

FOR YOUR INFORMATION

LOS ANGELES UNIFIED SCHOOL DISTRICT
Associate Superintendent, Human Resources

DISTRIBUTION: All Schools and Offices

SUBJECT: BULLETIN NO. S-27
EMPLOYMENT DISCRIMINATION COMPLAINT
PROCEDURE

DATE: December 3, 2001

DIVISION: Human Resources

APPROVED: IRENE H. YAMAHARA, Associate Superintendent

ROUTING

Local District School
Support Directors
Administrators
School Staff
All Employees

For further information, please call Betty Moore, Supervising EEO Investigator, Equal Opportunity Section at (213) 633-7173.

This revision replaces Office of Affirmative Action/Equal Opportunity Section Bulletin No. A-1 of the same subject issued March 15, 1995. This bulletin reflects current state and federal requirements and provides procedures for investigating employee complaints of employment discrimination.

I. BACKGROUND

Since 1975, the District has had an employee discrimination policy and complaint procedure. This procedure provides a fair and equitable internal process for resolving employee complaints of alleged employment discrimination. The District reaffirms its commitment to the policy of Equal Employment Opportunity (EEO) through the implementation of this revised complaint procedure. The responsibility for implementation of this procedure is assigned to the Equal Opportunity Section (EOS).

II. POLICY

Los Angeles Unified School District is committed to providing a working and learning environment free of harassment and discrimination. District policy prohibits harassment or discrimination based on race, sex, religion, color, national origin, ancestry, physical or mental disability, medical condition (cancer-related), pregnancy, childbirth or related medical condition, status as Vietnam-era veteran or special disabled veteran, marital status, age (40 and above), sexual orientation or any other basis protected by federal, state or local law or ordinance or regulation. All such harassment is unlawful. The District prohibits harassment by any employee of the District, including supervisors, co-workers, and parents or by persons doing business with or for the District.

The District prohibits retaliation against anyone who files a complaint or any participant in the complaint investigation process.

III. DEFINITIONS AND PROHIBITED ACTS

- A. **Employment Discrimination Complaint:** An employment discrimination complaint must be based upon an alleged violation of federal, state, or local EEO law or District EEO policy. Grounds for filing this type of complaint for any alleged discrimination or harassment shall be based on one or more of the following: race, color, religion, sex, national origin, ancestry, marital status, pregnancy, age (40 and above), disability, medical condition (cancer-related), sexual orientation, political belief or affiliation, status as Vietnam-era veteran or special disabled veteran, or retaliation for complaining or participating in an inquiry about such conduct. (It does not include allegations based upon union affiliation/activities.)

The complaint must be filed within six months of the alleged employment discrimination. In order to ensure a fair process and prompt resolution, the "Employment Discrimination Complaint Form" (EOS Form 001) should be used to clearly record information about the complainant, the nature of the complaint, and all pertinent information related to the complaint. This form must then be submitted to the EOS.

- B. **Sexual Harassment:**

- Sexual harassment of or by school employees or students is a form of gender discrimination and is, therefore, prohibited.
- Schools must respond to allegations of sexual harassment once they are reported.
- See Associate Superintendent, Human Resources Bulletin No. S-26, dated December 3, 2001, "Sexual Harassment Policy - Employees," for detailed information regarding sexual harassment.

- C. **Harassment Based On:**

Race, Color, Sex, Religion, National Origin, Ancestry, Age (40 and above), Sexual Orientation, Marital Status, Pregnancy, Physical or Mental Disability, Medical Condition (cancer-related), Political Belief or Affiliation, and Status as Vietnam-era Veteran or Special Disabled Veteran: Unwelcome statements, name-calling or other verbal or physical conduct based upon the above-referenced categories, is prohibited if or when any of the following occurs:

- Submission to such conduct is made a term or condition of an individual's continued employment, promotion, or other condition of employment.
- Submission to or rejection of such conduct is used as a basis for employment decisions affecting an employee or job applicant.
- Such conduct is intended to interfere or results in interference with an employee's work performance, or creates an intimidating, hostile, or offensive work environment.

