

## STUDENT WELFARE: FREEDOM FROM DISCRIMINATION, HARASSMENT, AND RETALIATION

**Note:** This regulation addresses discrimination, harassment, and retaliation based on protected classes involving District students. For provisions regarding discrimination, harassment, and retaliation of District employees, see DIA. For reporting requirements related to child abuse and neglect, see FFG. Note that FFH shall be used in conjunction with FFI (bullying) for certain prohibited conduct. This policy is consistent with *Tex. v. Cardona*, No. 4:23-CV-00604-O, 2024 WL 2947022 (N.D. Tex. June 11, 2024).

### **Employee Obligation to Report Prohibited Conduct**

All employees must promptly notify a campus administrator or the Title IX Coordinator, the Section 504 Coordinator, or Superintendent, if the employee has information about conduct that reasonably may constitute prohibited conduct as defined in FFH(LOCAL), including discrimination, harassment, or retaliation. Contact information for the District's Title IX and Section 504 Coordinators can be found in FB(EXHIBIT), FFH(EXHIBIT), the Student Handbook, the Employee Handbook, and the District's website. Absent extenuating circumstances, employees are expected to report prohibited conduct within 2 business days.

### **Notification of Title IX or Section 504 Coordinator**

If a campus administrator is notified of conduct that may constitute sex or disability discrimination, he/she shall notify the District's Title IX Coordinator or Section 504 Coordinator, depending on the nature of the conduct, within 2 business days. Notification to the Title IX or Section 504 Coordinator may be made orally or in writing. An email shall constitute written notification.

### **District Official Response**

For reports of sex discrimination, the Title IX Coordinator shall offer supportive measures to affected students and coordinate other efforts required by this Discrimination Grievance Procedure. For reports of disability discrimination, the Section 504 Coordinator shall offer supportive measures to affected students and coordinate other efforts required by this Discrimination Grievance Procedures. For all other reports of discrimination, the Superintendent's designees, which are hereby identified as campus administrators, shall offer supportive measures to affected students and coordinate other efforts required by this Discrimination Grievance Procedure. The Title IX Coordinator, Section 504 Coordinator, or Superintendent may delegate responsibilities under this regulation to other District administrators but shall continue to oversee implementation of this regulation and related policy requirements. With respect to this regulation, "the District Official" shall mean the administrator responsible for overseeing the implementation of this regulation and related policy.

### **Discrimination Grievance Procedure**

If a discrimination complaint is made, the District Official shall initiate this Discrimination Grievance Procedure. A "complaint" means an oral or written request to the District to investigate and determine whether discrimination has occurred. When a complaint is not made but the District has notice of possible discriminatory conduct under policy FFH, the District Official shall take prompt and effective steps to ensure that discrimination does not continue or recur within the District's education programs or activities. The District Official shall document steps taken to comply with this regulation and ensure that such documentation is maintained in accordance with the record keeping requirements below.

**Reports Must Be Documented**

All reports of prohibited conduct, as defined by FFH, shall be documented in writing in an electronic format and promptly provided to the appropriate District Official. If the person who made the initial report of prohibited conduct will not or cannot provide a written statement of the alleged prohibited conduct, the District Official shall ensure that the report is documented in writing.

In cases where an alleged victim does not initiate a complaint (i.e., does not request that the conduct be investigated), the District Official may initiate these grievance procedures where warranted.

**Timeframes for Grievance Procedures**

This grievance procedure shall be engaged with deliberate speed for resolving complaints of discrimination. Temporary delays shall be permitted for good cause. Good cause may include, but is not limited to, law enforcement activities, the absence of a party or witness, or the need to provide language assistance or accommodation of disabilities.

**Parties**

A “Complainant” is a student, former student, or applicant for admission, who is alleged to have been subjected to conduct that could constitute discrimination under policy FFH. A “Respondent” is a person who is alleged to have engaged in prohibited conduct that could constitute discrimination under policy FFH. Complainants and Respondents may be referred to collectively as “the parties.”

**Equity and Objectivity**

Complainants and Respondents are to be treated equitably in the grievance procedure. The District must ensure an objective evaluation of all relevant evidence, including inculpatory and exculpatory evidence.

