports, and for the communication of the results to the reporting employee and to those District officials or employees who have authority to take appropriate corrective action;
- Prohibits retaliation against employees who in good faith make such reports or cooperate in the investigation of those reports and informs them how to file a complaint if they believe retaliation has occurred;
- Provides for the thorough and independent investigation of retaliation complaints and for the communication of the results to the complaining employee and to those District officials or employees who have authority to remedy retaliation found in those investigations; and,
- Explains how an employee who is not satisfied with the District's response to a retaliation complaint may request a hearing to adjudicate their complaint.

#### III. DEFINITIONS

The following defined terms are used in the Procedure. (Defined terms are capitalized when they are used in this Procedure).

- A. "Adverse change" means an involuntary change in an employee's terms and conditions of employment. It includes, but is not limited to, denial of

adequate ~~staff~~employees to perform duties; frequent ~~staff~~employee changes; frequent and undesirable office changes or changes in the physical location of the employee's workplace or a change in the basic nature of the employee's job; refusal to assign meaningful work; unsubstantiated letters of reprimand or unsatisfactory performance evaluations; demotion; reduction in pay; denial of promotion, transfer or reassignment; suspension or dismissal or other disciplinary action; a supervisor or superior behaving in or encouraging coworkers to behave in a hostile manner toward the employee; or any other significant action that is inconsistent compared to actions taken before the employee engaged in conduct protected by this procedure, or compared to other employees who have not engaged in conduct protected by this procedure.

- B. "District Employee" or "Employee" means every individual who is, or was at the time the relevant actions were taken, appointed to a permanent, temporary, or intermittent position of employment with the District;
- C. "District Investigator" means a District employee or contractor authorized to conduct an investigation under this procedure.
- D. "District Official" means a member of the ~~Seattle School~~ District Board of Directors;
- E. "Ethics Officer" means the District's designated Ethics Officer and his or her authorized staff (currently the ~~Executive Director of the Seattle Ethics and Elections Commission~~Ethics Officer);
- F. "Good Faith" means having a reasonable basis to believe the information provided is accurate;
- G. "Gross Waste of Public Funds or Resources" means:
  - 1) To spend or use District funds or resources, or to allow the use of District funds or resources, in a manner grossly deviating from the standard of care or competence that a reasonable person would observe in the same situation; or,
  - 2) The non-collection of a debt or other obligation owed the District when the non-collection is done in a manner grossly deviating from the standard of care or competence that a reasonable person would observe in the same situation.
- H. "Improper Governmental Action" means any action by a District official or employee undertaken in the performance of official duties, whether or not the action is within the scope of employment, that:
  - 1) Violates any federal, state, or local statute or rule, ~~or School Board Policy or Superintendent's procedure~~;
  - 2) Is an abuse of authority;
  - 3) ~~Creates a~~Is of substantial and specific danger ~~or a risk of serious injury, illness, peril, or loss, to which the exposure of District students, staff or the public is a gross deviation from the standard of care or competence that a reasonable person would observe in the same situation~~health or safety; or,
  - 4) Results in a Gross Waste of Public Funds or Resources.

"Improper Governmental Action" excludes personnel matters, including but not limited to: employee grievances, complaints, appointments, promotions, transfers, assignments, reassignments, reinstatements, restorations, reemployments, performance evaluations, reductions in pay,

dismissals, suspensions, demotions, reprimands, or alleged violations of collective bargaining civil service laws, or collective bargaining agreements- (“CBA”).

- I. “Retaliate” and “Retaliation” each mean to make, or use one’s authority to make, an Adverse Change in an Employee’s terms or conditions of employment if one of the following employee actions was a contributing factor in the District’s decision to make the Adverse Change:  
The employee has in Good Faith, or is perceived to have:
- 1) Timely reported under this procedure an Improper Governmental Action by another employee or District official;
  - 2) Co-operated in an investigation conducted under this procedure;
  - 3) Testified in a proceeding resulting from an investigation conducted under this procedure; or,
  - 4) Provided information about an Improper Governmental Action to someone outside the District:
    - i. at least 60 days after the District Investigator or the Ethics Officer has issued an investigative report finding that an Improper Governmental Action occurred; or,
    - ii. if no investigative report has yet been issued, at least 120 days after the original report of an Improper Governmental Action was filed.
- J. “Superintendent” means the Superintendent of ~~Seattle Public Schools~~ the District or his or her designee.

