

**TITLE: DISCRIMINATION GRIEVANCE PROCEDURE**

**Section 1: POLICY**

The District shall provide a learning and working environment free from discrimination. The District is governed by federal, state and local anti-discrimination laws and acts. To that end, these procedures provide a mechanism of redress for students, parents, guardians, employment applicants and employees to identify barriers to a discrimination-free learning and working environment. The following grievance procedure is provided as an avenue for the expeditious processing of complaints toward the elimination of unlawful acts of discrimination.

**Section 2: SCOPE**

These procedures shall govern all compliance proceedings for students, parents and employees of the District. Complaints may be filed if an individual believes that discrimination has occurred as follows:

1. Alleged discriminatory practices on the basis of disability with regard to placement, access to services, treatment or employment in programs or activities.
2. Alleged discriminatory practices due to an individual's race, color, national origin, age, religion, marital or parental status, political beliefs or sex.
3. Alleged retaliation, harassment or intimidation due to an individual's filing of a grievance or participating in an investigation, proceeding or hearing regarding a charge of discrimination or due to the opposition of language or conduct that violates the above-stated policy.

**Section 3: DEFINITIONS**

"Allegation" means an incident(s) that the grievant believes constitutes an unlawful form of discrimination.

"Agency" means the county board of education.

"Day" means a workday for employees and the time allotted for processing employee grievances; a school day for students/parents and the time allotted for processing grievances from the same.

"Discrimination" means making a distinction in the treatment of people due to race, color, national origin, age, religion, marital or parental status, political beliefs, sex, sexual orientation, veteran status or disability.

“Employee” means any person employed by the county board of education.

“Grievance” is a complaint of discrimination on the basis of race, color, national origin, age, religion, marital or parental status, political beliefs, sex, sexual orientation, veteran status or disability, or alleged retaliation, harassment or intimidation due to participation in an investigation, proceeding or hearing regarding a charge of discrimination. Any student, parent, employee or employment applicant may file a grievance.

“Grievant” is the person who files a complaint based on alleged discrimination.

“Individual with Disability” means any person who (1) has a physical or mental impairment that substantially limits one or more of such person’s major life activities, (2) has a record of such impairment, or (3) is regarded as having such an impairment.

“Party” means one or more individuals or a grievant’s representative.

“Respondent” means a party answering the complaint.

“Religion” means all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he or she is unable to reasonably accommodate an employee’s or prospective employee’s religious observance or practice without undue hardship on the conduct of the employer’s business.

“Sexual Harassment” is defined as unwelcome sexual advances, requests for sexual favors, other verbal and/or physical behaviors of a sexual nature and the use of symbols to create a climate that adversely affects the work environment or educational process.

“Student” shall mean any individual enrolled in the District.

“Superior” is defined as an employee’s immediate supervisor or the school principal in cases originating from a student or parent.

#### **Section 4: REPRESENTATION**

1. Individuals who file complaints under these procedures are entitled to be accompanied, represented and advised by a representative of their choice throughout all stages of the complaint process. Nothing contained therein shall be construed to require any representative to be an attorney-at-law.

2. The District may appear by any of its officers, by an employee, or by counsel it authorizes to appear on its behalf.

**Section 5: CONFIDENTIALITY**

Information regarding an investigation of alleged discrimination shall be kept confidential to the extent possible. Individuals involved in the investigation shall not discuss information regarding the complaint outside the investigation process.

**Section 6: AMICABLE RESOLUTION**

Amicable resolution is encouraged at any stage of proceedings where such resolution is consistent with the provisions and objectives of these procedures.

**Section 7: INFORMAL RESOLUTION**

Level I

1. Many problems can be solved by an informal meeting with the aggrieved person and the immediate superior. Grievants are encouraged to discuss their complaints with the proper authorities in a prompt manner. A parent or student with a complaint shall first discuss the grievance with the school principal or designee involved, with the objective of resolving the matter promptly and informally. Employees with a complaint are encouraged to first discuss it with their immediate superior with the same objective. An exception is that complaints of sexual harassment may be discussed with the \_\_\_\_\_ or first-line superior or administrator who is not involved in the alleged harassment.

