

Davis School District Policy and Procedures

Subject: 11IR-100 Nondiscrimination Policy and Complaint Procedures
Index: Individual Rights and Responsibilities
Revised: August 2, 2022

1. POLICY STATEMENT OF NON-DISCRIMINATION.

The District prohibits discrimination and harassment on the basis of race, color, national origin, sex¹ (including sexual orientation and gender identity), disability and religion (“Protected Classes”). The District prohibits discrimination and harassment on school property, at District or school activities, or off campus if the conduct has a sufficient nexus to or continuing effect on the school or District. Students in the District shall not be subject to discrimination or harassment, excluded from participation in, or denied the benefits of school programs or activities on the basis of any Protected Class. The District will promptly investigate all allegations of discrimination and harassment, according to the procedures outlined in this Policy, and a substantiated charge of discrimination or harassment will result in disciplinary action. The District is committed to working with students and parents to prevent all discrimination and harassment and provide equal access to educational programs and a safe learning environment for all students.

2. OFFICE OF EQUAL OPPORTUNITY

- 2.1. The Office of Equal Opportunity (OEO) is responsible for responding to, investigating, and resolving complaints of student-on-student and staff-on-student harassment and other discrimination.
- 2.2. OEO staff includes a Director, District Coordinators, and School Coordinators. District and School Coordinators will investigate all complaints of harassment and discrimination in accordance with Section 4 of this Policy.
- 2.3. The OEO is also responsible for:
 - 2.3.1. Overseeing the District’s handling of complaints of harassment and discrimination.
 - 2.3.2. Evaluating the District’s responses to complaints and determining if additional supports, resources, or training is necessary.
 - 2.3.3. Implementing programs and procedures to address any hostile environments related to or arising from harassment and discrimination and ensure students have equal access to opportunities.
 - 2.3.4. Conducting outreach to parents, including educating parents on this policy and the procedures for submitting a complaint through parent nights and other community building events.

¹ Sexual harassment, as defined in Policy 5S-102, is prohibited under Policy 5S-102 and procedures for investigating allegations of sexual harassment are found in Policy 5S-102. Also, allegations of discrimination in athletic equity and access on the basis of sex will be investigated by the District’s Director of Athletics and not by the Office of Equal Opportunity.

- 2.3.5. Educating students and training staff on recognizing, reporting, responding to, and preventing harassment and discrimination and the District's related policies and procedures for responding to harassment and discrimination.

3. COMPLAINT PROCEDURES

3.1. Reporting Complaints

- 3.1.1. All complaints reported to the District are entered in the District's Harassment and Discrimination Reporting System ("HDRS") and investigated by the OEO.
- 3.1.2. Complaints of harassment and/or discrimination may be reported by:
 - [a] Filing a complaint directly through "HDRS", available on the home page of the District's website; or
 - [b] Directly reporting to school or District personnel, either in writing or verbally. The report will then be entered into HDRS by the person receiving the report, per 3.1.3. and 3.1.4.
- 3.1.3. All District employees are mandatory reporters of student-on-student and staff-on-student harassment and discrimination. All District employees are required to report information of harassment or discrimination that is known to them or of which they become aware, regardless of whether the information is from a student, parent, third party, or another staff member and regardless of whether the employee witnessed the incident or learned of the event from someone else.
- 3.1.4. District employees will report complaints of harassment or discrimination directly through HDRS.
- 3.1.5. When a building level administrator receives information regarding a complaint of harassment or discrimination, the administrator will:
 - [a] Enter a complaint into the HDRS, if that has not already been done. The building level administrator will also explain to the Complainant how to file a complaint through HDRS, if the Complainant wishes to do so.
 - [b] Contact parents/guardians of Complainant (if parents/guardians were not the ones to report the complaint) and of Respondent by phone to inform them of the complaint, that OEO will be investigating, and that they will receive a notice of the complaint and the investigative process in writing from OEO.
 - [c] In consultation with OEO, work with the Complainant and parents to determine and offer appropriate supportive measures reasonably calculated to help the student feel safe and supported and have access to educational programs, including regular check-ins with the Complainant. Supportive measures should be implemented as soon as possible, but no later than two (2) business days after receiving information of a complaint.
 - [d] If the complaint is about the building level administrator, an OEO District Coordinator will oversee notification to parents, communication with the Complainant, and implementation of supportive measures.
- 3.1.6. Email notifications of a complaint will automatically go to the building level administrator, the appropriate Director, and, if the complaint involves an employee Respondent, the Director of Human Resources.