- D. Physical Harassment (Non-sexual): Prohibited actions include, but are not limited to:
1. Display of signs, pictures, cartoons, written statements or other material that denigrates or discriminates against any employee(s) based on one's race, sex, color, religion, national origin, ancestry, age (40 and above), sexual orientation, marital status, pregnancy, physical or mental disability, medical condition (cancer-related) or status as Vietnam-era veteran or special disabled veteran.
 2. General harassment, including pushing, shoving, or other intentional act perpetrated in whole, or in part, because of the employee's race, color, sex, religion, national origin, ancestry, age (40 and above), sexual orientation, marital status, pregnancy, physical or mental disability, medical condition (cancer-related) or status as Vietnam-era veteran or special disabled veteran.
- E. Complainant: A complainant is an employee of the District who files a written complaint alleging a violation of the District's EEO policy or existing EEO law.
- F. Employee: Employee refers to any District employee. This term does not include independent contractors, or other persons serving under personal services contracts with the District. Applicants for employment with the District have the right to file complaints with the federal or state equal employment opportunity enforcement agencies (Federal -- the Equal Employment Opportunity Commission (EEOC) or State -- the Department of Fair Employment and Housing (DFEH)). Applicants applying for District classified positions have an examination appeal right under the Personnel Commission rules.
- G. Respondent: Respondent refers to the individual (e.g., the supervisor, co-worker, non-employee third parties, including parents or vendors) alleged to have committed acts in violation of the law or District policy in reference to employment discrimination.
- H. Equal Opportunity Section (EOS): The EOS is responsible for the administration of the District's equal opportunity policies and programs, including the investigation of employment discrimination complaints that have been filed with a state or federal agency, or those complaints filed internally.

With regard to District employment practices under Section 504 of the Rehabilitation Act of 1973 and applicable authority under the Americans with Disabilities Act, an employee or an applicant for employment requiring reasonable accommodation shall submit an application for reasonable accommodation to the Personnel Services for the Disabled Unit in accordance with Associate Superintendent, Human Resources Bulletin No. S-6 (Rev.), dated August 15, 2001, Reasonable Accommodation for Individuals with Disabilities.

- I. Investigation: Investigation consists of an official inquiry and systematic examination of the allegation(s) in order to make a determination as to the merits of the complaint. The EOS has the role of fact finder and is not the representative of any of the individuals involved in the complaint.

Note that the investigation is not governed by the strict rules of evidence, cross-examination, etc. Its purpose is to provide a fair and expeditious administrative review of complaints.

The investigation procedures include:

- An evaluation of the allegations of employment discrimination as presented in the written complaint. The EOS may, upon good cause, dismiss the complaint at this step (e.g., bargaining unit contract violation).
- Interviewing both the Complainant and Respondent.
- Interviewing relevant witnesses to the alleged discriminatory action.
- Examination of any relevant evidence.
- Informing all concerned that the matter is confidential and that no retaliation shall be tolerated.

- J. Days: Shall mean calendar days unless otherwise specified.

- K. Appeal: Shall mean a written request to review or re-investigate the complaint.

IV. CONFIDENTIALITY AND NON-RETALIATION IN THE COMPLAINT PROCEDURE

Complaints of discrimination shall be handled in a confidential manner, respecting the privacy of all parties to the fullest extent possible. Every attempt shall be made to limit the distribution of information to those persons with a need to know within the confines of the District's reporting procedures and the investigative process. The District will not tolerate retaliation in any form against a complainant for the filing of a complaint, for opposing District actions, or reporting or threatening to report such actions, or for participating in an investigation of District actions.

V. UNDERSTANDING HARASSMENT BASED ON RACE, SEX, RELIGION, NATIONAL ORIGIN, ANCESTRY, PREGNANCY, MARITAL STATUS, AGE (40 AND ABOVE), OR STATUS AS VIETNAM-ERA VETERAN OR SPECIAL DISABLED VETERAN, DISABILITY, OR SEXUAL ORIENTATION

As a general rule, employees should be referred to as individuals, rather than in reference to the individual's membership in a group based upon race, sex, religion, national origin, ancestry, age (40 and above), marital status, pregnancy, status as Vietnam-era veteran or special disabled veteran, physical or mental disability, medical condition (cancer-related) or sexual orientation.

Even complimentary statements that refer to these groups are demeaning because they fail to recognize the person as an individual.

References to the above-identified categories are normally not job-related, therefore there is no valid reason to make such references in most business situations.

Although an individual may be proud of his or her affiliation with the above-referenced categories, and the individual may refer to his or her own membership in a group, others should refrain from making such references.

Additional effort should be made to avoid derogatory references, even if the individual or group members have made such references about themselves. Group references and derogatory language employed against one's self or another member of the same group are usually not demeaning, but may be demeaning or discriminatory if a member of another group uses the same terminology.

