

## NONDISCRIMINATION AND ANTI-HARASSMENT COMPLIANCE GRIEVANCE PROCEDURE

### I. Overview of Discrimination/Harassment

- A. Hostile Environment - "Harassment":** Harassment, including sexual harassment and racial harassment, is one theory of establishing that a person has been illegally discriminated against. Behavior, based upon the protected classifications listed in policy AC, whereby the school or work environment becomes permeated with intimidation, ridicule and insult that is sufficiently severe or pervasive to alter the conditions of a student's participation in the district's programs and activities, or of an employee's employment, can amount to prohibited discrimination and is therefore within the prohibitions of policy AC. Any intimidation, ridicule or insult that is based on a reason listed in policy AC, including sex or race, is to be reported to the nondiscrimination compliance coordinator ("compliance coordinator"). In addition, unwelcome sexual advances, unwelcome requests for sexual favors and other unwelcome verbal, nonverbal or physical conduct of a sexual nature can contribute to rendering an environment hostile, and thereby discriminatory, on the basis of sex. A person's age and the relationship between the parties are factors which can make conduct unwelcome even in the absence of an obvious negative reaction by the victim. The harasser and the victim need not be of a different sex, race, etc.
- B. "Quid pro Quo":** This is another form of behavior that can amount to discrimination on the basis of sex. This occurs when an employee's supervisor makes job benefits or refraining from adverse action conditional upon submission to unwelcome sexual advances, unwelcome requests for sexual favors and other unwelcome verbal, nonverbal or physical conduct of a sexual nature. Similarly, "quid pro quo" harassment also occurs when an employee of the district, in real or apparent authority over a student, conditions the student's participation in the district's programs or bases educational decisions upon submission to unwelcome sexual advances, unwelcome requests for sexual favors and other unwelcome verbal, nonverbal or physical conduct of a sexual nature. It is extremely important that any person who knows of or experiences such "quid pro quo" behavior, whether or not the threatened action or promised favor was carried out, immediately notify the district's nondiscrimination compliance coordinator.
- C.** If harassment is occurring, there may be a variety of witnesses to discrete actions that may not of themselves seem of particular gravity. Also, victims may be unwilling to report or, because of their youth, may not understand the prohibited nature of some conduct. Only a central repository of all such reports from the entire district community can allow the compliance coordinator to effectively detect and remedy potentially illegal discriminatory harassment before its severity or pervasiveness causes the district to fail in its

compliance obligations. What constitutes discrimination by harassment depends on the facts of each situation, and therefore doubt as to whether to report to the compliance coordinator should be resolved in favor of reporting, so that the compliance coordinator has more, rather than less, information about a situation.

## **II. Overview of Procedural Components**

### **A. General**

1. This grievance procedure exists to provide formal resolution of complaints that policy AC has been violated. It does not prohibit the informal adjustment of any complaint. Pursuit of informal adjustment is not a valid reason for missing a filing deadline, but a timely filed complaint may be continued by consent of the parties in order to allow pursuit of informal adjustment.
2. The compliance coordinator should be informed of the progress of all informal adjustments and grievances at each step by the district employee responsible for each step of a grievance, so that the compliance coordinator may keep abreast of all matters concerning policy AC and be ready at any time to report on the same to the superintendent, Board or an outside agency.
3. Where a statute, administrative rule, or Board policy provides a scheme for resolutions of complaints arising under that statute, rule or policy, this grievance procedure shall not be applicable.
4. When, based upon reported information and/or investigation, the compliance coordinator finds a likely violation of policy AC, the compliance coordinator shall so inform the superintendent, regardless of whether a complaint has been filed. Lack of a complaint will not preclude appropriate remedial action by the district upon a finding by the superintendent of a violation of policy AC, nor will the existence of a complaint or its outcome hinder the superintendent in enforcing policy AC. Lack of a remedial action does not preclude a disciplinary action, and vice versa.
5. In addition to keeping the superintendent informed of likely violations of policy AC throughout the district, the compliance coordinator should also confidentially contact putative victims of likely violations of policy AC to investigate, further explain policy AC if necessary, and make sure the putative victim is aware of the grievance procedure.
6. Actions involving employees or students implemented as remedial action for a violation of policy AC are not exempt from such

constitutional due process requirements as apply case-by-case to such an individual and/or the nature of the action taken. However, this regulation is not meant to provide any additional substantive or procedural rights to employees or students who must be involved in remedial actions.

7. If a person designated to hear a complaint or appeal is the subject of the complaint, the next highest step in the grievance process will be used.
8. Deadlines herein are directory only, and not mandatory, upon the district. If more than twice the allotted time has expired without a response, appeal may be taken to the next step.
9. Persons alleged to have violated policy AC, and/or persons necessarily involved in resolution of complaints, will have access to written grievance materials only in the event that remedial or disciplinary action is actually implemented, and then only on a need-to-know basis or as required by the constitution. Participants must understand that FERPA may prevent the disclosure of some records or actions to complainants, including in the written responses called for in these regulations.
10. Failure to prosecute an appeal within the timelines given will be deemed as acceptance of the findings and any remedial action of the last level used.
11. All documents, communications and records pertaining to this grievance procedure will be kept separate from personnel records of employees.\*
12. The district will not be relieved of its responsibility to respond to a complaint filed under this grievance procedure by the fact that an outside enforcing agency has received a complaint arising from the same circumstances.
13. The compliance coordinator will make follow-up inquiries on completed grievances and informal adjustments to assure that remedial actions have been effective, and to assure that no violation of policy AC persists or has been caused by the grievance or adjustment itself.

