

DISCRIMINATION & HARASSMENT GRIEVANCE PROCEDURE

James River Special Education Unit

The following procedure is designed to resolve harassment, discrimination and retaliation complaints by and against students, parents, and third parties as described in board policy in a prompt and equitable manner. Board policy requires all students and staff to fully cooperate when asked to participate in a harassment, discrimination or retaliation investigation.

Retaliation Prohibited

The Unit prohibits retaliation for an individual's participation in and/or initiation of a harassment/discrimination complaint investigation, including instances when a complaint is not substantiated. The consequences for violating this prohibition are delineated in the Nondiscrimination & Anti-Harassment Board Policy.

Complaint Filing Format and Deadlines

Complaints can be filed verbally or in writing and should be filed as soon as a victim or witness of alleged harassment and/or discrimination becomes aware that alleged harassment or discrimination occurred. Complaints should be filed as soon as possible after the alleged discrimination, harassment or retaliation occurred. Delays in filing complaints may cause difficulties in investigating.

To Whom Complaints May be Filed

Complaints may be filed with any Unit employee. Unit employees are required to report any discrimination/harassment to the grievance coordinator (Title IX, 504 or Nondiscrimination) when they knew (e.g., received a complaint, directly observed it) or should have known it was occurring (e.g., overheard people talking about an incident). Failure by a Unit employee to report under this regulation may result in disciplinary action.

Initiating Complaint Resolution Procedure

After receiving a discrimination/harassment complaint or gaining knowledge of potentially discriminatory/harassing conduct, the grievance coordinator shall contact the complainant/victim, determine if an informal or formal investigation is appropriate, and determine if the complainant/victim requests confidentiality. Requests for confidentiality shall be handled in accordance with policy.

Prohibition on Meeting with the Accused

At no time during the informal or formal resolution process shall the complainant be required to meet with the accused. If any official listed in this regulation as responsible for conducting or overseeing the investigation is the accused, the Director or Board President (if the Director is the accused) shall designate a different individual (which may be a third party) to carry out the accused's responsibilities associated with the investigation.

Third-Party Assistance

Officials who are responsible for conducting/overseeing discrimination/harassment investigations are authorized to receive assistance from the Unit's legal counsel throughout the process.

Investigation Timeframes

The informal resolution procedure shall be completed within 30 days of a Unit employee reporting the complaint or incident to the appropriate grievance coordinator unless the investigator documents reasons for delays and communicates these reasons with the complainant and accused. The formal resolution procedure shall be completed within 60 days of a Unit employee reporting the complaint or incident to the grievance coordinator or a complainant or accused terminating the informal complaint procedure unless the investigator documents reasons for delays and communicates these reasons with the complainant and accused. Acceptable reasons for delays may include, but are not limited to, extended school breaks when witnesses are not available, and complex cases involving multiple witnesses.

Interim Measures

Pending the final outcome of an informal or formal resolution, the Unit shall institute interim measures to protect the alleged victim and inform him/her of support services available. Interim measure examples may include, but are not limited to, a Unit-enforced no contact order, schedule changes, coordinating any applicable academic modifications for an alleged student victim with the alleged victim's school district, and/or providing information regarding school counseling through the applicable school district for an alleged student victim. These interim measures should have minimum impact on the alleged victim. If the accused is a student, interim measures should also take into consideration the accused student's needs and educational rights.

Informal Resolution Procedure

This procedure shall not be used when the alleged discrimination or harassment may have constituted sexual violence or any other crime. This procedure shall only be used when mutually agreed to by complainant and/or alleged victim, the accused, and the appropriate grievance coordinator.

During this process, the investigator shall only gather enough information to understand and resolve the complaint. Based on this fact-gathering process, the investigator shall propose an informal resolution, which may include, but not be limited to, requiring an accused employee to undergo training on harassment/discrimination, reporting an accused student to the applicable school district and coordinating training efforts for the student with that district, requiring all staff to undergo such training, instituting protection mechanisms for the alleged victim, and/or holding a formal meeting with the accused to review the harassment/discrimination policy and discuss the implications of violating it. Both the complainant and the accused must agree to the informal resolution before it can be instituted.

The grievance coordinator shall monitor the implementation and effectiveness of the informal solutions and initiate the formal resolution procedure below if harassment/discrimination persists.

Both the complainant and the accused have the right to terminate the informal procedure at any time to pursue a remedy under the formal resolution procedure.

Formal Resolution Procedure

This procedure shall be used whenever the informal procedure is not used.

Whenever alleged discrimination or harassment may have constituted a crime, the Director should contact law enforcement and enter into a memorandum of understanding concerning sharing of evidence and coordination of the investigation. However, the Unit shall proceed with its investigation and this resolution procedure regardless of the criminal investigation or outcome.

The fact-gathering portion of the investigation shall be carried out or overseen by the appropriate grievance coordinator and shall consist of interviews with the complainant, the accused, and any others who may have witnessed or otherwise have knowledge of the circumstances giving rise to the alleged complaint and may involve gathering and review of information relevant to the complaint. Both the complainant and accused will have equal opportunity to present evidence and name witnesses. Witnesses shall be instructed not to discuss this matter with others.

The fact-gathering portion of the investigation shall be completed within 15-20 calendar days or as soon as practical.

Investigation Report

After the fact-gathering process is complete under the formal resolution procedure, the appropriate grievance coordinator shall complete a written report containing a determination of whether allegations were substantiated, whether the discrimination/ harassment policy was violated, and recommendations for corrective action, if any. These determinations shall be made on a case-by-case basis. The grievance coordinator shall assess if discrimination/harassment more than likely occurred based on, but not limited to, the following criteria:

- Whether evidence suggests a pattern of conduct supporting or disproving the allegations or harassment or discrimination
- Whether behavior meets the definition of harassment, sexual harassment, and/or discrimination as defined in board policy
- Ages of the parties involved
- Relationship between the parties involved
- Severity of the conduct
- How often the conduct occurred, if applicable
- How the Unit resolved similar complaints, if any, in the past.

The investigation report shall indicate if any measures shall be instituted to protect the complainant and/or alleged victim. Such measures may include, but not be limited to, extending any interim protection measures taken during the investigation. The report shall also inform the complainant and/or alleged victim of support services available, which at a minimum shall

include providing information on school counseling services at the applicable school district if the complainant and/or alleged victim is a student.

The investigation report shall contain a monitoring plan to evaluate the effectiveness of the resolution and help prevent recurrence.

Any employee disciplinary action shall be carried out in accordance with board policy, law, and, when applicable, the negotiated agreement. The appropriate grievance coordinator, along with the Director (if different), shall determine if a recommendation for discharge for an accused employee should be made. If this recommendation is made and a hearing is required, the hearing shall be held in accordance with Unit policy and law. For accused students, the appropriate grievance coordinator and/or Director (if different), shall report to the applicable school district the results of the investigation for potential discipline by the school district, which may include expulsion, in accordance with school district policy and law. Both the alleged victim and accused shall have an equal right to attend any hearing, have a representative and parent (if student) present, present evidence, and question witnesses. The alleged victim may choose to appoint a representative to participate in the hearing in his/her stead.

Notice of Outcome

Both the complainant (and/or alleged victim) and the accused shall be provided written notice of the outcome of the complaint. The outcome shall be final and binding; however, nothing shall prevent the parties from seeking judicial redress through a court of competent jurisdiction or through any applicable state or federal complaint procedures. Investigation materials will be maintained by the grievance coordinator (Title IX, 504, or Nondiscrimination) and retained for at least six years.