In sum, each employee has the right to be considered an individual; thus each employee has the duty to treat others as individuals.

VI. OTHER REQUIREMENTS

All District offices and schools are required to post in a "conspicuous" location where notices to applicants, employees, and parent volunteers customarily are posted.

The federal EEOC poster titled "**Equal Employment Opportunity Is The Law**" and the State DFEH poster titled "**Harassment or Discrimination in Employment**" must be posted in English and Spanish. The posters summarize protections against discrimination on the basis of race, color, religion, national origin, age (40 and above), medical condition (cancer/genetic characteristics), disability (mental, physical, and pregnancy-related) including HIV and AIDS, denial of pregnancy disability leave or reasonable accommodation, sex, sexual orientation, marital status, and status as Vietnam-era veteran or special disabled veteran.

VII. ROLE OF THE EQUAL OPPORTUNITY SECTION REGARDING DISCRIMINATION AND HARASSMENT

The Equal Opportunity Section is the office designated by the District to investigate formally-filed employee discrimination/sexual harassment complaints.

The Equal Opportunity Section is also responsible for conducting training on the prevention of sexual harassment. Such training covers the legal obligations of the District as an employer to provide a workplace free from sexual harassment; reviews methods that may be used to recognize and resolve sexual harassment situations; and reiterates the confidentiality and prohibition from retaliation requirements to be applied in addressing complaints.

VIII. OBLIGATION OF EACH DISTRICT EMPLOYEE

Each District employee has the obligation to:

- Cooperate with the District's efforts to eliminate and prevent discrimination/sexual harassment by maintaining a working environment free from such unlawful discrimination. This includes ensuring that each individual's personal conduct displays no discrimination or harassment towards another District employee.
- Cooperate in the investigation of employee discrimination/sexual harassment complaints which allege discrimination by providing any information that he/she might personally possess concerning the discrimination/sexual harassment complaint under investigation.
- Guard against any actions that would be considered retaliatory against another District employee who has filed a discrimination/sexual harassment complaint or who is participating in an investigation of a discrimination/sexual harassment complaint.

IX. RESPONDING TO COMPLAINTS

A. Informal Process:

An employee may discuss his/her complaint with the school's administrator or designee in order to attempt to resolve his/her complaint without delay. Informal resolutions should be encouraged. (However, the informal process shall be bypassed if the complaint names a school-based administrator as a respondent or if the complaint alleges school-wide or institutional discriminatory practices. In such cases, the complainant may file directly with the Equal Opportunity Section to initiate a formal complaint.) Listed below are general steps that may be followed:

1. Take seriously and investigate promptly any allegations made.
2. Interview and counsel the complainant and discuss options available to resolve the situation.
3. If possible request a factual written statement of the complaint.
4. If the situation merits it, determine what type of action will resolve the situation. The proposed resolution may be educational rather than punitive.
5. Follow up and verify with the complainant that the action taken did remedy the complaint.

6. Investigation Procedure/Time Requirements

The District encourages, but does not require that employees who feel that they are treated in violation of this policy, first attempt to inform his/her supervisor of the alleged discriminatory action or harassment, and to allow that supervisor the opportunity to informally resolve the matter at the work location within 30 days. If the matter cannot be resolved within 30 days at the work location or if the supervisor is the alleged discriminator, the complainant should proceed to the formal processing of the complaint according to the steps outlined in this bulletin.

It is the desire of the District to attempt to resolve all complaints informally. The following procedures establish an "Informal" resolution process followed by a "Formal" one.

- B. Formal Process: The "Employment Discrimination Complaint Form" should be used to request that the EOS conduct an internal investigation concerning discrimination in the workplace. (See EOS Form 001)

The EOS shall notify the complainant of its acceptance or rejection of the complaint within ten (10) days of receipt of the complaint. If accepted, the complaint shall be handled as a Formal complaint.

1. Investigation: Investigation consist of an official inquiry and systematic examination of the allegation(s) in order to make a determination as to the merits of the complaint. The EOS has the role of fact finder and is not the representative of any of the individuals involved in the complaint.

Note that the investigation is not governed by the strict rules of evidence, cross-examination, etc. Its purpose is to provide a fair and expeditious administrative review of complaints.

2. Scope and Timeliness

The scope of the investigation shall be limited to the allegations cited in the complaint, which shall be construed to effectuate the purposes of the District's anti-discrimination policy. Unless of a continuing nature, all formal complaints must be received by the EOS in writing, within six months of the alleged instance of employment discrimination.

