

EMPLOYEE WELFARE
FREEDOM FROM DISCRIMINATION, HARASSMENT, AND RETALIATION

DIA
(LOCAL)

Note: This policy addresses discrimination, harassment, and retaliation involving District employees. ~~In this policy, the term “employees” includes former employees and applicants for employment.~~ For discrimination, harassment, and retaliation involving students, see FFH. For reporting requirements related to child abuse and neglect, see FFG.

DEFINITIONS

SOLELY FOR PURPOSES OF THIS POLICY, THE TERM “EMPLOYEES” INCLUDES FORMER EMPLOYEES, APPLICANTS FOR EMPLOYMENT, AND UNPAID INTERNS.

STATEMENT OF
NONDISCRIMINATION

The District condemns and prohibits discrimination, including harassment, against any employee on the basis of race, color, age, sex, religion, national origin, marital status, citizenship, military status, disability, genetic information, gender stereotyping and perceived sexuality, **PERCEIVED OR ACTUAL SEXUAL ORIENTATION, GENDER IDENTITY OR GENDER EXPRESSION**, or any other basis prohibited by law. Retaliation against anyone involved in the complaint process is a violation of District policy.

DISCRIMINATION

Discrimination against an employee is defined as conduct directed at an employee on the basis of race, color, age, sex, religion, national origin, marital status, citizenship, military status, disability, genetic information, gender stereotyping and perceived sexuality, **PERCEIVED OR ACTUAL SEXUAL ORIENTATION, GENDER IDENTITY OR GENDER EXPRESSION**, or any other basis prohibited by law, that adversely affects the employee’s employment.

HARASSMENT

Prohibited harassment of an employee is defined as physical, verbal, or nonverbal conduct based on an employee’s race, color, age, sex, religion, national origin, marital status, citizenship, military status, disability, genetic information, gender stereotyping and perceived sexuality, or any other basis prohibited by law, when the conduct is so severe, persistent, or pervasive that the conduct:

1. Has the purpose or effect of unreasonably interfering with the employee’s work performance;
2. Creates an intimidating, threatening, hostile, or offensive work environment; or
3. Otherwise adversely affects the employee’s performance, environment, or employment opportunities.

EXAMPLES

Examples of prohibited harassment may include:

1. Verbal harassment such as offensive or derogatory language directed at another person’s religious beliefs or practices, ac-

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cent, skin color, gender identity, or need for workplace accommodation; offensive jokes; name-calling; slurs; or rumors; or

2. Physical harassment such as assault or aggression; threatening or intimidating conduct; impeding or blocking movement or any physical interference with normal work or movement; other types of aggressive conduct such as theft or damage to property; or visual forms of harassment such as derogatory drawings, cartoons, or posters; display of graffiti or printed material promoting racial, ethnic, or other stereotypes.

SEXUAL HARASSMENT

Sexual harassment is a form of sex discrimination defined as unwelcome sexual advances; requests for sexual favors; sexually motivated physical, verbal, or nonverbal conduct; or other conduct or communication of a sexual nature when:

1. Submission to such conduct is made a term or condition of employment;
2. Submission to or rejection of such conduct is the basis for an employment action affecting the employee; or
3. The conduct is so severe, persistent, or pervasive that it has the purpose or effect of unreasonably interfering with the employee's work performance or creates an intimidating, threatening, hostile, or offensive work environment.

EXAMPLES

Examples of sexual harassment may include sexual advances; touching intimate body parts; coercing or forcing a sexual act on another; jokes or conversations of a sexual nature; and other sexually motivated conduct, communication, or contact.

RETALIATION

The District prohibits retaliation against an employee who makes a claim alleging to have experienced discrimination or harassment, or another employee who, in good faith, makes a report, serves as a witness, or otherwise participates in an investigation.

An employee who intentionally makes a false claim, offers false statements, or refuses to cooperate with a District investigation regarding harassment or discrimination is subject to appropriate discipline.

EXAMPLES

Examples of retaliation may include termination, refusal to hire, demotion, and denial of promotion. Retaliation may also include threats, unjustified negative evaluations, unjustified negative references, or increased surveillance.

PROHIBITED
CONDUCT

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In this policy, the term "prohibited conduct" includes discrimination, harassment, and retaliation as defined by this policy, even if the behavior does not rise to the level of unlawful conduct.

