

OFFICE OF EQUAL OPPORTUNITY SERVICES REPORTING AND COMPLAINT PROCEDURES: EMPLOYEES

DEFINITIONS

- “Complainant” – a district student, parent/guardian of a district student, district employee, or third party who submits a complaint alleging discriminatory action or treatment. (Examples of third parties include audiences and competitors at inter-district athletic competitions, service contractors, school visitors, and employees of businesses or organizations participating in cooperative work or school programs with the district in relation to the incident(s) at issue).
- “Complaint” - An oral or written allegation that there has been a discrimination or harassment violation.
- “Complaint Submission Date” – the date of which a written complaint was received by the responsible administrator.
- “Respondent” – the person alleged to be responsible for the prohibited conduct alleged in a complaint.
- “Investigator” – an administrator/principal or designated investigator who is not the subject of a complaint or is not a complainant.
- “Third Parties” – can include audiences and competitors at inter-district athletic competitions, service contractors, school visitors and employees and businesses or organizations participating in cooperative work or school programs with the district in relation to the incident(s) at issue.

OVERVIEW

The purpose of these reporting and complaint procedures is to secure, at the lowest possible level, prompt and equitable resolutions of complaints on any form of discrimination or harassment based on disability, race, ethnicity, color, gender, sexual orientation, national origin or ancestry, religion, age, veteran status or any other protected category as defined by law and in violation of Title VII of the Civil Rights Act of 1964, Title IX of the Educational Amendments of 1972, the Age Discrimination in Employment Act, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, the New Mexico Human Rights Act and APS Board Policies.

These reporting and complaint procedures shall be available in every school site, administrative office, posted on the district website and included in the employee handbook.

WHO MAY FILE A COMPLAINT

Any employee who believes he/she/they has been subjected to alleged discrimination and/or harassment by a student, teacher, administrator or other school personnel or third parties should report the incident(s) immediately to their supervisor or an administrator with supervisory/administrative authority. They may also directly report to the Office of Equal Opportunity Services.

All APS employees, particularly supervisors, have a responsibility for keeping our schools and work environments free of harassment and discrimination. Any employee, who becomes aware of an alleged discrimination and/or harassment, whether by witnessing the incident or being told of it, must report it to their immediate supervisor or to the Office of Equal Opportunity Services.

Any report made to a supervisor or administrator must be addressed in a timely manner by school administration, or the supervisor, and reported to the Office of Equal Opportunity Services. Site principals and/or district level supervisors are responsible for ensuring that sexual violence reports shall be directed to the APS School Police as well as the Title IX Director in the Office of Equal Opportunity Services.

HOW TO FILE A COMPLAINT

Supervisors and administrators who have received a complaint from an employee(s) must report the alleged allegation(s) to the Office of Equal Opportunity Services.

An employee may contact the Office of Equal Opportunity Services directly.

When the district becomes aware of an alleged discrimination and/or harassment, it is obligated by law to take prompt and appropriate action, whether or not the alleged victim wants the district to proceed or not.

For allegations that may rise to the level of sexual violence, parties may choose and/or be directed by the Office of Equal Opportunity Services, Title IX, to also file a police report.

TYPES OF COMPLAINTS

Complaints are classified into two categories – informal and formal.

Informal complaint resolution process

Informal resolution may be an appropriate choice when the conduct involved is not a serious or repetitive nature and disciplinary action is not required to remedy the situation. The determination is made by the school principal, administrator, or designee. The informal resolution process shall not be considered a precondition for the filing of a formal written complaint. The informal resolution process can be ended by a complainant at any time to begin a formal complaint process.

Methods for informal resolution may include, but are not limited to, coaching the person on how to directly address a situation which is causing a problem; developing written behavior expectations of the alleged offender to redirect conduct; assisting with the resolution of a real or perceived problem; or arranging a documented meeting or mediation with the alleged offender that involves a discussion of the District's Office of Equal Opportunity Services' policies and requirements for compliance. The complainant and respondent may voluntarily choose to participate in mediation to resolve the complaint. The mediation program minimizes the need for a lengthy investigation and helps to resolve complaints in a faster time frame. Specific mediation information and guidelines may be requested through the Office of Equal Opportunity Services. Mediation is completely voluntarily on the part of the alleged victim; it will not be a required resolution.

The principal, administrator or designee shall document any informal resolution, and a copy of such documentation shall be forwarded within three (3) business days of resolution to the Office of Equal Opportunity Services, and when appropriate, the Chief of Human Resources & Legal Services.

Formal complaint resolution process

Initiation of the formal complaint procedures requires a written complaint. The complaint form can be accessed from the Office of Equal Opportunity Services' webpage. Hard copy forms are available from the Office of Equal Opportunity Services, and individuals can also request a hard copy from a school.

