

G-19: Administrative Procedures Discrimination, Harassment, and Retaliation Prohibited



REFERENCES

[Board Policy G-19](#)

DEFINITIONS

Complainant: An individual or group of individuals making a complaint. A parent may file a complaint on behalf of their student.

Compliance Officer: The person designated to handle inquires and complaints regarding unlawful discrimination, harassment, and retaliation: Whitney Banks, 440 East 100 South, Salt Lake City, Utah 84111, (801) 578-8388.

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

Discrimination: Conduct including words, gestures, and/or other actions that unfairly disadvantages individuals based upon protected characteristics such as their age, color, disability, gender, gender identity, genetic information, national origin, pregnancy, race, religion, sexual orientation, and/or veteran status.

Gender Identity: Refers to one's internal sense of one's own gender. It may or may not correspond to the sex assigned to a person at birth, and may or may not be made visible to others.

Genetic Information: Information about an individual's genetic tests, the genetic tests of family members of an individual, and the manifestation of a disease or disorder in an individual's family members. This term also includes an individual's request for, or receipt of, genetic services, or participation in clinical research which includes genetic services, by an individual or any family member of the individual. This term does not include information about the sex or age of any individual.

Harassment: Unwelcome conduct that is demeaning or derisive of, or occurs substantially because of, the individual's age, color, disability, gender, gender identity, genetic information, national origin, pregnancy, race, religion, sexual orientation, and/or veteran status, and that creates a hostile learning or work environment.

Harassment, based on one of the above listed categories, may include but is not limited to:

- A. Intentional behavior directed at an entire group which is based on demeaning or derisive stereotypes, and is severe enough that it creates a hostile environment. Examples include offensive comments, slurs or jokes, physical gestures, and visual displays such as posters, etc.
- B. Intentional, non-criminal behavior which is targeted at an individual or particular members of a group, which can be verbal, physical, or visual, and that is severe enough or pervasive enough that it adversely affects the individual's working or learning environment. Examples include negative or offensive comments, slurs or jokes, suggestions, and gestures directed at the personal traits or characteristics of an individual or group.
- C. Harassing behavior which violates state or federal criminal statutes. Examples include criminal assault, sexual assault, rape, criminal mischief, stalking, arson, and trespass.

Parent: For the purposes of these procedures, parent means a custodial parent or legal guardian of a student.

Pregnancy: For purposes of the board's non-discrimination policies and the district's corresponding administrative procedures and practices, the term pregnancy includes childbirth, pregnancy-related conditions, breastfeeding, and medical conditions related to breastfeeding.

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

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

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

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

- A. has asserted, or assisted another individual to assert, a complaint in either a formal or informal manner with the district or with any state or federal agency; or

- B. has testified, assisted, or participated in any manner in an investigation, proceeding, or hearing related to a complaint.

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

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

Examples of sexual harassment include but are not limited to:

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

The district prohibits unlawful discrimination, harassment, and retaliation on all district premises, during district sponsored activities, in all aspects of employment with the district, and by all district students and employees.

Any student who commits unlawful discrimination, harassment, or retaliation, or violates an individual's civil rights may be subject to discipline up to and including alternative placement. Any employee who engages in such behavior may be subject to discipline up to and including termination. The district will determine the appropriate remedy for each complaint.

Any request to stop the unlawful behavior outlined in these procedures must be complied with immediately. Individuals are encouraged to make such requests in order to resolve these situations if possible.

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

The district will investigate all complaints of discrimination, harassment, and retaliation, and will take appropriate action to stop violations, prevent recurrence, and remedy any effects of violations. All complaints will be investigated by using the preponderance of the evidence standard. A preponderance of the evidence means that it is more likely than not that the testimony or other evidence on one side of a particular issue is true.

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

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

The district has jurisdiction over Title IX complaints and those complaints shall be resolved by using the procedures listed below. Title IX prohibits retaliation. Under Title IX, a Complainant has the right to file a criminal complaint and a Title IX complaint simultaneously.

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

I. Duty to Report

It is the duty of every student and every employee to report any violations of these procedures or the accompanying board policy. Failure to do so may result in disciplinary action.