3.2. Assignment and Notice of Investigation

- 3.2.1. Upon receipt of the complaint by the OEO, an OEO Coordinator will be assigned to investigate the complaint.
- 3.2.2. District Coordinators will investigate complaints of harassment and discrimination, including discriminatory administration of discipline if the complaint involves:
 - [a] instances of recurring harassment for either the student being subjected to harassment or for the student alleged to have engaged in the harassment;
 - [b] complaints of physical harm or threats of physical harm;
 - [c] allegations of non-harassment forms of discrimination against the School Coordinator, the Principal, Assistant Principal, Administrative Intern, or another District Coordinator; and
 - [d] all allegations of staff-on-student harassment.
- 3.2.3. School Coordinators will investigate all complaints not identified in 3.2.2.
- 3.2.4. For complaints that allege harassment or discrimination based on multiple protected classes, including allegations related to access to services based on disability or language, OEO will coordinate between the District Coordinator and the appropriate compliance officer(s) to address the other allegations.²
- 3.2.5. Prior to beginning an investigation, the OEO Coordinator will ensure both the Complainant and the Respondent receive written notice of the complaint including:
 - [a] a brief description of the alleged misconduct;
 - [b] names of the parties, if any, if disclosure is necessary for an adequate response;
 - [c] date and location of the incident(s), if known.
 - [d] the definitions of the misconduct at issue;
 - [e] information regarding the investigation process;
 - [f] the right to submit relevant evidence and identify relevant witnesses;
 - [g] an estimated timeline for conducting the investigation; and
 - [h] notification that retaliation is prohibited, with instructions on how to report any suspected retaliation.

3.3. Investigations

- 3.3.1. No later than two (2) business days following receipt of complaint through the HDRS and issuance of written notice, the OEO Coordinator conducting the investigation ("Investigating Coordinator") will:
 - [a] Interview Complainant, using trauma-informed interviewing skills. The Coordinator may conduct multiple interviews, as necessary.
 - [b] Interview staff or student alleged to have engaged in the harassment or discrimination, one or more items.

² For example, if a student who is Black and on an IEP alleges he is routinely the subject of jokes based on both race and disability, the investigator will work with the student's Special Education Coordinator to make them aware of the report and allow the IEP team to determine if certain measures need to be implemented in the student's IEP to allow the student to continue to access FAPE both during and after the investigation. The Special Education Coordinator may also have information regarding the student's disability and IEP history that may be relevant to the investigator's investigation.

- [c] Interviews witnesses (students or staff) who may have information regarding the complaint.
 - [d] Review any physical or electronic evidence, such as screenshots of images or text on a person's personal electronic device, security video footage, police reports (if any)
 - [e] For discrimination complaints, review information regarding treatment of similarly situated students who are not members of the Complainant's protected class.
- 3.3.2. The Investigating Coordinator will gather facts and make a factual determination regarding:
- [a] For harassment complaints:
 - (i) whether the conduct occurred as alleged; and
 - (ii) whether the conduct constituted harassment as defined in this policy, namely, whether the conduct was: unwelcome; and whether the conduct was on the basis of membership in a Protected Class
 - [b] For discrimination complaints:
 - (i) whether the Complainant was treated unfairly or unequally; and (ii) whether that treatment was based on a Protected Class.
 - (ii) Each finding will be made using a preponderance of the evidence standard (more likely than not).
- 3.3.3. Complaints of off-campus harassment that have a continuing effect on District programs and activities will also be investigated according to the procedures outlined here.
- 3.3.4. Law enforcement officers, including the school's resource officer ("SRO"), will not be involved in any aspect of the OEO investigation, although there may be an ongoing separate criminal investigation into an incident that is the basis for the complaint to OEO. Investigating Coordinators may rely on SROs as witnesses, and may request police reports as part of the evidence, but will not rely solely on SRO testimony and/or a police report, and will not include an SRO in any interviews with complainant, respondent, or witnesses.
- 3.3.5. If a student engages in conduct that poses a serious threat to another student or staff, including, the possession, control, or actual or threatened use of a real weapon or look alike weapon with intent to intimidate another person or disrupt normal school activities, or engages in a physical altercation that, if committed by an adult would be a felony or class A misdemeanor, the school building administrator may immediately remove involved students for no more than one full school day to guarantee school safety, unless the threat is severe and ongoing as determined by the OEO director in consultation with the building administrator. If a student involved in the conduct described in this paragraph alleges harassment as a motivating factor for the conduct, the building administrator will contact OEO and the OEO Coordinator and building administrator will determine appropriate measures to ensure student safety during the course of an OEO investigation.
- 3.3.6. At any time during the course of the investigation, Respondent may be removed to an online educational setting if the Investigating Coordinator determines removal is necessary to ensure the emotional and/or physical safety of the Complainant or witness, or to maintain the integrity of the investigation.