## **B. Definitions Used in This Procedure**

1. *Complaint* - Submission to the responsible district official of a written and signed allegation that there has been a violation of policy AC, which states: date of filing, discrimination category at issue (e.g., sex,

national origin, etc.), names of persons involved including possible witnesses, facts alleged to have happened, a statement of why the facts constitute a violation of policy AC, a suggestion of the remedy desired, and a statement of any informal adjustment attempts or progress within the complainant's knowledge as of the date of the complaint. Exhibits may be attached.

2. *Complainant* - A person who, by the filing of a complaint under this procedure, claims to be the victim, or the parent or guardian of a student who claims the student was a victim of discrimination in violation of policy AC.
3. *Appeal* - An appeal requires the filing of the original complaint and exhibits, all decisions rendered by district officials at any lower levels in the grievance process, a statement of why the decision being appealed from is inadequate or incorrect, and a statement of the progress of any informal adjustment known to the complainant.

### III. Procedure

- A. *Level I* -- A complaint should be filed with the district's compliance coordinator. If a complaint is filed with any other administrator, the administrator will immediately forward any complaint received to the compliance coordinator. The compliance coordinator may, in his or her discretion, assign the principal of the building concerned to investigate the matter, unless the principal is a subject of the complaint. Likewise, the principal may delegate an assistant principal to investigate the matter unless the assistant principal is a subject of the complaint. If the compliance coordinator does not assign a principal to investigate the matter, then the compliance coordinator will conduct the investigation.

Regardless of who investigates the complaint, an investigation will be conducted within a normal limit of five (5) working days after submission of a complete complaint, including such hearings or *ex parte* interviews as are reasonably necessary, including contacting witnesses identified by the complaint. The investigator will then issue a written response to the complaint: (1) Summarizing the facts, (2) Making conclusions on whether they constitute a violation of policy AC and (3) if a violation of policy AC is found, stating what remedial action will be implemented at the school level or sought from the central administration.

- B. *Level II* -- Within five (5) working days after receiving the *Level I* decision, appeal may be taken to the nondiscrimination compliance coordinator. If the compliance coordinator conducts the initial investigation, an appeal may be taken to the superintendent, as outlined in *Level III*. The compliance coordinator will meet with the complainant as soon as workably possible to

review the appellate materials, further discuss the complaint and take any additional evidence the complainant has to offer. Within a normal limit of five (5) working days, the compliance coordinator will issue a written response to the appeal summarizing his or her findings and stating what, if any, remedial actions will be recommended to the superintendent and/or the building-level administration for implementation.

- C. *Level III* -- Within five (5) working days after receiving the *Level II* decision, appeal may be taken to the superintendent. If the compliance coordinator conducts the initial investigation, an appeal may be taken to the superintendent within five (5) working days after receiving the *Level I* decision. If the superintendent is the compliance coordinator, an appeal of the superintendent's decision may be made to the Board of Education as outlined in *Level IV*. If the superintendent is the subject of the complaint, an appeal of the compliance coordinator's decision may be made to the Board of Education as outlined in *Level IV*.

The superintendent may refer the matter to an assistant or associate superintendent, general counsel, or outside counsel, to act as designee and prepare a final decision for signature and implementation. The superintendent or designee will review the appeal materials, conduct further investigations or hearings at the superintendent's or designee's discretion, and seek counsel if necessary. Within a normal limit of ten (10) working days, the superintendent will issue a written decision upon the appeal stating whether a violation of policy AC is found and, if so, stating what remedial actions will be implemented. A copy of the appeal and decision will be sent to the compliance coordinator by the superintendent.

- D. *Level IV*-- Within five (5) working days after receiving the *Level III* decision, appeal may be taken to the Board of Education by filing the appeal with the superintendent. If the superintendent is the subject of the complaint, an appeal may be taken to the Board of Education by filing the appeal with the compliance coordinator or the president of the Board. The matter will be placed on the agenda of the next scheduled meeting of the Board, for closed session unless law requires otherwise. The complainant will be allowed to address the Board, and the Board may call for the presence of such other persons as the Board deems necessary to advise it on the matter and the maintenance of its compliance obligations. The Board may conduct its procedure upon the appeal as it sees fit, and shall normally render a written decision upon the appeal within 30 working days, for implementation by the administration. For district purposes, and without waiving the right to take any actions later deemed necessary for nondiscrimination mandate compliance, the Board's decision and any actions taken are final. A copy of the appeal and decision will be sent to the compliance coordinator by the Board secretary.

- \* This paragraph does not include the records of a collateral disciplinary action. Records of disciplinary actions for violations of policy AC are kept in the same manner as any other discipline record.

\* \* \* \* \*

***Note: The reader is encouraged to check the index located at the beginning of this section for other pertinent policies and to review administrative procedures and/or forms for related information.***

Approved: June 20, 2001

Revised:

Halfway R-III School District, Halfway, Missouri

© 2000, Missouri School Boards' Association, Registered in U.S. Copyright Office  
*For Office Use Only: AC-R.1B (10/00)*