**Credibility and Presumption of Innocence**

Credibility determinations shall not be made solely on the basis of a person’s status as a Complainant, Respondent, or witness. However, the credibility of those involved may be assessed and utilized in order to determine responsibility (i.e., whether discriminatory conduct occurred). Any finding of responsibility (i.e., a determination that a Respondent has engaged in

**Determination of Responsibility**

discriminatory conduct) comes only at the conclusion of this grievance procedure. A Respondent is presumed not responsible (i.e., entitled to a presumption that he/she has not engaged in discriminatory conduct) until an investigation has been completed and a determination made whether discriminatory conduct occurred. This presumption, however, does not prohibit the District from providing supportive measures to Complainants and Respondents during the investigation, which could include measures such as changing class schedules and increased supervision during an investigation. Nor does this presumption prevent the District from removing a Respondent on an emergency basis in accordance with the procedures provided herein for emergency removals.

**No Conflicts of Interest**

District officials who are directly involved in the grievance procedure or informal resolution process must not have any bias against the parties or Complainants or Respondents generally or a conflict of interest. These individuals shall have training related to their duties under this regulation, including training to determine whether they have a conflict of interest.

**Burden of Proof & Standard of Evidence**

The burden is on the District—not the parties—to conduct an investigation that gathers sufficient evidence to determine whether discrimination occurred. The standard of evidence the District will use to reach a determination regarding

responsibility shall be the preponderance of the evidence standard. Preponderance of the evidence means it is more probable than not that discriminatory conduct occurred. The District shall not use the standard of proof required in criminal cases (i.e., proof beyond a reasonable doubt.)

**Confidential Privileged Information**

No information protected by a legal privilege, such as the attorney-client privilege or the doctor-patient privilege, shall be considered in an investigation or turned over to another party during an investigation, unless the person holding that privilege has waived it. Individuals can opt to waive their own privileges.

**Emergency Removals**

The District may remove a Respondent from the District's education programs or activities on an emergency basis, if the District first undertakes an individualized safety and risk analysis and determines that an immediate threat, arising from the allegations of discrimination, to anyone's physical health or safety justifies removal. The District Official may request that a threat assessment in accordance with District Policy FFB and related procedures be conducted when making this safety and risk analysis. If a Respondent is removed, the District must provide the Respondent with notice and an opportunity to challenge the decision immediately following the removal. This provision does not override or modify the rights of individuals under the Individuals with Disabilities Education Act, Section 504, or the Americans with Disabilities Act.

If the Respondent is a District employee, the employee may be placed on administrative or other district-initiated leave during the investigation.

**Initial Assessment**

Upon receipt of a complaint, the District Official shall determine whether the allegations, if proven, would constitute prohibited conduct as defined by policy FFH. This determination shall be made within 2 business days of receipt of the reported conduct.

**Dismissal of Complaint**

The District Official may dismiss a complaint:

1. if the District is unable to identify the Respondent after taking reasonable steps to do so;
2. if the Complainant voluntarily withdraws the allegations, the District Official declines to initiate a complaint, and the District determines that without the Complainant's allegations the conduct alleged would not constitute discrimination even if proven; or
3. the District determines the conduct alleged in the complaint, even if proven, would not constitute discrimination under applicable law or policy.

Before dismissing a complaint, the District will make reasonable efforts to clarify the allegations with the Complainant. Such dismissal does not preclude the District taking disciplinary action under the Student Code of Conduct for non-discrimination-related misconduct.

If the District Official dismisses a complaint or any allegations in it, the Coordinator shall send written notice of the dismissal and the reasons to the parties at the same time. The parties have the right to appeal a dismissal decision within 10 business days after the decision is sent to the parties. Absent good cause, failure to timely appeal a dismissal shall result in closing of the complaint.

The District will not dismiss a complaint involving an alleged improper relationship between an employee and student without conducting an investigation.

If the District official determines that the allegations, if proven, would not constitute prohibited conduct as defined by this policy but might constitute bullying, the District official shall refer the complaint for consideration under FFI.

**Consolidation of Complaints**

The District may consolidate complaints when alleged discrimination arises out of the same facts or circumstances.

**Investigation Timeframe**

Absent extenuating circumstances, such as a request by a law enforcement or regulatory agency for the District to delay its investigation, an investigation under this grievance procedure should be completed within 10 business days.

**Delays**

In the event of delays in the investigation, all parties shall be notified of the reason for the delay, unless the District is directed by a law enforcement or regulatory agency not to disclose the reasoning.

If a law enforcement or regulatory agency notifies the District that a criminal or regulatory investigation has been initiated, the District shall confer with the agency to determine if the District investigation would impede the criminal or regulatory investigation. The District shall proceed with its investigation so long as it does not impede the ongoing criminal or regulatory investigation.

If the District has been asked to suspend its investigation during a law enforcement or regulatory agency investigation, the District Official shall communicate with the law enforcement or regulatory agency at least bimonthly until permission is granted to proceed with the investigation. Records of these communications shall be maintained by the District Official.