3. Intake - Screening

Upon receipt of the Employment Discrimination Complaint Form, or a like document, the EOS shall review the complaint to determine the initial timeliness, validity and thoroughness of the information submitted in the complaint. Untimely complaints shall be closed. The EOS shall inform the complainant in writing of the acceptance of the complaint for investigation within ten (10) working days of its receipt. The complainant shall be promptly notified if further information or documentation is required to support the complaint.

4. Settlement During Investigation

If, during the investigation of the complaint, a settlement is reached between District management and the complainant, a Settlement Agreement shall be reduced to writing and approved by the EOS Director, before the complaint shall be considered closed. The Settlement Agreement must be signed by both the complainant and the appropriate District management official.

5. Withdrawal of Complaint

The complaint, or any part thereof, may be withdrawn by the complainant at any time during the investigation. The request for withdrawal must be submitted in writing to the EOS by the complainant.

Please note, regardless of the withdrawal of the complaint, if the District believes the conduct is ongoing, the District will assume the complaint and continue the investigation, as otherwise required by law.

6. Closure of Investigation

In the event that the complainant files a formal charge of discrimination with the Department of Fair Employment and Housing (DFEH) or the Equal Employment Opportunity Commission (EEOC), the District shall close the internal investigation. The parties and appropriate supervisory officials shall be notified of the closure of the internal investigation following receipt of an external agency complaint. The complaint and the investigation may also be closed by the EOS on the basis of an uncooperative complainant. "Uncooperative" in this context includes, but is not limited to, failure to respond, to keep appointments, to cooperate with the EOS investigator, or to provide requested documentation (if available).

7. Collective Bargaining Agreement Jurisdiction

This complaint procedure shall not apply if the allegations of the complaint fall within the purview of matters covered by a collective bargaining agreement or if the complainant has filed a grievance regarding the same issue with his/her bargaining unit.

8. Representation

The complainant and/or the respondent may at any point in the procedure be accompanied and represented by another individual. This normally includes representation by the relevant union. The complainant or respondent shall not have an attorney as his/her representative during the investigation process.

9. Non-Retaliation

It is unlawful to discipline, retaliate, harass, or otherwise discriminate against an employee because (s)he has opposed unlawful employment practices or because (s)he has filed an internal employment discrimination complaint, testified or assisted in an investigation pursuant to this complaint procedure.

10. Release Time for Employees

Parties involved in the complaint, as well as any witness, may be allowed release time (without loss of pay) to attend meetings or interviews held during assigned duty time with EOS personnel investigating the complaint.

11. Investigative Findings

- a. "Unfounded Finding" Means that the EOS has determined that the allegations in the complaint are false or, inherently improbable; or that no evidence was provided through witnesses to support the claim; or that the allegations do not constitute employment discrimination or "sexual harassment." An "Unfounded Finding" shall be issued in writing to the complainant, respondent and the appropriate site administrator, district superintendent, or unit division head.
- b. "Substantiated Finding" Means that the EOS has determined that the allegations in the complaint are based upon credible evidence to constitute sexual harassment or other form of employment discrimination. A "Substantiated Finding" shall be issued in writing to the complainant, the respondent and the appropriate site administrator, district superintendent, branch or division head, office of Staff Relations, Employee Services section, and shall result in discipline.
- c. "Substantiated Finding - Not Creating a Hostile Environment" Means that the EOS has determined that the allegations are based upon credible evidence to constitute inappropriate behavior, but not rising to the level of creating a hostile, intimidating environment. A "Substantiated Finding - Not Creating a Hostile Environment" shall result in administrative action. The complainant, respondent and the appropriate site administrator, district superintendent, branch or division head, office of Staff Relations and Employee Services section shall be notified in writing of the final action when a "Substantiated Finding - Not Creating a Hostile Environment" is issued.

12. Employee Discipline

In cases where "Substantiated Finding," item (b), above, is the final determination, appropriate disciplinary action(s) shall be taken and a copy of the finding shall be placed in the personnel folder of the respondent, as and when appropriate.

In cases where "Substantiated Finding - Not Creating a Hostile Environment," item (c), above, is the final result, appropriate administrative action(s) shall be taken.

C. Appeals

Either the complainant or the respondent has the right to appeal the decision of the Equal Opportunity Section by filing an appeal with the local superintendent or division administrator. The appeal must be in writing and received by the local superintendent, or division administrator or such other office that may be designated by the Superintendent, within ten (10) working days of the complainant's and/or respondent's receipt of the findings issued by the EOS.