All written complaints regarding harassment or discrimination of students shall be submitted to:

Office of Equal Opportunity Services

Albuquerque Public Schools, 6400 Uptown Blvd., NE, Albuquerque, NM 87110

505-855-9831

<https://www.aps.edu/equal-opportunity-services>

1. Reporting Formal Complaints

- a. Complaints may be filed with the Office of Equal Opportunity Services and must be submitted in writing within 180 days from the date of alleged act(s), unless the time for filing is extended by the Office of Equal Opportunity Services for good cause (to be determined by the OEOS). Failure of a complaint to comply with any time limitation in the complaint procedure may result in dismissal of the complaint and/or denial of the appeal. Dismissal shall not preclude the individual's right to pursue the complaint through other appropriate external agencies. If a district representative fails to comply with any time limitation in the complaint procedure, the complainant may immediately proceed to the next level permitted by these Procedures.
- b. Individual(s) will complete the complaint form. In addition, the complainant may also attach a written narrative explaining the nature of the complaint. The complaint form and/or narrative shall contain information that describes the conduct that has violated prohibitions, and identify with reasonable particularity the respondent(s) and any witnesses to the alleged conduct.

2. Determining Procedures

The Office of Equal Opportunity Services shall initially review the written complaint to determine whether the matter falls within the scope of these procedures. Within five (5) business days after the complaint submission date, the Office of Equal Opportunity Services shall initiate an investigation of the matters alleged, or inform the complainant in writing that the matters alleged in the complaint are not within the jurisdiction or authority of the district to investigate and that the district will not carry out any further investigations. If the matter does not involve allegations of discrimination within the scope of these procedures, the Office of Equal Opportunity Services shall forward the matter to the proper district administrative authority for review, if appropriate.

3. Investigation

- a. The Office of Equal Opportunity Services shall oversee that an adequate, reliable and impartial investigation of the complaint is conducted by an investigator at the school site where the student is enrolled, the employee is assigned and/or where the alleged discrimination occurred.
- b. In order to provide a neutral and objective investigation, neither the Office of Equal Opportunity Services nor the investigator conducting the investigation shall be a party of the complaint in the investigation.
- c. In the event that the investigator is not a neutral party, the Equal Opportunity Services Director shall designate a neutral and objective investigator to conduct the investigation. In the event that the Director of Equal Opportunity Services is not a neutral party, the Director of Title IX shall designate a neutral and objective investigator to oversee the investigation.
- d. In conducting the investigation, the investigator shall interview all parties identified in the complaint and other witnesses that the investigator determines may provide information relevant to resolving the complaint allegation(s). Both the complainant and the respondent shall have the opportunity to identify witnesses to be interviewed and provide documentation or other evidence for the investigator to review.
- e. The investigator shall consider the evidence compiled and take whatever additional actions deems necessary to complete the investigation.
- f. The investigator will maintain documentation of all proceedings, which may include written findings of facts, transcripts, notes, audio recordings and communications with involved parties and any appeals. The investigator will submit a summary of findings and actions to the Office of Equal Opportunity Services.
- g. The Office of Equal Opportunity Services will maintain documentation of all investigations conducted.
- h. The complainant and/or respondent will be informed of the status of the investigation at regular intervals. However, at any given time during the on-going investigation process, the complainant and/or respondent may request a status update on the current complaint. This may be requested in writing directly to the Office of Equal Opportunity Services.

4. Notice of Resolution

- a. The Office of Equal Opportunity Services shall notify both the complainant and respondent in writing within thirty to forty-five (30-45) business days from the complaint submission date of the results of the investigation. In some cases, the investigation may take longer. However, the Office of Equal Opportunity Services and investigator will make every reasonable effort to ensure that the investigation is completed within the appropriate timeline. The Office of Equal Opportunity Services Director shall oversee this process.
- b. The investigator shall consider the totality of the evidence and determine whether the preponderance of the evidence establishes that the alleged discrimination occurred.

- c. If the investigator determines that the preponderance of the evidence does not support the allegations of discrimination, the complainant may appeal the determination.
- d. If the investigator determines that the preponderance of the evidence supports the allegations of discrimination by the respondent, the investigator shall provide written findings and conclusions supporting the determination. In addition, the written determination shall make recommendations of (A) immediately ending the discriminatory conduct; (B) ways to remedy the discriminatory behavior on the complaining party and, if applicable, the district's educational environment, and (C) the steps to be taken to prevent the recurrence of any discriminatory or harassing conduct found to have occurred. Implementation shall be carried out by Human Resources or the responsible administrator unless either party appeals.

5. Appeal Rights

- a. A party not satisfied with the resolution may submit a written appeal within ten (10) business days to the superintendent. Ten business days shall be deemed effective on the person served as the date of delivery, if personally served, faxed or email, or effective three calendar days of deposit by first-class mail if delivered by mail. This written appeal shall state with particularity the nature of the disagreement, the reasons underlying such disagreement and how the outcome would be changed by reconsideration of the determination.
- b. The superintendent or designee shall conduct a review of the record to determine whether the preponderance of the evidence supports the determination. The superintendent or designee shall issue a written decision and mail it to the parties within fifteen (15) business days of the receipt of the appeal. The superintendent's decision is a final decision.

