

## Superintendent's Regulation 0100-R

### REPORTING COMPLAINTS OF DISCRIMINATION OR HARASSMENT

TSJ  
Approved Upon Superintendent's Initials

1/6/20  
Date

#### Complaint Procedures

Any individual who believes that a) s/he has been subjected to unlawful discrimination or harassment, or b) who is made aware of and/or witnesses a possible occurrence of unlawful discrimination or harassment, shall report such actions as soon as possible after the alleged incident occurs in order to enable the District to promptly and effectively investigate and resolve the complaint. To facilitate a thorough investigation, those discriminated against, targeted, and/or harassed, and/or any witnesses, should document the discrimination or harassment as soon as it occurs, providing as much detail as possible.

Reports of unlawful discrimination or harassment should be made by completing the District Complaint Form (see #0100F) and then filing that form with the Human Resources Department (HR), directed to the District's Compliance Officer, the Chief of Human Resources.

#### Employee Complaints or Student Complaints Against Employees:

Upon receipt of the complaint, the Chief of HR or his/her designee will refer it to the Department of Law for a determination as to whether the complaint states a tenable claim upon which relief can be granted, and advice on how to proceed accordingly, including an investigation of the complaint by the Office of Safety and Security. If the Chief of HR or his/her designee believes that irreparable harm may occur before the investigation can be completed, then s/he may recommend appropriate interim relief, including temporary reassignment of job duties pending completion of the investigation. The complainant, the accused, and any witnesses will be directed to refrain from talking about the investigation while it is pending.

Upon completion of the investigation, the Office of Safety and Security will provide the Chief of HR or his/her designee with a report of the investigation's factual findings. The Chief of HR or his/her designee, in consultation with the Department of Law, will determine what action, if any, is appropriate based on the outcome of the investigation and the applicable Board Policies, as well as state and federal laws and any applicable collective bargaining agreements. The Chief of HR or his/her designee will issue a written determination within 90 days of the receipt of the complaint, unless extenuating circumstances warrant an extension of the time period. Complainant(s) and respondent(s) will be informed in writing of the determination. The information regarding the written recommendations may remain confidential.

If a violation of Board Policy is substantiated in the case of a complaint against an employee, the respondent's supervisor will confer with the Chief of HR or his/her designee who, in consultation with the Department of Law, will determine what, if any, disciplinary action or corrective measures are appropriate.

It is the responsibility of the Chief of HR or his/her designee to ensure that any appropriate corrective action is implemented.

#### Student Complaints:

If the complaint is filed by a student against another student, the Chief of HR, will, except in unusual circumstances, determined in consultation with the Department of Law, refer the complaint to the student's Principal or his/her designee for investigation and appropriate action. If the Principal or his/her designee believes that irreparable harm may occur before the investigation can be completed, then s/he should implement appropriate interim relief pending completion of the investigation (e.g., minimizing or eliminating contact between complainant and accused). A Principal who investigates a student complaint will also determine what, if any, disciplinary or corrective actions are appropriate at the conclusion of the investigation according to applicable laws and Board Policy. If the complaining student is dissatisfied with the outcome of the Principal's or designee's investigation, s/he may seek review of the investigation and determination made by the Principal or designee by filing a District Complaint Form (0100F) with the Chief of HR within ten (10) school days, requesting such a review. The Chief of HR or his/her designee, following consultation with the Department of Law, will notify the building principal/supervisor, complainant, and accused in writing of the determination after review within ten school days of receipt of the 0100F District Complaint Form.

#### Limited Privacy Rights

As part of an investigation, the District has the right to search all school property and equipment, including District computers and email accounts. Buildings, associated grounds, desks, cabinets, lockers, computers, etc., provided for the use of students and staff that are the property of the District. The users thereof have no reasonable expectation of privacy with respect to these such locations or equipment or materials stored therein.