3.4. Investigative Reports and Responses to Complaints

- 3.4.1. Within ten (10) business days³ of the receipt of a complaint, the Investigating Coordinator will prepare a written report (“Investigative Report”) through HDRS, which will include:
- [a] a statement of the allegation, with the policy definition of the alleged conduct;
 - [b] a summary of the interviews and evidence including a description of the impact of the alleged conduct;
 - [c] findings of fact, based on a preponderance of the evidence standard, with a rationale for each finding;
 - [d] a determination of whether a policy was violated; and
 - [e] if Policy 11IR-100 was violated, the appropriate remedial or disciplinary measures.
- 3.4.2. If the investigation results in a finding that harassment or discrimination has occurred, the OEO will work with the building administrator to ensure disciplinary measures are implemented. The building administrator will also be responsible for implementing, at the direction of OEO, all remedial measures for the Complainant following a finding of harassment or discrimination.
- [a] For harassment complaints, prior to completing the Investigative Report, the Investigator will share with the building level administrator the appropriate remedial or disciplinary measure. If the building level administrator disagrees with the Investigator’s conclusion regarding the appropriate remedial or disciplinary measures, the Report and recommendations will be reviewed by the OEO Director and the Area Director of the school where the Complainant is enrolled.⁴ The OEO Director will make the final decision regarding appropriate remedial or disciplinary measures.
- 3.4.3. If the evidence does not support a finding of harassment or discrimination, the OEO may send the Investigative Report to the school or any other department to determine whether the factual findings should be addressed under any other District policy.
- 3.4.4. All Investigative Reports involving employees as the Respondent will also be sent to the Director of Human Resources for review with the Administrative Consultation Team (ACT) disciplinary committee and final determination regarding employment discipline, if any, in accordance with Policy 2HR-004.

3.5. Notice of Conclusion

- 3.5.1. Upon entry of the Investigative Report to the HDRS, the parties involved will receive notice that the investigation has concluded (Notice of Conclusion) by electronic mail.

³ If an investigation will exceed ten business days for extenuating circumstances, the Investigator will notify both parties in writing of the need to extend the investigation, the reason for the extension, and an estimated date by which the investigation will conclude. Investigating an allegation of an incident occurring more than six months ago may constitute extenuating circumstances requiring an extension of time to investigate.

⁴ In the event that the Area Director was involved in reviewing the appropriate remedial or disciplinary measures, as discussed in section 3.4.2.1, a different Area Director will be part of the appeals panel.

3.5.2. The Notice of Conclusion will include:

- [a] the outcome of the investigation and the rationale for that outcome;
- [b] the remedial measures for the Complainant and the disciplinary measures for the Respondent;
- [c] that retaliation is strictly prohibited with information about how to report retaliation; and
- [d] notice that if either party disagrees with the District's findings, they can appeal pursuant to Section 6. All appeals must be received within 5 business days of receipt of Notice of Conclusion.

3.5.3. Disciplinary measures, if any, will be provided to the Respondent and only shared with the Complainant to the extent that the discipline involves the Complainant.

3.6. All reports of sexual harassment will follow District Policy 5S-102.

4. RETALIATION

4.1. The District will not tolerate retaliation or intimidation of any kind towards anyone making a complaint of harassment and/or discrimination based on a Protected Class and covered by this Policy, or participating in an investigation of such an allegation. Such retaliation and intimidation not only violates the District policy, but also may violate state and federal law. All Complainants shall be informed of their right to be free from retaliation and intimidation.