#### **IV. CONFIDENTIALITY PROVISIONS**

- A. Anonymous Reports of Improper Governmental Action. The District and the Ethics Officer shall accept and, to the extent practicable, investigate anonymous reports of Improper Governmental Action.
- B. Identity of a Reporting Employee. A District Investigator and the Ethics Officer shall not disclose the identity of an employee who reported an Improper Governmental Action unless the disclosure is required by law or the employee authorizes the disclosure in writing.
- C. Identity of Witnesses. During the pendency of an Improper Governmental Action or Retaliation investigation, a District Investigator and the Ethics Officer shall make their best efforts to not disclose the identity of a witness who requests confidentiality unless the disclosure is required by law or the witness authorizes the disclosure.

#### **V. PROCEDURES FOR REPORTING IMPROPER GOVERNMENTAL ACTION**

- A. Where to Report: A District Employee who becomes aware of an Improper Governmental Action:
- 1) Is encouraged to report such actions first to their supervisor or to a management employee in their chain of command;
  - 2) May report such actions directly to the District Human Resources (“HR”) Department or to the Ethics Officer;

- 3) May, if the employee reasonably believes that a crime is about to be committed, report such actions directly to any law enforcement agency; and,
  - 4) May, if the employee reasonably believes emergency circumstances exist that if not immediately changed may cause damage to persons or property, report such actions directly to an appropriate government agency or other person with the authority to address such emergencies. This includes appropriate reporting to Child Protective Services. Emergency circumstances under this subsection do not include when prompt attention and reporting by the employee could have avoided the perceived emergency.
- B. When to Report: In order to be timely, a report of Improper Governmental Action must be filed within one (1) year after the occurrence of the alleged improper action, or within one (1) year after a reasonable person similarly situated to the reporting employee would have become aware of the action. The District or the Ethics Officer may investigate an untimely filed report if they determine that doing so is in the public interest.

## **VI. INVESTIGATIONS OF IMPROPER GOVERNMENTAL ACTIONS**

- A. The District shall investigate, or cause to be investigated, reports of conduct that, if true, would constitute an Improper Governmental Action. District supervisors or other management employees shall, upon receiving such a report, take prompt action to assist the District in properly investigating the report. The investigation may be conducted by a District Investigator or by the Ethics Officer.
- B. Ethics Officer Investigations.
- 1) The Ethics Officer may investigate reports of Improper Governmental Action either filed with or referred to the Ethics Officer. The Ethics Officer shall endeavor to complete the investigation within ninety (90) days.
  - 2) The Ethics Officer may also refer such reports to District management or to another governmental agency that has jurisdiction to investigate such matters.
  - 3) The Ethics Officer may close an investigation if he or she determines that no further action is warranted, and shall notify the District and the reporting employee.

## **VII. REPORTS OF INVESTIGATIONS OF IMPROPER GOVERNMENTAL ACTIONS**

- A. The District investigator or the Ethics Officer shall, upon completing an investigation, issue a report summarizing the facts and determining whether an Improper Governmental Action occurred. The District Investigator or the Ethics Officer may submit a draft report for review and comment prior to issuing a final report.
- B. A copy of the final report:
- 1) Shall be provided to the reporting employee, the appropriate Assistant Superintendent, and the District General Counsel; and,

- 2) May be provided to the Superintendent and/or the School Board President.
- C. District Response: The Ethics Officer may request that the District respond to the investigative report. If the Ethics Officer determines that the District's response is inadequate, the Ethics Officer shall report that determination to the Superintendent and to the School Board.

## **VIII. RETALIATION PROHIBITED**

It is a violation of this procedure for any District Official or ~~Employee~~employee to Retaliate against any Employee.

## **IX. RETALIATION COMPLAINTS**

- A. When to File. In order to be timely, an employee's Retaliation complaint must be filed within 180 days after the Adverse Change alleged to constitute Retaliation occurred, or within 180 days after a reasonable person similarly situated to the employee should have become aware that the Adverse Change occurred.
- B. Where to File: The complaint shall be filed with the Ethics Officer or the Assistant Superintendent for Human Resources. ~~Complaints filed with the Assistant Superintendent for Human Resources shall be forwarded to the Ethics Officer within five~~ (5) business days.
- C. Contents of the Complaint. The complaint shall identify in writing:
  - 1) The Adverse Change(s) alleged to constitute Retaliation and the date(s) it occurred;
  - 2) The District Official(s)~~,~~, or Employee(s) who made the Adverse Change or Changes;
  - 3) The employee's original report of an Improper Governmental Action~~,~~ or other conduct that qualifies the employee for ~~anti-retaliation~~nonretaliation protection under this procedure; and,
  - 4) If the original report was not made in writing to the Ethics Officer or Assistant Superintendent for Human Resources, ~~appropriate independent evidence that the employee made such a report on a~~ timely basis.

