



Administrative Regulation 4425 STAFF COMPLAINT PROCESS: Harassment, Sexual Harassment And Intimidation

Responsible Office: Office of the General Counsel

PURPOSE

This administrative regulation sets forth the procedures for the prompt and equitable response to administrative complaints from staff regarding allegations of harassment, sexual harassment, discrimination and/or retaliation against a staff member in the Washoe County School District ("District").

REGULATION

1. The Department of Civil Rights Compliance oversees the complaint process for all harassment and discrimination matters falling under Board Policy 9200, Discrimination and Harassment Prohibited, Board Policy 4111, Equal Opportunity in Employment, and state and federal laws and regulations including Title II of the Americans with Disabilities Act of 1990, Title VI of the Civil Rights Act of 1963, Title VII of the Civil Rights Act of 1964, Title IX of the Educational Amendments of 1972, and the Age Discrimination Act of 1975. The Director of the Department of Civil Rights Compliance and the Title IX Coordinator is Gina C. Session.
2. For the purposes of this administrative regulation, the term "harassment and/or discrimination" encompasses harassment, sexual harassment, discrimination, and/or retaliation.
3. Filing a Complaint
 - a. A formal written complaint must be filed within 45 days of the date the complaining party first knew, or should have known, of the decision or action giving rise to the complaint.
 - b. Such complaints should be filed with the lowest level administrator / supervisor who is not involved in the alleged harassment and/or discrimination and has the authority to remedy the alleged issues or the Labor Relations Department ("Labor Relations").
 - c. If an administrator/supervisor is aware or made aware of actions that may amount to harassment and/or discrimination, the administrator/supervisor may request a written complaint from the alleged victim or proceed with an investigation without a written complaint. If there is no written complaint, the administrator/supervisor will file a report, which will serve as the complaint for purposes of the investigation.

- d. If the complaint is not filed with the appropriate administrator/supervisor, the person receiving the complaint shall note the date and time the complaint form was received and immediately forward the complaint form to Labor Relations. The Director of Labor Relations will then be responsible for forwarding the complaint to the appropriate administrator/supervisor as soon as practicable. The Director of Labor Relations shall notify the complainant of the filing error and the actions of the Director of Labor Relations.
 - e. Once a complaint is received by the appropriate first level administrator/supervisor, a confidential investigation shall begin no later than five (5) working days from the date it is received by the appropriate administrator/supervisor, absent any extenuating circumstances.
 - f. It is a violation of the law to retaliate against any individual filing a complaint. Any staff member who believes they are experiencing retaliation because they filed a complaint should file a separate complaint regarding the alleged retaliation.
 - g. Additional avenues available to staff members for filing a complaint include:
 - i. U.S. Equal Employment Opportunity Commission ("EEOC") and/or Nevada Equal Rights Commission ("NERC").
 - 1. A staff member is required to exhaust the administrative process with the District, prior to filing a complaint with the EEOC or NERC.
 - ii. The Nevada State Department of Education
 - iii. U.S. Department of Education Office for Civil Rights, Regional Office
 - iv. Any court of competent jurisdiction
4. Complaint Review
- a. Upon receiving a complaint of alleged harassment and/or discrimination, the administrator/supervisor shall take any immediate necessary action to ensure the safety and well-being of the complainant(s) or other employee(s) that have alleged harm.

5. Investigation Process

- a. The District will endeavor to complete an investigation into harassment or discrimination not later than 15 business days after the administrator/supervisor receives the complaint. Additional time shall be allowed when necessary to complete all interviews or gather pertinent information. In the event the investigation cannot be completed within the initial 15 business day time period, the administrator/supervisor will notify the Complainant(s) with the estimated date of completion.
 - i. During the investigation, interviews will be conducted and statements shall be taken from the involved individuals , to include any witnesses. Written statements are preferred, when possible.
- b. A written report of the findings and conclusions of the investigation shall be completed that includes a summary of the facts and the evidence considered.