6. Complaints to an External Agency

If a party is not satisfied at any time, including with the superintendent's decision, the party may file a complaint with the Office of Civil Rights ("OCR") in Denver, Colorado. More information is available at the Office of Civil Rights, Federal Office, 1244 Speer Blvd, Suite 310, Denver, CO 80204-3582, (303) 844-5695.

INTERIM MEASURES

During both the informal and formal complaint process, interim measures, such as schedule changes, placing employees on leave and/or counseling support may be implemented to protect students and employees in the educational and work setting, pending the outcome of the process. Employees can receive support from the APS Employee Assistance Program (EAP).

District employees, including APS district School Police enforcement personnel, may notify municipal law enforcement or other agencies with jurisdiction of any incident that is suspected to warrant a criminal investigation. District employees, including APS district School Police enforcement personnel, will also timely notify the district's Title IX Director of any incident of

sexual harassment, sexual assault and sexual violence against students within the district's jurisdiction. The initiation of a criminal complaint or other outside investigation does not mitigate the district's obligation to complete a prompt and equitable resolution of every complaint alleging sex discrimination. District employees must report sexual violence to APS School Police Department and to the district Title IX Director even if the incident is also reported to municipal law enforcement or other agencies with jurisdiction.

DISCIPLINARY CONSEQUENCES

Any individual who violates this policy by engaging in conduct defined throughout this policy that directly or indirectly causes intimidation, harassment or physical harm to another student or employee will be subject to disciplinary action.

For employees, potential sanctions of policy violation(s) may include leave of absence, suspension, written directive, separation of employment, reclassification of job duties, mandated training and/or police report. If the disciplinary consequence involved discharge or termination, the employee's hearing and appeal rights will be governed, to the extent applicable, by New Mexico law, District policies and collective bargaining agreements.

FALSE COMPLAINTS

Any individual who knowingly files a false or misleading complaint alleging harassment, discrimination or retaliation is subject to appropriate disciplinary action, including, but not limited to, dismissal of the complaint. If the preponderance of the evidence supports a finding that the complainant submitted a false or misleading complaint alleging harassment, discrimination or retaliation, the complaint will be dismissed, and the student or employee who submitted the complaint will be recommended for discipline in a manner consistent with district policies and procedures.

RETALIATION

Retaliation means some type of adversarial or punitive action taken against an individual or individuals as a result of filing a complaint or participating in the complaint process. An individuals or individuals who make complaints in good faith shall be free from retaliation, coercion and reprisal in seeking resolution of their complaint. Furthermore, persons acting as witnesses to a complaint, in good faith, shall be free from reprisal. Retaliation against an individual seeking assistance at his/her/their school or work site, filing a complaint or participation in the investigation process is grounds for a subsequent retaliation/harassment complaint.

CONFIDENTIALITY

APS will respect the privacy of the complainant, the individual(s) against whom the complaint is filed and the witnesses as much as possible, consistent with legal obligations to investigate, take appropriate action, and conform to any legal discovery or disclosure. Any information gathered during an informal procedure may be used during a formal procedure, if initiated. While there can be no assurances of complete confidentiality, complaints under this procedure will be treated as

sensitive information not to be shared with others except in limited circumstances. Decisions regarding confidentiality will be made by the Office of Equal Opportunity Services.

Examples of exceptions to maintaining confidentiality include:

- information the law requires to be reported or disclosed.
- information imparted to others in supervisory positions in order to further an investigation, halt a discriminatory practice or provide counsel or discipline relation to a discriminatory practice.
- information given to the respondent in order to have sufficient information to respond to the allegations.

Subject to these exceptions, the district will take reasonable steps to investigate and respond to a complaint consistent with a request by the complaining party not to disclose his/her/their name. However, such requests for confidentiality may limit the district's ability to adequately investigate and respond to the allegations raised in the complaint. Additionally, the complaining party's identity, though not expressly disclosed, may become apparent due to the nature of the allegations.

Requests for confidentiality, therefore, will be evaluated subject to the exceptions outlined in the previous paragraphs and in the context of the district's responsibility to provide a safe and nondiscriminatory environment for all students and employees. The district will also evaluate the following factors:

- the complainant's age;
- whether there have been other harassment complaints about the same individual; the need to discipline or counsel the alleged harasser in relation to the incident(s), and
- the alleged harasser's rights to receive information under FERPA and district policies.

Evidence of past relationships will not be used as part of the investigation, unless the district determines that the relationship between the parties directly impacts the analysis of the complaint's allegations or the alleged harasser's response to the allegations.

All parties to a grievance, including the complainant, respondent and witnesses, have privacy interests and, therefore, all parties should be cautioned not to divulge or publicize the nature of the proceedings or the identity of those involved outside the scope of the investigation.

LEGAL COMPLIANCE

The Office of Equal Opportunity Services, has the responsibility to monitor the compliance of state and federal laws and regulations as well as district policies and procedures related to harassment and discrimination issues.

Office of Equal Opportunity Services
Albuquerque Public Schools, 6400 Uptown Blvd, NE
Albuquerque, NM 87110
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