4.2. Complaints of retaliation will be investigated in accordance with the procedures outlined in Section 4 of this policy.

4.3. The District will take swift and strict disciplinary action against any individual who retaliates against a Complainant, or who retaliates against a person who testifies, assists, or participates in an investigation, proceeding, or hearing in connection with a complaint.

5. DISCIPLINARY AND REMEDIAL MEASURES

5.1. Violations of this Policy will result in measures intended to end the harassment and/or discrimination and to prevent it from happening again to ensure the Complainant and all students have equal access to educational opportunities.

5.1.1. Students who violate this Policy will be disciplined in accordance with the procedures in this Policy and not Policy 5S-100.

5.1.2. Employees who violate this Policy will be disciplined subject to the recommendation of the ACT upon receipt of OEO Investigative Report.

5.2. Disciplinary and remedial measures that may be taken as a result of an OEO investigation include, but are not limited to:

5.2.1. Exclusionary removal from school (e.g., suspension)

5.2.2. Regular observation of the Complainant's classes and activities

- 5.2.3. Changes in the activity in which the harassment occurred, including increased adult supervision or video monitoring
 - 5.2.4. Transfer or change of school or class assignment for Respondent or Complainant, if requested
 - 5.2.5. Exclusion of Respondent from particular extracurricular activities
 - 5.2.6. Increased parental involvement for Respondent, including inviting parents to attend classes with Respondent, requiring parent-administrator conference weekly to review Respondent's conduct
 - 5.2.7. Required sensitivity training (for the Respondent, a class, or the entire school)
 - 5.2.8. Counseling
 - 5.2.9. Specialized counseling to students who have experienced trauma from racial harassment and hostile environments
 - 5.2.10. An apology from Respondent
 - 5.2.11. Community service
 - 5.2.12. Psychological or medical assessment of Respondent
 - 5.2.13. No contact orders
 - 5.2.14. Additional opportunities to participate in or try out for activities, programs, sports or to form student groups
 - 5.2.15. Removal of disciplinary infractions related to discrimination and harassment
- 5.3. The OEO will work with the building level administrator to ensure that disciplinary and remedial measures included in the final notice to parties are implemented. Depending on the remedial measure, a deadline may be required for completion of the remedial measure.

6. APPEAL

- 6.1. An investigation will be reviewed on appeal if the person requesting the appeal alleges:
- 6.1.1. misstatements of fact or failure to include relevant facts that improperly impacted factual findings;
 - 6.1.2. newly discovered evidence that was not reasonably available to the parties during the investigation;
 - 6.1.3. procedural irregularity that affected the outcome; or
 - 6.1.4. bias of OEO personnel or District or school employee that affected the outcome of the matter.

- 6.2. An appeal may be submitted in writing to the Director of OEO within five (5) business days of receipt of the Notice of Conclusion. All requests for appeal will be forwarded for informational purposes to the District Superintendent, as well.
- 6.3. The appeal will include an explanation for the basis of the appeal, as outlined in Paragraph 6.1.
- 6.4. The appeal will be heard by an appeals panel comprised of the following individuals:
 - 6.4.1. Assistant Superintendent over OEO
 - 6.4.2. Area Director for the school where the student filing appeal is enrolled
 - 6.4.3. Assistant Superintendent over Family and Student Resources Department
 - 6.4.4. If the matter involves a student on an IEP, the Director of Special Education
- 6.5. A member of the appeals panel will be recused if directly involved in the investigation or if named as a respondent in the harassment or discrimination complaint that is the subject of the appeal.
- 6.6. The OEO Director will forward the written appeal, the investigation report, the notice of the outcome of the investigation, and the underlying file (including notes or recording of interviews and documentary evidence) to the appeals panel.
- 6.7. The appeal panel may take any of the following actions after reviewing the appeal and/or hearing from the student requesting the appeal:
 - 6.7.1. send the investigation report back for further investigation;
 - 6.7.2. reverse the determination of whether there was a policy violation;
 - 6.7.3. uphold the OEO findings and remedial measures; or
 - 6.7.4. amend sanctions or remedial measures.
- 6.8. Within five (5) business days of receiving the appeal, the appeals panel will issue its decision on the appeal.