2. The grievant and the immediate superior shall confer concerning the grievance with the objective of arriving at a mutually satisfactory resolution. At the conference, the immediate superior shall inform the grievant of the Board policy on discrimination complaints. The grievant should expect a decision at the end of the informal meeting or within a reasonable time thereafter (within five (5) days).

3. If the matter is not resolved to the satisfaction of the grievant, then within five (5) days of the informal decision, the grievant may file a formal written complaint and submit it to: \_\_\_\_\_.

Necessary forms for filing may be obtained from any school, from an immediate superior or from the \_\_\_\_\_, by calling \_\_\_\_\_ during normal business hours.

4. All persons submitting complaints shall be given or mailed, by certified mail, return receipt requested, a copy of these procedures.

**Section 8: FORMAL RESOLUTION**

Level II

1. If the complaint or issue is not resolved at Level I, the grievant may file a written complaint with \_\_\_\_\_ within five days of the disposition of Level I.

a. A complaint must contain a signed statement from the person claiming to be aggrieved. This statement must be sufficiently precise to identify the aggrieved individual and the operating unit or departmental office or school, and to describe generally the action(s) or practice(s) that forms the basis of the complaint. The complaint also must contain a telephone number and address where the complainant or his or her representative can be contacted.

2. The \_\_\_\_\_ shall acknowledge receipt of a complaint, in writing, and shall inform the grievant of the date on which the complaint was received.

3. The \_\_\_\_\_ shall conduct a complete and fair investigation of the grievance within twenty (20) days of the filing of the complaint unless the parties agree in writing to extend that period.

### **Section 9: DISMISSAL OF GRIEVANCES**

The \_\_\_\_\_ shall dismiss a grievance or a portion of a grievance:

1. that fails to state a claim under Section 2 subparagraph 1, 2, or 3;
2. that fails to comply with the applicable time limits contained in Sections 7 and 8, unless the \_\_\_\_\_ determines that due to extenuating circumstances, the time limit should be extended;
3. that is the basis of a pending civil action in a United States District Court or State Court in which the complainant is a party, provided that at least 180 days have passed since the filing of the administrative complaint or that was the basis of a civil action decided by a United States District Court in which the complainant was a party;
4. where the complaint has been filed pursuant to West Virginia Public Employees Grievance procedure that permits allegations of discrimination;
5. that is moot or alleges that a proposal to take a personnel action or other preliminary step to taking a personnel action is discriminatory;
6. where the grievant cannot be located, provided that reasonable efforts have been made to locate the grievant, and the grievant has not responded within fifteen (15) days to a notice of proposed dismissal sent to his or her last-known address; or
7. where the \_\_\_\_\_ has provided the grievant with a written request to provide relevant information or otherwise proceed with the complaint, and the complainant has failed to respond to the request within ten (10) days of its receipt or the grievant's response does not address the agency's request, provided that the request included a notice of the proposed dismissal.

## Section 10: INVESTIGATION OF COMPLAINTS

1. The following procedures apply:

a. The grievant, the operating unit, departmental office or any District employee shall produce such documentary and testimonial evidence as the \_\_\_\_\_ deems necessary. Statements of witnesses may be required to be made under oath or affirmation.

b. A respondent, whether identified at the time a formal grievance is filed or during the investigation, must be given an opportunity to respond to all allegations made against him or her. In this respect, the \_\_\_\_\_ should interview and receive information from the responding official as often as may be necessary to ensure that the responding official has an opportunity to respond to all of the allegations. Pertinent documents (i.e., documents in which the respondent is identified and charged with discrimination or other wrongdoing) intended for inclusion in the investigative file in which the respondent is named must be made available to the official for this purpose. Names and identifying information of persons other than the complainant and the respondent should be deleted from copies of the documents shown to the respondent in order to protect such persons from unwarranted invasion of privacy.

