

**Regulation 4031: ^Complaints Concerning Discrimination In Employment**

**Status:** DRAFT

**Original Adopted Date:** 09/20/2001 | **Last Revised Date:** 04/10/2014 | **Last Reviewed Date:** 04/10/2014

Complaint Procedure

Introduction

The Governing Board is committed to responding promptly and effectively to complaints of discrimination or harassment as follows:

(cf. 0410 – Nondiscrimination in District Programs and Activities)

(cf. 4030 – Nondiscrimination in Employment)

(cf. 4032 – Reasonable Accommodation)

(cf. 4119.11/4219.11/4319.11 – Sexual Harassment)

1. The Board designates the following position the district's Coordinator for Nondiscrimination in Employment ("Coordinator"):

Assistant Superintendent of Human Resources

San Jose Unified School District

Human Resources Department

855 Lenzen Avenue

San Jose, CA 95126

(408) 535-6139

2. An employee or job applicant ("complainant") should make a complaint as soon as the complainant knows or discovers prohibited discrimination or harassment.

3. The district shall notify the accused and all necessary parties involved in a complaint that a complaint was made, when an investigative meeting or hearing is scheduled, and when a final decision is made or action is taken. The district shall notify the accused and all necessary parties of any right to appeal or seek review of the decision or action.

4. Where the complaint concerns the complainant's immediate supervisor or the complainant is uncomfortable making the complaint to the supervisor, the complainant may direct the complaint to the next appropriate administrative level.

5. Meetings related to a complaint shall be held at times the district determines appropriate to the circumstances.

6. To maintain privacy, the district will keep confidential the complaint, the investigation, and any proceedings to the extent possible.

7. All documents, communications and records relating to the complaint and the investigation of the complaint shall be maintained in a confidential district complaint file and not in the employee's individual personnel file.

(cf. 1340 – Access to District Records)

(cf. 3580 – District Records)

(cf. 4112.6/4212.6/4312.6 – Personnel Files)

(cf. 4119.23/4219.23/4319.23 – Unauthorized Release of Confidential/Privileged Information)

8. Time limits specified in these procedures may be extended or changed only by agreement and confirmed in writing. If the district fails to respond within a specified or adjusted time limit, a complainant may proceed to the next

level. If a complainant fails to timely appeal or seek review of the complaint, the complaint shall be considered resolved.

## Complaint and Investigation Procedure

### 1. Notice and Receipt of Complaint

An employee or job applicant (the complainant) who believes he/she has been subjected to prohibited discrimination or harassment shall promptly inform his/her supervisor, the district's Coordinator for Nondiscrimination in Employment, or the Superintendent.

The complainant may file a written complaint in accordance with this procedure, or if he/she is an employee, may first attempt to resolve the situation informally with his/her supervisor.

A supervisor or manager who has received information about an incident of discrimination or harassment, or has observed such an incident, shall report it to the Coordinator, whether or not the complainant files a written complaint.

The written complaint should contain the following:

- a. The complainant's name and contact information, and the name and contact information of any representative;
- b. The name of the individual who allegedly committed the discrimination or harassment;
- c. A description of the alleged discrimination or harassment including the date and location;
- d. The names of any witnesses who may have relevant information;
- e. Any evidence of the discrimination or harassment, and any other pertinent information which may assist in investigating and resolving the complaint;
- f. The complainant's signature or that of his/her representative.

### 2. Investigation Process

The Coordinator or designee shall initiate an impartial investigation of an allegation of discrimination or harassment within 5 school days of receiving notice of the behavior, regardless of whether a written complaint has been filed or whether the written complaint is complete.

The Coordinator or designee shall meet with the complainant to explain the district's complaint procedure and discuss the relief being sought by the complainant. The Coordinator shall inform the complainant that the allegations will be kept confidential to the extent possible, but that some information may be revealed as necessary to conduct an effective investigation.

If the Coordinator determines that a detailed fact-finding investigation is necessary he/she shall begin the investigation immediately. As part of the investigation, the Coordinator will interview the complainant, the accused, and any witness or person with possible relevant information.

When necessary to the investigation or to protect employee or student safety, the Coordinator may notify the Superintendent or designee, district legal counsel, or the district's risk manager.

The Coordinator shall determine whether interim measures, such as scheduling changes, transfers, or leaves, need to be taken before the investigation is completed to prevent further harassment or discrimination.

The Coordinator shall ensure that any interim measure does not constitute retaliation.

### 3. Written Report on Findings and Corrective Action

No more than 30 calendar days after receiving the complaint unless extended by written agreement, the Coordinator or designee shall conclude the investigation and prepare a written report of his/her findings.

The report shall include findings and the reasons for the findings and shall summarize the investigation. If a determination has been made that discrimination or harassment occurred, the report also shall include any corrective action(s) that have been or will be taken to address the behavior and ensure that retaliation or further discrimination

or harassment does not occur.

The report or a synopsis of the report shall be presented to the complainant, the person accused, and the Superintendent or designee.

#### 4. Appeal to the Governing Board

The complainant or the person accused may appeal any findings to the Board within 10 working days of receiving the Coordinator's findings. The Superintendent or designee shall provide the Board with all information presented during the investigation. Upon receiving an appeal, the Board shall schedule a hearing as soon as practicable. Any complaint against a district employee shall be addressed in closed session in accordance with law. The Board shall render its decision within 10 working days of the hearing.

(cf. 1312.1 – Complaints Concerning District Employees)

(cf. 9321 – Closed Session Purposes and Agendas)

The Board may appoint a hearing panel to review the complaint and previous decisions and make recommendations to the Board. The panel shall hear the appeal and render its decision within 10 working days of such appointment.

#### Other Remedies

Complainants may appeal the Board's action to the California Department of Education. The Superintendent or designee shall ensure that complainants are informed that injunctions, restraining orders and other civil law remedies may also be available to them. This information shall be published with the district's nondiscrimination complaint procedures and included in any related notices. (Education Code 262.3)

In addition to filing a discrimination or harassment complaint with the district, a person may also file a complaint with the California Department of Fair Employment and Housing (DFEH) or the Equal Employment Opportunity Commission (EEOC). The time limits for filing such complaints are as follows:

1. To file a valid complaint with DFEH, within one year of the alleged discriminatory act(s), unless an exception exists pursuant to Government Code 12960 (Government Code 12960)
2. To file a valid complaint directly with EEOC, within 180 days of the alleged discriminatory act(s) (42 USC 2000e-5)
3. To file a valid complaint with EEOC after first filing a complaint with DFEH, within 300 days of the alleged discriminatory act(s) or within 30 days after the termination of proceedings by DFEH, whichever is earlier (42 USC 2000e-5)

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**Policy Reference Disclaimer:** These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

#### Notice References

Unique Policy

#### Description

[This policy is unique to the district/COE and is not connected to an existing CSBA sample policy or included in regular quarterly updates from CSBA.](#)