II. Confidentiality

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

III. Submitting an Initial Complaint

- A. A Complainant may submit an initial complaint as follows:
 - 1. Any complaint involving students must be immediately referred to the school principal.
 - a. Any district employee who receives a complaint of sexual harassment from a student shall inform the student of the employee's obligation to report the complaint to the principal, and then shall immediately notify the principal. Such behavior will also warrant reporting to the appropriate licensing or law enforcement authority.
 - b. Pursuant to state law, when a complaint involves allegations of child abuse, the complaint must immediately be reported to either the Division of Child and Family Services (DCFS) or local law enforcement, and the anonymity of both the Complainant and school officials involved in the investigation will be strictly protected.
 - 2. If the complaint involves a district employee, the Complainant may submit a complaint to their supervisor, or may contact the Compliance Officer.
 - 3. If the complaint involves the Compliance Officer, the Complainant may contact the district's Human Resources Department (HR) at 801.578.8343, 440 East 100 South, Salt Lake City, Utah 84111.
 - 4. When the Respondent is a third-party such as a vendor, visiting speaker, patron, volunteer, etc., if the Complainant is a student, s/he should contact the principal; if the Complainant is a district employee, s/he should contact the Compliance Officer.
- B. Any complaint clearly alleging criminal conduct will be forwarded to local law enforcement for investigation.
- C. Good faith submission of a complaint will not adversely affect the Complainant's future employment, grades, work assignments, or participation in district-sponsored programs or activities. However, a student or employee who knowingly files a false report may be subject to civil and/or legal actions as well as district disciplinary action.

IV. The Initial Complaint Contents

- A. The initial complaint may be submitted either orally or in writing.
 - 1. A complaint should be made as soon as possible, but preferably not later than thirty (30) days after the incident(s) in order to be effectively investigated and resolved.
 - 2. It should set forth in plain language the circumstances which the individual believes support the allegation(s) of unlawful behavior, the names of the individual(s) against whom the claim is made, and any remedies that are being sought.
 - 3. Individuals should provide as much information as possible including any conversations(s) with the Respondent, noting the time, date and place, what was said or done, and any other relevant circumstances surrounding the event(s).
- B. Complaint forms may also be used and are available online and in each district building. See, Board Policy G-19, Complaint for Equity and Compliance Form.

V. Responsibilities and Protocol for Resolving a Complaint

- A. Any principal or supervisor receiving a complaint will first document the complaint in writing. In circumstances involving allegations of sexual violence, the District will forward the complaint to local law enforcement for investigation, and Complainants shall immediately be informed of their right to file a criminal complaint or police report with law enforcement.
- B. The principal or supervisor must immediately forward a copy of the written complaint to the district's Compliance Officer.
- C. Complaints will be investigated by the following individuals:
 - 1. Any complaint alleging a student violation against another student shall initially be investigated by the principal.
 - 2. Any complaint alleging a district employee violation against a student or other employee(s) shall be reported immediately to the Compliance Officer who will then be responsible for investigating the complaint.
 - 3. Any complaint alleging a third party violation against a student shall be investigated by the principal.

4. Any complaint alleging a third party violation against an employee shall be investigated by the Compliance Officer.

D. A principal or supervisor who does not immediately follow the protocol as indicated above may be subject to disciplinary action.

VI. First Level Investigation and Response

A. The individual designated to investigate the complaint ("Investigator") shall be responsible for investigating the complaint as outlined in these procedures. Failure to properly investigate a complaint may result in discipline.

B. Initial investigation

1. At any point during or after the investigation, the district may take steps to protect and or support the Complainant, students, and other employees.

a. For students, such actions may include providing counseling services and/or academic support services, and/or adjusting passing times, class seating arrangements, and/or class schedules.

i. The district provides a list of counseling services at:

<http://slcschools.org/departments/student-services/Counseling-Services.php#.Vx6GDHn2aUk>.

b. For employees, appropriate steps may include changing work schedules or work locations, but any changes will be dependent on the employee's job responsibilities and must be arranged through HR.

2. An investigation may consist of personal interviews with the Complainant, Respondent, and others who have knowledge of the alleged incident or circumstances giving rise to the complaint.

3. The investigation may also consist of any other methods and documents deemed pertinent by the Investigator.

4. The extent of the investigation will be determined based on the nature of the allegations, the context and circumstances surrounding the alleged violation, the relationship between the parties, and the history of the parties involved.