6. Appeals

- a. Any complainant that is dissatisfied with the resolution of a complaint may appeal that decision in writing within 10 business days of notification of the resolution addressed to Labor Relations based on one or more of the following grounds:
 - i. Procedural error that significantly impacted the outcome of the investigation.
 - ii. To consider new evidence which was unknown or unavailable during the original investigation and that could substantially impact the original findings or sanction. The appeal must include a summary of new evidence, why it was unavailable at the time of the investigation and its potential impact.
- b. An appeal will be assigned to a District administrator (“Appeal Review Officer”) who did not conduct the underlying investigation. The Appeal Review Officer assignment will be made by the Director of Civil Rights Compliance or the Director of Labor Relations, depending on the nature of the complaint. Acknowledgement of receipt of appeal will be sent to the appealing party within three (3) business days.
- c. Before considering the appeal, the Appeal Review Officer will determine whether the appeal is timely and raises one or more of the permissible grounds for appeal listed under 5(a) above. If the written appeal is not

timely or does not raise one or more of the permissible grounds for appeal, the Appeal Review Officer will notify the appealing party in writing that the appeal is denied and the basis for the denial.

- d. A decision on an appeal will be based on the following:
 - i. Unless there is a request to consider new evidence pursuant to 5(a)(ii) as grounds for an appeal, the Appeal Review Officer will limit his or her review to the investigation record and process.
 - ii. The Appeal Review Officer will decide whether to grant or deny the appeal based on the specific grounds for appeal pursuant to 5(a) (i) or (ii).
 - iii. The Appeal Review Officer may also remand the matter back to the original investigator to consider new evidence.
 - iv. The Appeal Review Officer will respond to the appealing party with a written decision within 15 business days of receiving the appeal.

7. Confidentiality

- a. An investigation will be kept in strictest confidence, where practical, for the protection of all parties involved.
- b. The District's obligation to investigate, provide a safe environment and take corrective action may supersede an individual's right of privacy.
- c. Pending the completion of the investigation, however, the District may take any action necessary to protect the safety and well-being of its students, employees and property.

8. Sanctions

- a. Consistent with the requirements of applicable state law, District policies and administrative regulations and/or collective bargaining agreements, the District may take such action as deemed necessary and appropriate after the completion of the investigation. The complainant(s) will be notified in writing of the investigation findings. However, if the individual(s) who were found to be engaged in prohibited behavior are disciplined, the complainant(s) will only be advised that the District is taking appropriate steps to ensure that the prohibited behaviors will not re-occur.

- b. A substantiated charge against an employee of the District may subject the employee to disciplinary action in accordance with any the requirements of applicable state law, District policies and administrative regulations and/or collective bargaining agreements.

9. False Accusations

- a. Persons knowingly bringing false accusations will be held responsible for their actions, and may be subject to disciplinary action in accordance with the requirements of applicable state law, District policies and administrative regulations and/or collective bargaining agreements.

10. Remediation

- a. Individuals found to be subjected to harassment or discrimination will be provided support services available from the District to help deal with the effects.

11. Other Sources Of Assistance

- a. U.S. Equal Employment Opportunity Commission and/or Nevada Equal Rights Commission
- b. U.S. Department of Education Office for Civil Rights, Regional Office
- c. Nevada State Department of Education

DEFINITIONS

- 1. Harassment is unwelcome conduct that is based on race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information.
 - a. Harassment becomes unlawful where 1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive. Anti-discrimination laws also prohibit harassment against individuals in retaliation for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or lawsuit under these laws; or opposing employment practices that they reasonably believe discriminate against individuals, in violation of these laws.

- b. Petty slights, annoyances, and isolated incidents (unless extremely serious) will not rise to the level of illegality. To be unlawful, the conduct must create a work environment that would be intimidating, hostile, or offensive to reasonable people.
 - c. Offensive conduct may include, but is not limited to, offensive jokes, slurs, epithets or name-calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, and interference with work performance. Harassment can occur in a variety of circumstances, including, but not limited to, the following:
 - i. The harasser can be the victim's supervisor, a supervisor in another area, an agent of the employer, a co-worker, or a non-employee.
 - ii. The victim does not have to be the person harassed, but can be anyone affected by the offensive conduct.
 - iii. Unlawful harassment may occur without economic injury to, or discharge of, the victim.
2. Sexual Harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when submission to or rejection of this conduct explicitly or implicitly affects an individual's ability to receive an education, unreasonably interferes with an individual's educational performance or creates an intimidating, hostile or offensive educational environment. The term sexual harassment includes sexual violence under Title IX.
3. Discrimination is the distinguishing treatment of an individual based on their actual or perceived membership in a certain group or category, in a way that is worse than the way people are usually treated.
- a. Protected Classes: Race, color, national origin or ethnic group identification, marital status, ancestry, sex, sexual orientation, gender identity or expression, genetic information, religion, age, mental or physical disability, military or veteran's status
 - i. "Disability" means, with respect to a person: 1) a physical or mental impairment that substantially limits one or more of the major life activities of the person, including, without limitation, the human immunodeficiency virus; 2) a record of such an