#### Retaliation Prohibited

Retaliation against any individual for filing a charge of unlawful discrimination and/or harassment, or reporting allegations of unlawful discrimination or harassment is illegal and prohibited. Regardless of the stage of the investigation, the complainant(s)/targeted individual(s) will be instructed by the applicable supervisor or principal and/or Chief of HR to immediately report to them if prohibited discriminatory or harassing behavior occurs again, and/or if the

accused or associates of said accused person(s) retaliate(s) against the originally targeted individual(s). Any witnesses who cooperate in the investigation of the complaint will be similarly instructed to report to the supervisor or principal and/or Chief of HR immediately as to any retaliatory action(s). The supervisor or principal and/or Chief of HR should also follow up with complainants and witnesses to verify that no retaliation or intimidation has occurred. Any employee or student who retaliates against another individual shall be subject to disciplinary action, as warranted, in accordance with legal guidelines, applicable contractual mandates and/or the Code of Conduct.

### **Penalties**

Based upon the result of the District's investigation into a report of unlawful discrimination, harassment or retaliation, immediate corrective action will be taken as appropriate:

Should the offending individual be a school employee, appropriate disciplinary measures will be imposed, up to and including termination of the offender's employment in accordance with contractual and legal guidelines.

Should the offending individual be a student, appropriate disciplinary measures will be imposed, up to and including permanent suspension in accordance with applicable law, regulations, and the Code of Conduct (Policy 1400);

Vendors/contractors and other individuals who do business with the District who have been found to violate the terms of the non-discrimination/anti-harassment policy and/or regulations by engaging in prohibited conduct will be subject to appropriate sanctions up to and including loss of District business. School volunteers who are found to have violated District policy and/or regulation in these regards may face termination of volunteer status;

Should the offending individual be a visitor, guest or other third party, then any corrective action deemed appropriate will be taken including, but not limited to, expulsion and/or banishment from the District premises and/or school activities/events under the control and supervision of the District.

The imposition of such disciplinary measures by the District does not preclude the appropriate filing of civil and/or criminal charges by the District as may be warranted.

### **Finding That Unlawful Discrimination or Harassment Did Not Occur**

At any level/stage of investigation of alleged discrimination, including harassment, if a determination is made that unlawful discrimination or harassment did not occur, the supervisor, principal or Chief of HR or his/her designee will so notify the complainant and the alleged offender

of this determination. Such a finding does not preclude the complainant from pursuing other legal recourse.

### **Knowingly Making False Accusations**

Employees and/or students who knowingly make false accusations of discrimination or harassment or knowingly provide false information in the course of investigation of a complaint may be subject to the same range of disciplinary actions enumerated above under **Penalties**. A complaint that is deemed untenable or unfounded will not be considered a false accusation, so long as the complaint was made in good faith.

### **Informal Complaint**

A. An employee or student who believes that s/he has been subjected to unlawful discrimination or harassment, or anyone who is aware of, has knowledge of, or witnesses an occurrence of unlawful discrimination or harassment may file an informal complaint by immediately notifying his/her immediate supervisor or principal. The supervisor or principal will assist the student or employee in documenting the complaint in writing.

If the building principal/immediate supervisor is the alleged offender, then the complainant may report the discrimination or harassment directly to the Compliance Officer, who is the Chief of Human Resources. The Chief of HR shall designate another school official who will take the place of the building principal/supervisor in all applicable phases of the complaint process.

B. Informal complaint procedures will generally take place at the building level and involve resolution steps short of a comprehensive investigation and/or formal hearing. For example, in attempting to resolve a complaint informally, the supervisor or Principal may separately interview the complainant and the accused, inform the accused of the complaint, question the accused about the alleged incidents, and review the District's policy and regulations regarding discrimination, including harassment.

C. If the supervisor or principal concludes that the complaint is founded, then s/he will direct the perpetrator to immediately cease the offensive conduct, and will impose any appropriate discipline. The supervisor or principal will follow the provisions of any applicable collective bargaining agreement(s) throughout the course of such investigation(s).

D. If his/her investigation reveals that the complaint is valid, the supervisor or principal will take such action as is necessary to remedy the situation stated in the complaint within fifteen (15) school/working days after receipt of the complaint..