7. OTHER AVENUES OF REDRESS

The complaint procedures of this policy do not preclude a Complainant from seeking alternative forms of redress. At any time, if a student, parent, employee, or member of the public believes that he/she has been subjected to discrimination in violation of the law, the individual may file a complaint with the appropriate state or federal agency.

- 7.1. U.S. Department of Justice (DOJ);
Educational Opportunities Section
(202) 514-4092
1-877-292-3804 (toll-free)
(202) 514-8337 (Fax)
Email: Community.Davis@usdoj.gov
<https://civilrights.justice.gov/report/>

- 7.2. U.S. Department of Education; Office for Civil Rights (OCR), Region VII
Cesar E. Chavez Memorial Building
1244 Speer Blvd. Suite #310, Denver CO 80204-3582
(303) 844-4303
TDD-Hearing Impaired (800) 877-8339
<https://www2.ed.gov/about/offices/list/ocr/complaintintro.html>

8. CRIMINAL ACTS (REPORTING REQUIREMENTS)

- 8.1. Where a complaint contains evidence that may involve child abuse or criminal activity, the OEO Director shall immediately report the conduct to appropriate law enforcement authorities or the Division of Child and Family Services (DCFS).
- 8.2. When a report of harassment that occurred at school or a school-sponsored event has been referred to law enforcement, the OEO will work with law enforcement to ensure the obligations under this Policy are met. Regardless of the outcome of the criminal investigation, the OEO will pursue its own neutral investigation of the allegations.
- 8.3. If a school investigation is delayed at the request of law enforcement during a criminal investigation, OEO, through the building administrator, will offer interim supportive measures reasonably calculated keep all parties involved in allegations of harassment safe and able to equitably access educational opportunities.
- 8.4. When a report of harassment that occurred off school grounds and not at a school-sponsored event has been referred to law enforcement, the OEO, in coordination with the school administrator will work to ensure the students involved have continued equal access to educational programs and or opportunities.
- 8.5. The District encourages any individual who has knowledge of discriminatory acts involving violence or criminal activity to independently report the information to law enforcement authorities.

9. MAINTENANCE OF RECORDS.

- 9.1 All records of complaints, including all electronic and paper records must be retained by the District for at least five (5) years from the date of the complaint.

10. POLICY DISSEMINATION

- 10.1 This policy will be posted on the District's homepage, and on every homepage of each school in the District.
- 10.2 The policy will also be part of the District's policy manual.

DEFINITIONS

“Discrimination” means the unjust or prejudicial treatment of individuals on the grounds of membership in a Protected Class. The following are examples of discrimination. This is not an exhaustive or comprehensive list and is not intended to cover all acts of discrimination.

- [a] Disproportionate discipline based on a student’s Protected Class.
- [b] Denying privileges or opportunities to students, such as the opportunity to form a club or to Participate in extracurricular activities, based on a student’s Protected Class.
- [c] Denying students with a disability access to Free Appropriate Public Education (FAPE)
- [d] Assigning students of a particular Protected Class to an inadequate or less adequate building, facility, bus, program, class, project, teachers, activity, school, or grouping of any kind
- [e] Denying access to facilities based on a student’s Protected Class, including access to written and spoken language
- [f] Denying reasonable accommodations to students with disabilities for the purpose of accessing extra-curricular activities.

“Harassment” is unwelcome conduct on the basis of a student’s Protected Class. Harassment need not include intent or harm, be directed at a specific person, or involve repeated incidents. The following are examples of harassment. This is not an exhaustive or comprehensive list and is not intended to cover all acts of harassment.

- [a] Threatening or intimidating conduct directed at a student on the basis of the student’s Protected Class
- [b] Use of discriminatory language, when targeted at a student or group of students, including epithets, slurs, negative stereotypes, name calling, verbal abuse, derogatory comments, degrading descriptions, and hostile acts which are on the basis of a student’s Protected Class
- [c] Verbal, written, or graphic material containing comments or stereotypes aimed at degrading students on the basis of a Protected Classes
- [d] Aggressive conduct towards a student motivated by Protected Class
- [e] Graffiti containing offensive or derogatory language, symbols, or pictures in the context any Protected Class
- [f] Any unwelcome communication (whether written, verbal, or sent by electronic or other means) that is offensive or degrading and motivated by a student’s Protected Class
- [g] Jokes, notes, stories, drawings or pictures, gestures, or the display or distribution of offensive or degrading material based upon any Protected Class.
- [h] Displaying words, pictures, or symbols on clothing that are offensive or degrading based upon any of the legally protected classifications.
- [i] Mocking someone’s speech, clothes, hairstyle, customs on the basis of a Protected Class.
- [j] Engaging in any of the foregoing types of harassing behavior outside of school or outside of school-related activities and events, but which has a sufficient nexus to or continuing effect on the particular school.