**Written Notice of the Allegations**

Upon initiation of this Discrimination Grievance Procedure, the District Official shall ensure that Complainants and Respondents receive written notice that includes the following:

- (1) A copy of FFH policy and this regulation;
- (2) Sufficient information available at the time to allow the parties to respond to the allegations, including the identities of the parties, the conduct alleged, and the date and location of the alleged incident(s), if known;
- (3) A statement that retaliation is prohibited;
- (4) A statement that the parties are entitled to an equal opportunity to access relevant evidence or an accurate description of this evidence;
- (5) If, in the course of an investigation, the District decides to investigate additional allegations of discrimination that are not included in this notice, the District must provide notice of the additional allegations to the parties; and
- (6) Information about the District's Informal Resolution Process.

**Informal Resolution Process**

In lieu of resolving a complaint through this Discrimination Grievance Procedure, the parties may instead elect to participate in an informal resolution process. The District may offer informal resolution in appropriate cases but not when the Respondent is an employee of the District. Informal resolution may be attempted only if each party enters the process completely voluntarily. The District shall never require or pressure any party to participate in an informal resolution process.

The District shall provide a specially trained employee who is free from conflicts of interest or bias to facilitate the informal resolution process. Before initiation of the informal resolution process, the District Official shall provide the parties with notice that includes the following: the allegations, the requirements for the information resolution process, a statement that any party has the right to withdraw from the process and resume the grievance procedure, a statement that agreement to a resolution at the conclusion of the process would preclude the parties from resuming the grievance procedures arising from the same allegations; potential terms that may be requested or offered in an informal resolution agreement (including notice that an agreement is binding only on the parties), and what information the District will maintain and how the District could disclose such information for use in the grievance procedure.

The District may abate the investigation for two weeks for the parties to engage in informal resolution or longer if by agreement of the parties.

**District Investigation**

The investigation should be conducted by a trained administrator, such as a principal, an assistant principal, a central administrator, or by a third party designated by the District, such as an attorney. When appropriate, the campus principal shall be involved in or informed of the investigation.

The District shall provide an equal opportunity for the parties to present evidence to be considered, including information from witnesses, as well as inculpatory or exculpatory evidence.

The District may restrict the ability of a party to discuss the allegations under investigation but not to the extent that a party is prohibited from talking to witnesses or consulting family members, confidential resources, or advisors. Parties have the right to choose to participate or not participate in any part of the grievance procedure. No party shall be retaliated against for choosing not to be part of the grievance procedure; however, employees must participate to assist with an investigation..

The investigation may consist of interviews with the person making the report, the Complainant, the Respondent, and others with knowledge of the circumstances surrounding the allegations. The investigation may also include analysis of other information or documents related to the allegations. All evidence collected as part of the investigation shall be maintained in accordance with the recording keeping section below.

**Relevant Evidence**

Evidence is relevant when it may aid a decisionmaker in determining whether the alleged discrimination occurred.

**Impermissible Evidence**

The following types of evidence are impermissible:

- i) Evidence that is protected under a privilege recognized by federal or state law, unless the privilege is voluntarily waived;

- ii) A party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional in connection with the provision of treatment to the party or witness unless the party or witness has provided voluntary, written consent; or
- iii) Evidence that relates to a Complainant's sexual interests or prior sexual conduct, unless the evidence is offered to prove that someone other than the Respondent committed the alleged conduct or to prove consent to alleged sex-based harassment.

**Reviewing Evidence**

Prior to the completion of the investigative report, the District shall provide the parties with an opportunity to view the relevant and permissible evidence. In the alternative, the District may provide a brief written summary of the evidence. The manner in which the evidence is made available to the parties will be up to the administrator investigating the matter. Unless it is impossible for the party to access the materials in person, parties will be required to view the evidence at a school facility rather than be provided with a virtual viewing or a copy. The parties are prohibited from copying records that contain personally identifiable information about other students. The parties shall have 2 business days after reviewing the evidence to submit a written response to the evidence; the investigator will consider any written responses about the evidence prior to completing the investigative report.

**Disability Accommodations**

The District shall ensure that individuals with disabilities who participate in this grievance procedure are appropriately accommodated, including with respect to the use of technology and reliance on visual, auditory, or written modes of communication.

In addition, when a student with a disability is the Complainant or Respondent in an investigation, the District Official shall meet with a member of that student's 504 committee or IEP team to determine how best to comply with the student's 504 plan or IEP in the implementation of supportive measures.