Any action taken by the supervisor or principal with respect to a complaint will be documented in writing.

1. The supervisor or principal may consult with or seek the assistance of the Chief of HR and the Department of Law in resolving the complaint.

2. If the supervisor or principal can not resolve the issues raised in the complaint within fifteen (15) school/working days, s/he shall notify all material parties of that fact before the expiration of the fifteen (15) school/working day period and s/he shall further indicate the approximate date on which his/her determination will be made..

3. If the complaint is not resolved at the informal stage to the satisfaction of the parties, s/he/they may, individually, within ten (10) school/working days of the decision of the supervisor or principal ask that the Chief of HR or his/her designee review the allegations and informal-level decision. The District complaint form [O100F] should be utilized for this purpose. The completed complaint form may be given to the principal or supervisor for forwarding, or provided directly to the Chief of HR.

4. The Chief of HR or his/her designee will review the file and, if necessary, conduct an additional investigation in accordance with federal or state laws and regulations and any applicable collective bargaining agreement(s).

5. If the review by the Chief of HR results in a finding different from the informal-level finding, after consultation with the Department of Law, the Chief of HR or his/her designee, will notify the building principal/supervisor, complainant, and accused of the change in finding and any recommendations. If unlawful discrimination or harassment is found to have occurred, prompt disciplinary action in accordance with the terms of District policy and regulations, federal and state law and regulations, and/or the applicable collective bargaining agreement, will be imposed, together with such remedial measures as are appropriate.

### **Confidentiality**

The District will keep complaints and discussions as confidential as possible; however, the need for confidentiality must be balanced against the obligation to cooperate fully with lawful investigations, to provide due process to the accused, and/or to take necessary action to conciliate, investigate or resolve the complaint. Information will be disclosed only to the extent necessary to effectively investigate the complaint, pursue corrective action and/or as mandated by law or court order.

A written record of the investigation and any action taken will be established and maintained. Additionally, parents of students subjected to possible discrimination, including harassment, and/or students filing a discrimination and/or harassment complaint, as well as parents of accused students, may be notified by the appropriate administrator of such occurrence and/or allegations as warranted and in accordance with legal guidelines, and the Code of Conduct.

If the complainant attempts to withdraw a complaint, the Chief of HR or designee will

ensure that the withdrawal is not caused by retaliation and then document the complainant's reasons and ask the complainant to sign the documentation.

Subject to all applicable laws and collective bargaining agreements, the following guidelines shall be utilized in the investigation and resolution of discrimination complaints:

### **Appeal/Redress**

#### **Accused**

The appeal process for student discipline which is contained in Board Policy 1400, The Code of Conduct, shall apply to any student who is disciplined based on a finding that s/he violated Board Policy 0100 or 0110.

The grievance processes contained in the collective bargaining agreement between an employee's union and the District, or, if applicable the Rules and Regulations of the Superintendent's Employees' Group, shall apply to any employee who is disciplined based on a finding that s/he violated Board Policy 0100 or 0100.

#### **Complainant**

The filing of a complaint, and/or the rendering of a decision regarding the complaint shall in no way prohibit, prevent or limit the complainant from taking appropriate legal action in accordance with state and federal law. The parties may, individually, while the investigation is on-going at the District, contact a personal attorney (at their own expense) or other advocacy groups or investigative agencies, including, but not limited to, any of the following:

New York State Commissioner of Education  
(pursuant to Education Law §§310 and 306)

Education Law §310 provides that persons considering themselves aggrieved by an action taken at a school district meeting or by school authorities may appeal to the Commissioner of Education for a review of such action. In addition, Education Law §306 allows the Commissioner of Education to remove a trustee, member of a board of education and certain other school officers for willful misconduct or neglect of duty.