5. At the beginning of the investigation, the Investigator shall disclose his or her neutrality as opposed to being an advocate for any party.

6. At a minimum, the Investigator will immediately:

a. notify the Complainant of his or her right to have someone translate or interpret during the interview;

b. notify the Complainant of his or her right to have someone of the same gender conduct or be present during the interview;

c. interview the Complainant and document the conversation;

d. instruct the Complainant to have no contact or communication regarding the complaint with the Respondent;

e. ask the Complainant specifically what action he or she wants taken in order to resolve the complaint;

f. inform the Respondent that a complaint has been filed against him or her;

g. inform the Respondent that if the objectionable conduct has occurred, it must cease immediately;

h. provide the Respondent with a copy of these procedures;

i. inform the Respondent of his or her rights and responsibilities during the investigation;

j. notify the Respondent that he or she will be afforded a full and complete opportunity to respond to the allegations;

k. instruct the Respondent to have no contact or communication regarding the complaint with Complainant, and to not take any retaliatory action against the Complainant; and

l. document the conversation with the Respondent.

7. Within five (5) business days of receiving notice of a complaint, the Respondent shall submit a written answer to the Investigator.

a. The answer shall include:

i. an admission or denial of each allegation in the complaint;

ii. a statement as to the extent to which the complaint has merit;

iii. an acceptance or rejection of the relief or action requested in the complaint, if any; and

iv. any other information the Respondent deems relevant.

b. If the Respondent admits all or part of the allegations in the complaint, appropriate disciplinary action will be coordinated by the Investigator and the appropriate district administrator, the executive director of HR, and/or the director of student services.

i. At a minimum, a written reprimand shall be issued to the Respondent and a copy placed in the Respondent's file.

4. The appropriate district administrator will then inform the Complainant:
 - a. whether or not appropriate action will be or has been taken; and
 - b. that he or she should immediately report any further objectionable behavior or retaliatory actions.

VII. Second Level Review

- A. Complainants and Respondents (hereafter collectively referred to as "Appellants") who are not satisfied with the outcome of the first level investigation may file a request for review with the Compliance Officer. The second level appeal must be made within ten (10) business days of the receipt of the first level investigative report.
 1. the Compliance Officer will review the first level investigations completed by principals; and
 2. the appropriate executive director or director will review the first level investigations completed by the Compliance Officer.
- B. Requests filed with the second level reviewer shall be in writing and contain the following information:
 1. Appellant's name, home address, telephone number, and school or work location;
 2. a brief description of the alleged discrimination, harassment, or civil rights violation including the date, place and time;
 3. a brief description of the actions/efforts that have already occurred to address the issue; and
 4. any other relevant information.
- C. The Appellant may also include a statement of requested relief or corrective action.
- D. Alternate methods of filing a request will be made available to individuals with disabilities unable to file written requests.
- E. Within ten (10) business days after receipt of the request, the second level reviewer, or his or her designee, will meet with the Appellant to discuss the request and possible resolutions.
- F. The second level reviewer will review the appropriateness of any first level investigation, response, Investigative Report, and corrective action taken, if any.
- G. The second level reviewer may take any additional steps he or she deems necessary in order to resolve the request such as re-interviewing the parties or any witnesses, requesting additional information, or interviewing other pertinent individuals.
- H. Within fifteen (15) business days after the initial meeting, the second level reviewer will respond in writing; explaining the district's position and offering options for substantive resolution of the request.

VIII. Final Review

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

IX. Responsibility for Dissemination of Policy

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

X. Records

- A. Records of discrimination or harassment complaints shall be maintained by the Compliance Officer, or his or her designee. The records will be kept in a separate and confidential file as required by the Governmental Records and Access Management Act.
- B. The release of information regarding the specific disciplinary action imposed on a student or employee must meet the requirements of the applicable state and federal laws.
- C. Information gathered, developed, and documented in the investigation will be regarded as a protected record.
- D. If the Complainant is an employee, no record of the complaint shall be kept in the Complainant's personnel file.

- E. If there appears to be no foundation to the allegation(s), no record will be placed in the Respondent's personnel file.
- F. Records of initial complaints and investigations shall be retained for at least one year.
- G. Records of district level investigations shall be retained for at least three years.

XI. District Compliance Office

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

XII. Outside Reporting Procedures

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

XIII. Training

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