**Written Investigative Report – Determination of Responsibility**

After the investigation and review of all relevant evidence, the District Official who conducted the investigation shall make a determination of whether prohibited discriminatory conduct occurred and notify the parties in writing of the determination, including the rationale for the determination and the procedures and permissible bases for appeal. The investigator shall also determine whether any remedies are needed to restore or preserve equal access to the District's education programs or activities for the Complainant. Any remedies provided shall be listed in the investigative report.

**Remedies**

For sex discrimination investigations, the Title IX Coordinator shall coordinate the provision and implementation of any remedies contained in the investigative report. For disability discrimination investigations, the Section 504 Coordinator shall coordinate the provision and implementation of any remedies contained in the investigation report. For other types of investigations, the Superintendent's designee is responsible for coordinating and implementing any remedies.

The District's remedies should be designed to restore or preserve equal access to the District's education programs or activities. Disciplinary sanctions for students will range from a verbal warning to expulsion. Respondents who are employees may be subject to a range of discipline from a written warning up to and including termination of employment.

<b>Bullying</b>	If the results of an investigation indicate that bullying occurred (rather than discrimination) as defined by FFI, the District official shall refer to FFI for appropriate notice to parents and District action. The District official shall refer to FDB for transfer provisions if applicable.
<b>Improper Conduct</b>	If an investigation reveals improper conduct that does not rise to the level of prohibited conduct or bullying, the District may take disciplinary action in accordance with the Student Code of Conduct or other action reasonably calculated to address the conduct, if it has not already done so.
<b>Appeals Process</b>	A party who is dissatisfied with the outcome of an investigation may appeal by filing a written appeal on a form provided by the District within 10 business days of the receipt of the investigative report. Appeals can be made from four different points in the grievance procedures: 1) after dismissal of a complaint; 2) after an emergency removal of a Respondent; 3) after the implementation of supportive measures; and 4) after the issuance of the determination of responsibility in the investigative report.
<b>Grounds for Appeal</b>	The grounds for appeal at all phases are limited to: 1) a procedural irregularity that would change the outcome of the matter; 2) new evidence that was discovered that was not reasonably available at the time of the determination of responsibility or dismissal that would change the outcome of the matter; or 3) a conflict of interest on the part of a District Official directly involved in the grievance procedure that would change the outcome. Appeals on other bases will be denied.
<b>Appellate Decisionmaker</b>	<p>Appeals will be reviewed by a District administrator (Appellate Decisionmaker) who shall not be the same person who conducted the investigation and made the initial determination of responsibility. The Appellate Decisionmaker must have training on the District's obligation to address discrimination; the scope of conduct that constitute prohibited conduct; requirements for discrimination investigations and responses to discrimination; and how to serve impartially; the meaning and application of relevant evidence.</p> <p>The Appellate Decisionmaker will acknowledge receipt of any appeal in writing to all parties and provide the parties with an opportunity to submit an oral or written statement. Absent extenuating circumstances, the parties shall have 10 business days to submit a statement regarding the appeal. After considering any written appeal statements, the Appellate Decisionmaker shall send a written decision on the appeal to all parties.</p>
<b>Appeal to School Board</b>	The Appellate Decisionmaker's decision may be appealed to the Board of Trustees by filing a written appeal with the Superintendent within 10 business days of the date of the appellate decision. The appeal to the Board must state the applicable grounds for appeal, which are limited as described above, and the remedy sought by the party filing the appeal. All parties shall be notified in writing by the appropriate District Official if an appeal is filed. At a Board meeting after the appeal is received and for which proper notice can be posted, but in no event later than 1 month after an appeal is filed, the Board will review the record of the investigation and determination. Unless the Board determines that an oral presentation is needed, the Board will make a decision based on a review of the record. The Board may act to grant the appeal, deny the appeal, or take no action. If the Board takes no action, that

will have the effect of upholding the appellate decision. The Board's decision will be limited to the grounds for appeal as outlined in this regulation and FFH(LOCAL).

**Records Retention**

For reports of sex discrimination, the Title IX Coordinator shall ensure that copies of allegations, investigation reports, and related records regarding any alleged prohibited conduct are retained for a period of 7 years after conclusion of an investigation and all appeals. For reports of disability discrimination, the Section 504 Coordinator shall ensure that copies of allegations, investigation reports, and related records regarding any alleged prohibited conduct are retained for a period of 7 years after conclusion of an investigation and all appeals. For all other reports of discrimination, the Superintendent's designee shall ensure that copies of allegations, investigation reports, and related records regarding any alleged prohibited conduct are retained for a period of 7 years after conclusion of an investigation and all appeals.