“Complainant” means a person alleged to have been subjected to conduct that could constitute discrimination or harassment. There may be more than one complainant to a complaint.

“Harassment and Discrimination Reporting System” is a central reporting and management system through which all complaints of harassment and discrimination will be filed and recorded with the Office of Equal Opportunity.

“Respondent” means a person alleged to have engaged in harassment and/or discrimination and against whom a complaint has been filed. There may be more than one respondent in a complaint.

“Supportive measures” means measures the school takes that are reasonably calculated to ensure a Complainant feels safe and supported at school, based on the facts known at the time, upon reporting harassment. Examples of supportive measures include, but are not limited to:

- [a] counseling
- [b] extensions of deadlines or other course-related adjustments
- [c] modifications of class schedules
- [d] altering work arrangements, changes in work locations, or leaves of absence for student-employees
- [e] school safety plan
- [f] mutual restrictions on contact between the parties (no contact orders)
- [g] increased security and monitoring of certain areas of the school, and
- [h] other similar measures.

“Investigating Coordinator” means the coordinator from the Office of Equal Opportunity conducting the investigation. At times, that may be a School Coordinator from the Office of Equal Opportunity or it may be a District Coordinator from the Office of Equal Opportunity, depending on the nature of the allegation.

“Retaliation” means any form of sanction or adverse treatment, including but not limited to intimidation, reprisal, or harassment of any individual because that individual 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 has testified, assisted, or participated in any manner in an investigation, proceeding, or hearing related to a complaint.

“Disciplinary measures” means sanctions that impose corrective action for misconduct, including but not limited to, school suspension, removals from class, bus, or school activities, including extracurricular activities the Respondent is involved in. Disciplinary measures are intended to prevent prohibited conduct from recurring. As applied to this Policy, disciplinary measures are those sanctions taken against a Respondent where the investigation results in a finding of a violation of this Policy.

“Remedial measures” means steps taken to restore the Complainant to equal educational access, and protect, support, and intervene on behalf of the student who is the target of the prohibited conduct.

REFERENCES

[Office for Civil Rights, U.S. Department of Education Regulations \(34 C.F.R. § 106.8\)](#)
[Title IV of the Civil Rights Act of 1964 \(42 U.S.C. § 2000\(d\) et. seq.\)](#)
[Title VI of the Civil Rights Act of 1964 \(42 U.S.C. § 2000\(d\) et. seq.\)](#)
[Title IX of the Education Amendments Of 1972 \(20 U.S.C §§ 1681-86\)](#)
[Office for Civil Rights, U.S. Department of Education Regulations \(34 C.F.R. § 104.7\)](#)
[Section 504 of the Rehabilitation Act of 1973 \(29 U.S.C. § 794\)](#)
[U.S. Department of Justice Regulations \(28 C.F.R. § 35.107\)](#)
[Implementing Title II of the Americans with Disabilities Act \(42 U.S.C. § 12131\)](#)
[Office for Civil Rights Regulations, U.S. Department of Education Regulations \(34 C.F.R. -Part 100\)](#)

DOCUMENT HISTORY:

Adopted: January 17, 2012 – Combines previous policies 11IR-102 Designation of Compliance Officer and 11IR-103 Civil Rights Grievance Procedure. Renamed and renumbered to 11IR-100 Nondiscrimination Policy and Complaint Procedure. Simplifies the Complaint Procedure for students, employees, and patrons.

Revised: January 28, 2016 - Updated consistent with changes in State law. Sexual orientation and gender identify included as protected classes in employment decisions.

Revised: March 2, 2021 - Five-year review. Added reference to sexual harassment policies. Additional nonsubstantive changes.

Revised: August 2, 2022 – Updated to comply with Federal, and State law, as well as the Department of Justice settlement. Policy reflects District reporting, investigation, supports, and training practices.