<http://www.counsel.nysed.gov/appeals/>

Office for Civil Rights  
U.S. Department of Education  
32 Old Slip, 26th floor  
New York, NY 10005-2500

Phone: 646-428-3900 / 800-421-3481  
Fax: 646-428-3843  
TDD: 877-521-2172  
E-mail: [OCR.NewYork@ed.gov](mailto:OCR.NewYork@ed.gov)

<http://www2.ed.gov/about/offices/list/ocr/docs/howto.html>

New York Civil Liberties Union  
125 Broad Street, 19th Floor  
New York, NY 10004

Phone: 212-607-3300  
Fax: 212-607-3318

<http://www.nyclu.org>

New York State Division of Human Rights  
259 Monroe Avenue, Suite 308  
Rochester, New York 14607  
(585) 238-8250

<http://www.dhr.ny.gov/>

Equal Opportunity Employment Commission  
Buffalo Local Office  
6 Fountain Plaza, Suite 350  
Buffalo, New York 14202  
(800) 669-4000

<http://www.eeoc.gov>

### **Limitations**

Nothing in this Regulation shall be construed as creating a cause of action. Neither the proscriptions of, nor actions taken pursuant to this Regulation shall on that basis estop the Board and/or its designee from fully arguing for or against the existence of any fact and the scope or meaning of any law in any forum.

**Rochester City School District**  
**Complaint of Alleged Discrimination Form**  
**[A Complaint Should be Filed Within 30 Days of the Event Which is the Subject]**  
 (please type or print clearly and complete all sections applicable to your concern)

Date submitted:

**SECTION I**

<b>Name of Complainant (print)</b>	<b>Signature of Complainant</b>
<b>Complainant's Home Address</b>	<b>Complainant's Phone Number(s)</b>
<b>Street Address</b>	Home: (    )
<b>City/Town, State</b>	Cell: (    )
<b>Zip Code</b>	Work: (    )
	Email:
<b>Complainant's Role(s) in the School (check all that apply)</b>	
<input type="checkbox"/> Student Grade: _____  Age: _____	<input type="checkbox"/> District employee Title: _____ <input type="checkbox"/> Parent or guardian  <input type="checkbox"/> Community member or other

**SECTION II**

<b>School Building Name/ Work Location</b>	<b>School Principal's Name/ Department Head</b>

**SECTION III**

**The Discrimination or Harassment is Based on Your: (check all that apply)**

- Race    Color    Creed    Religion    National Origin    Ethnic Group  
 Sex (excludes sexual harassment and sexual violence)    Sexual Orientation (the term "sexual orientation" means heterosexuality, homosexuality, bisexuality or asexuality)    Political Affiliation    Age    Retaliation  
 Other (specify): \_\_\_\_\_

**EMPLOYEES**

- Marital Status    Military Status    Veteran Status    Domestic Violence Victim Status  
 Arrest or Conviction Record    Genetic Information

**STUDENTS**

- Religious Practice    Gender Identity    Gender Expression    Weight



## SECTION IV

**Location of Incident(s) / Condition Affecting Equal Access:** (Attach additional pages, if necessary)

**Date(s) of Alleged Incident(s) of Discrimination or Harassment:**

Name of any person(s) committing action(s) against complainant, if known:

Name(s):

Job or role (if known):

Description of complaint or incident(s):

Witnesses, if any, or others who should be contacted with knowledge pertinent to this investigation (include contact information for each person): (Attach additional pages, if necessary)

Name(s):

Contact Information:

Others you may have discussed this complaint or incident with, including contact information for each:

Name(s):

Contact Information:

If tangible evidence exists, please describe:

## SECTION V

Has this complaint or incident been previously reported?

No

Yes      Date:

Reported to (Name, Title/Job):

If yes, describe the outcome or resolution:

## SECTION VI

Remedy, outcome or resolution sought by complainant:

Once completed, please forward this form to the Compliance Officer - Chief of Human Capital, 131 West Broad Street, Rochester, New York 14614 or [TitleIXComplianceOfficer@RCSDK12.org](mailto:TitleIXComplianceOfficer@RCSDK12.org); to your Principal, Department Head, or Dignity Act Coordinator