## **X. RETALIATION COMPLAINTS – INVESTIGATIONS**

- A. The Ethics Officer shall investigate all timely retaliation complaints alleging facts that, if true, would constitute Retaliation in violation of this procedure. The Ethics Officer shall endeavor to complete the investigation within ninety (90) days.
- B. The Ethics Officer shall notify the Assistant Superintendent for Human Resources of the name(s) of any employee(s) alleged to be responsible for retaliatory activity~~,~~ and the Assistant Superintendent for Human Resources shall notify such employee(s) within a reasonable time of the existence of the investigation and the allegations made, which shall not be more than twenty (21) days after the commencement of the investigation.
- C. The Ethics Officer may refer a complaint to District management, through the General Counsel's office, at the discretion of the Ethics Officer. The



Ethics Officer will not divulge the identity of the Cooperating Employee without a written waiver of confidentiality by the employee. The responsible department head shall respond to the Ethics Officer within ninety (90) days, including identification of any appropriate corrective action.

## **XI. RETALIATION COMPLAINTS – INVESTIGATION REPORTS**

- A. The Ethics Officer shall issue a written report summarizing the facts and determining whether Retaliation occurred. The Ethics Officer may submit a draft report for review and comment prior to issuing the final report.
- B. If the final report finds no retaliation occurred, the Ethics Officer shall dismiss the complaint and inform the District, the complaining employee and any employee alleged to have engaged in retaliation.
- C. If the final report finds retaliation occurred, the Ethics Officer's report:
  - 1) Shall summarize the facts upon which the finding is based;
  - 2) May identify any District employee ~~or employees~~ (s) the Ethics Officer found responsible for retaliation;
  - 3) May recommend District action to address the retaliation;
  - 4) Shall be provided to the complaining employee, any employee found to be responsible for retaliation, the appropriate Assistant Superintendent, Superintendent, and the District General Counsel; and,
  - 5) May be provided to the Superintendent and/or the School Board President.

## **XII. DISTRICT RESPONSE TO REPORT FINDING RETALIATION**

If the Ethics Officer finds retaliation in violation of this procedure, the Assistant Superintendent-(s) for the department(s) involved shall respond to the Ethics Officer and complaining employee in writing not more than 30 days after the final report is issued:

- 1) Describing the actions the District will take to correct the retaliation; or,
- 2) Notifying the Ethics Officer that the matter has been resolved with the complaining employee.

## **XIII. EMPLOYEE'S APPEAL, HEARING, AND REMEDIES**

- A. A complaining employee, or an employee found responsible for retaliation, who is dissatisfied with the Ethics Officer's report or the District's response may submit a written request for an appeal hearing before the ~~Superintendent (or the Deputy Superintendent if designated by the Superintendent)~~.
- B. In order to be timely, a written request must be sent to the District General Counsel not more than thirty (30) calendar days after:
  - 1) The Ethics Officer issues a report finding no retaliation; or,
  - 2) The response in paragraph 12 is provided or the deadline for doing so has passed. Such written request shall specify the alleged retaliatory action and the relief requested.

- C. The Deputy Superintendent shall convene an appeal hearing within thirty (30) days of receipt of the written request, at which time the complaining employee and any employee found responsible for retaliation shall be permitted to make written and oral presentations. Relief that may be granted is set forth in RCW 42.41.040(7). Any disciplinary action against an employee found to have been responsible for retaliation shall be addressed through separate procedures, including ~~collective bargaining agreements~~ CBAs, if appropriate. The Deputy Superintendent shall issue a written decision not later than ~~20~~ thirty (30) days after the completion of the hearing.
- D. A complaining employee or an employee found responsible for retaliation who is dissatisfied with the decision of the Deputy Superintendent may request an administrative hearing before the state office of administrative hearings pursuant to RCW 42.41.040 to establish that a retaliatory action occurred and to obtain appropriate relief as defined in RCW 42.41.040(7). In order to be timely, a written request must be sent to the District General Counsel not more than thirty (30) calendar days after receipt of the decision of the Deputy Superintendent. -Within fifteen (15) working days of receipt of a timely request for a hearing, the District shall apply to the state office of administrative hearings for an adjudicative proceeding before an administrative law judge as provided in RCW 42.41.040.

#### **XIV. INTIMIDATION PROHIBITED**

It is a violation of this procedure for any District Official or Employee to use his or her official authority or influence, directly or indirectly, to threaten, intimidate, or coerce an employee for the purpose of interfering with that employee's right to report or disclose information concerning an Improper Governmental Action under this procedure.

#### **XV. RELATIONSHIP TO COLLECTIVE BARGAINING**

Nothing in this procedure is intended to diminish existing employee rights under any ~~collective bargaining agreement~~ CBA.

Approved: July 2013

Revised: DATE

Cross Reference: Policy No. 5250