2. The \_\_\_\_\_ has authority to investigate all written grievances. The Superintendent may designate other investigators as warranted. If possible, the \_\_\_\_\_ will facilitate the resolution of the grievance at any stage in the proceedings. If the grievant and responding official cannot agree on resolution, \_\_\_\_\_ will prepare a written report of the investigation, which shall include the following:

a. A clear statement of the allegations of the grievance and remedy sought by the grievant;

b. A statement of the facts, as contended by the party, signed, certifying that the party has read the document;

c. A statement of the facts as found by the \_\_\_\_\_ and Investigations and identification of evidence to support each fact;

d. A list of all witnesses interviewed and documents reviewed during the investigation;

e. A narrative describing attempts to resolve the grievance; and

f. A conclusionary statement as to whether the allegations in the grievance are meritorious;

The \_\_\_\_\_ will complete the investigation and issue a decision within 25 days after receipt of the written grievance. The decision shall state findings of fact and conclusions of law and the reasons, therefore, upon all material issues of fact or law presented on the record and may recommend that action be taken. The decision shall contain such terms, conditions and other provisions as are consistent with and will effectuate the purposes of these procedures. A copy of the written report will be forwarded to the grievant and/or his or her representative.

**Section 11: APPEAL OF DECISIONS**

The following procedures apply when appealing the decisions of the \_\_\_\_\_:

1. Within five (5) days after receipt of the \_\_\_\_\_ decision, any party may appeal any part of the findings and corrective actions to the Superintendent by filing a written appeal from the decision with the Superintendent. The appeal shall briefly state the reasons for the appeal.
2. The Superintendent shall review the previously presented information and administrative decisions and conduct any necessary meetings and investigations in order to render a fair and impartial decision.
3. The Superintendent/Designee shall issue a written decision within five (5) days after receipt of the appeal from the Compliance and Investigations director’s decision. The Superintendent’s decision shall be final. Copies of the final decision shall be sent to all appropriate parties.

The following checklist should be followed for the filing of a grievance alleging discrimination, using the District’s discrimination grievance procedures. This checklist is provided to facilitate understanding of the grievance process.

Informal Resolution

- 1. Discuss the grievance with immediate superior, with the purpose of resolving the issue. The principal is the student’s immediate superior. An exception is that complaints of sexual harassment may be discussed with the director of Compliance and Investigations or first-line superior or administrator who is not involved in the alleged harassment.
- 2. Expect a decision at the conclusion of this conference or a reasonable time thereafter.
- 3. Should the immediate superior’s decision be unsatisfactory in resolving the issue, then, within five (5) days of the informal decision, file a formal written complaint to: \_\_\_\_\_.

Necessary forms for filing may be obtained from any school, from an immediate supervisor or from the \_\_\_\_\_.

### Formal Resolution

- 1. The grievant should submit a formal written complaint.
- 2. The \_\_\_\_\_ shall be empowered to investigate all written grievances and take all necessary action to avoid delay and maintain order in the proceedings.
- 3. The \_\_\_\_\_ may hold a conference to resolve the issue(s).
- 4. The \_\_\_\_\_ may interview witnesses as part of the fact-finding process.
- 5. The \_\_\_\_\_ shall issue a decision within 25 days following the receipt of the formal written grievance unless the parties agree to extend that period.
- 6. The \_\_\_\_\_ may facilitate the resolution of the grievance at any stage of the proceedings.
- 7. The \_\_\_\_\_ will forward a copy of the written decision to the grievant and/or the representative.

### Appeal of Compliance and Investigations Director's Decision

- 1. Should the \_\_\_\_\_ decision be unsatisfactory in resolving the issue, then, within five (5) days of receipt of the \_\_\_\_\_ decision, the grievant may file a written appeal to the Superintendent/Designee. The appeal shall include the reasons for the appeal.
- 2. Within five (5) days of receipt of appeal, the Superintendent shall render a decision. The Superintendent's/Designee's decision shall be final.

Review Schedule. This policy shall be reviewed in accordance with the Policy Review Schedule published by the Superintendent.

#### **Legal Authority:**

**Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972**

**Age Discrimination in Employment Act of 1967**

**Title IX of the Education Amendments of 1972**

**Rehabilitation Act of 1973, as amended**

**Americans with Disabilities Act of 1990 and Amendments**

**Civil Rights Act of 1991**

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