The acceptable issues for appeal are: bias, new evidence that was not previously considered; or failure to follow procedures. The appeal need not be an evidentiary hearing. The parties have no right to legal or other representation at appeals.

The designee shall review the matter and issue a written decision to the parties concerned. The decision of the reviewer shall be the final response of the District.

D. Further Options

1. Civil Law Remedies. Pursuant to the state law, persons who have filed a complaint should also be advised that civil law remedies may also be available to them.
2. State and Federal Agencies: You have the right to file your complaint with the federal or state equal employment enforcement agencies:

Federal - Equal Employment Opportunity Commission (EEOC)
255 East Temple Street, Fourth Floor
Los Angeles, CA 90012
(213) 894-1000 or (800) 669-4000

State - Department of Fair Employment & Housing (DFEH)
611 West Sixth Street, Suite 1500
Los Angeles, CA 90017
(213) 439-6799

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LOS ANGELES UNIFIED SCHOOL DISTRICT
Associate Superintendent, Human Resources

BULLETIN NO. S-27
December 3, 2001

ATTACHMENT A

EMPLOYMENT DISCRIMINATION COMPLAINT FORM
INTERNAL COMPLAINT SYSTEM

CASE NO. _____

1. Name _____ Telephone No. _____

Home Address _____

City & State _____ Zip Code _____

2. Job Title _____ Employee No. _____

Work Location _____ Telephone No. _____

3. Date of the alleged discriminatory act: _____
(Internal Complaint System requirement: Above date must be within six months of date you file this complaint.)

4. Check and specify the basis upon which your complaint is being filed.
(Example: __ National Origin Hispanic)

- | | |
|--|--|
| <input type="checkbox"/> Race _____ | <input type="checkbox"/> Color |
| <input type="checkbox"/> National Origin _____ | <input type="checkbox"/> Sex |
| <input type="checkbox"/> Age _____ | <input type="checkbox"/> Disability |
| <input type="checkbox"/> Religion _____ | <input type="checkbox"/> Political Belief or Affiliation |
| <input type="checkbox"/> Medical Condition (cancer-related) | <input type="checkbox"/> Ancestry |
| <input type="checkbox"/> Status as Vietnam-era or special disabled veteran | <input type="checkbox"/> Sexual Orientation |
| | <input type="checkbox"/> Marital Status |

5. The alleged employment discrimination occurred in connection with:

<input type="checkbox"/> Assignment	<input type="checkbox"/> Harassment	<input type="checkbox"/> Sexual Harassment
<input type="checkbox"/> Apprenticeship	<input type="checkbox"/> Retaliation	<input type="checkbox"/> Terms and Conditions
<input type="checkbox"/> Benefits	<input type="checkbox"/> Lay Off	<input type="checkbox"/> Training Opportunity
<input type="checkbox"/> Demotion	<input type="checkbox"/> Promotion	<input type="checkbox"/> Transfer
<input type="checkbox"/> Discharge	<input type="checkbox"/> Disciplinary Action	<input type="checkbox"/> Reasonable Accommodation
<input type="checkbox"/> Wages	<input type="checkbox"/> Other (Specify) _____	

6. Name(s), Title(s), Work Location(s) and Telephone Number(s) of the accused:

Name Title Location Telephone No.

Name Title Location Telephone No.

- 7. Present the facts of the alleged discriminatory employment practice. (FOR EXAMPLE: How were you discriminated against? Describe completely the reason(s) for your complaint. You must include the date(s) and relevant circumstances underlying your allegation. Give the names of all persons involved.)

Please add sheets if necessary

- 8. Do you have witnesses that can corroborate your allegations? Yes No If yes, please identify:

- 9. Please supply supporting evidence that you may have to document the basis for the alleged discriminatory practice that you are claiming, e.g., copies of any written material that you believe support your allegation.

I have attached supporting evidence: Yes No

- 10. Have you filed any other claim, complaint or grievance related to this matter? Yes No
If Yes, please describe:

- 11. What remedy are you seeking to resolve your complaint?

I understand that the filing of this complaint does not protect any other rights that I may have as an employee of the District or as covered by a collective bargaining agreement.

Complainant's Signature

Date Filed

Please return this form to: Equal Opportunity Section
355 South Grand Avenue, 14th Floor, Suite 1440, Los Angeles, CA 90071
P.O. Box 512298, Los Angeles, CA 90051-0298
(213) 633-7735
(213) 633-7152 (Fax)