- impairment; or 3) being regarded as having such an impairment.
- ii. "Gender identity or expression" means a gender-related identity, appearance, expression or behavior of a person, regardless of the person's assigned sex at birth.
 - iii. "Sexual orientation" means having or being perceived as having an orientation for heterosexuality, homosexuality or bisexuality.
4. Retaliation is an adverse employment action against the employee based upon a protected activity, i.e. Filing a complaint or being a witness in an investigation.
- a. An "adverse employment action" has been defined in the Ninth Circuit Court of Appeals as "any adverse treatment that is based on a retaliatory motive and is reasonably likely to deter the charging party [an employee] from engaging in protected activity." Ray v. Henderson, 217 F.3d 1234, 1242-43 (9th Cir. 2000) Examples of adverse employment actions include termination of employment, demotion evidenced by a decrease in wage or salary, a less distinguished title, a material loss of benefits or diminished responsibilities. Not every disagreeable workplace action constitutes retaliation; rather, retaliation must produce an injury or harm. Aki v. Univ. of California Lawrence Berkeley Nat'l Lab., 74 F. Supp. 3d 1163, 1181 (N.D. Cal. 2014) (citations and quotations omitted.)

DESIRED OUTCOMES

1. Through this regulation and its associated Board policies, the District shall:
 - a. Adopt and implement effective anti-discriminatory employment practices; procedures for investigating discrimination complaints; and programs to educate employees about unlawful discriminatory practices.
 - b. Promote a culture of respect that prohibits discriminatory practices. All employees are encouraged to foster an environment where individuals are judged on their merits, and to promote a workplace free of discriminatory policies and practices.

IMPLEMENTATION GUIDELINES & ASSOCIATED DOCUMENTS

1. This administrative regulation reflects the goals of the District's Strategic Plan and aligns to the governing documents of the District, to include:
 - a. Board Policy 9200, Harassment and Discrimination Prohibited

- b. Board Policy 4111, Equal Opportunity in Employment
 - c. Administrative Form LEG-F122, Staff / Job Applicant Complaint From – Workplace Discrimination
2. This Administrative Regulation complies with federal laws and regulations, to include:
- a. Title VII of the Civil Rights Act of 1964.
 - b. Title IX of the Education Amendments of 1972.
3. This Administrative Regulation complies with Nevada Revised Statutes (NRS) and Nevada Administrative Code (NAC), to include:
- a. Chapter 613, Employment Practices, and specifically:
 - i. NRS 613.310 to 613.435, Equal Opportunities for Employment

REVIEW AND REPORTING

1. This document shall be reviewed as part of the bi-annual review and reporting process for the corresponding policy.

REVISION HISTORY

Date	Revision	Modification
1/23/1990	1.0	Adopted
10/27/1992	2.0	Revised
4/25/1995	3.0	
7/14/1998	4.0	Revised
8/27/2002	5.0	Revised
10/25/2011	6.0	Revisions based on 2011 Legislative Session – inclusion of Gender Identity in protected areas
10/26/2016	7.0	Revised: to clarify the investigation process
11/02/2016	7.1	Revised: 5(a)(i) erroneously referred to a "hearing." Changed to "investigation"
4/7/2017	8.0	Revised: to change the number from 4111.3 to align with like regulations; added Desired Outcomes

5/22/2018	9.0	Revised to remove bullying in accordance with changes to state law (2017-Senate Bill 225)
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