WORKPLACE
BULLYING

The District considers workplace bullying to be unacceptable and shall not tolerate it under any circumstances.

Workplace bullying shall be defined as engaging in written or verbal expression, expression through electronic means, or physical conduct that occurs in the workplace that:

1. Has the effect or will have the effect of physically harming another employee, damaging the employee's property, or placing the employee in reasonable fear of harm to the employee's person or of damage to the employee's property;
2. Is sufficiently severe, persistent, and pervasive that the action or threat creates an intimidating, threatening, or abusive work environment for the employee;
3. Exploits an imbalance of power between the employee perpetrator and the employee victim through written or verbal expression or physical conduct; and
4. Interferes with the victim's employment or substantially disrupts the operation of the work location.

Workplace bullying shall not include the legitimate exercise of employee management, including task assignment, employee coaching, and work-related employee discipline.

REPORTING
PROCEDURES

An employee who believes that he or she has experienced prohibited conduct or believes that another employee has experienced prohibited conduct should immediately report the alleged acts. The employee may report the alleged acts to his or her supervisor or campus principal.

Alternatively, the employee may report the alleged acts to one of the District officials below.

DEFINITION
~~OF DEFINITION OF~~
DISTRICT OFFICIALS

For the purposes of this policy, District officials are the Title IX coordinator, the ADA/Section 504 coordinator, and the Superintendent.

TITLE IX
COORDINATOR

Reports of discrimination based on sex, including sexual harassment, may be directed to the **DESIGNATED TITLE IX COORDINATOR**. ~~[SEE DIA(EXHIBIT)] Title IX coordinator. The District designates the following person to coordinate its efforts to comply with Title IX of the Education Amendments of 1972, as amended:~~

Name: ~~Patricia Cortez~~

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~~Position: Director of Employee Relations~~
~~Address: 6531 Boeing Drive, El Paso, TX 79925~~
~~Telephone: (915) 230-2033~~

ADA / SECTION 504
COORDINATOR

Reports of discrimination based on disability may be directed to the **DESIGNATED** ADA/Section 504 coordinator. **[SEE DIA(EXHIBIT)]**~~The District designates the following person to coordinate its efforts to comply with Title II of the Americans with Disabilities Act of 1990, as amended, which incorporates and expands upon the requirements of Section 504 of the Rehabilitation Act of 1973, as amended:~~

SUPERINTENDENT

~~Name: Patricia Cortez~~
~~Position: Director of Employee Relations~~
~~Address: 6531 Boeing Drive, El Paso, TX 79925~~
~~Telephone: (915) 230-2033~~

~~SUPERINTENDENT~~

The Superintendent shall serve as coordinator for purposes of District compliance with all other antidiscrimination laws.

ALTERNATIVE
REPORTING
PROCEDURES

An employee shall not be required to report prohibited conduct to the person alleged to have committed it. Reports concerning prohibited conduct, including reports against the Title IX coordinator or ADA/Section 504 coordinator, may be directed to the Superintendent.

A report against the Superintendent may be made directly to the Board or Board President. If a report is made directly to the Board or Board President, the Board shall appoint an appropriate person to conduct an investigation.

TIMELY REPORTING

Reports of prohibited conduct shall be made as soon as possible after the alleged act or knowledge of the alleged act. A failure to promptly report may impair the District's ability to investigate and address the prohibited conduct.

NOTICE OF REPORT

Any District supervisor who receives a report of prohibited conduct shall immediately notify the appropriate District official listed above and take any other steps required by this policy.

INVESTIGATION OF
THE REPORT

The District may request, but shall not insist upon, a written report. If a report is made orally, the District official shall reduce the report to written form and ask the complainant to confirm its accuracy.

Upon receipt or notice of a report, the District official shall determine whether the allegations, if proven, would constitute prohibited conduct as defined by this policy. If so, the District official shall

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immediately authorize or undertake an investigation, regardless of whether a criminal or regulatory investigation regarding the same or similar allegations is pending.

If appropriate, the District shall promptly take interim action calculated to prevent prohibited conduct during the course of an investigation.

The investigation may be conducted by the District official or a designee, such as the campus principal, or by a third party designated by the District, such as an attorney. When appropriate, the campus principal or supervisor shall be involved in or informed of the investigation.

The investigation may consist of personal interviews with the person making the report, the person against whom the report is filed, 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.

CONCLUDING THE
INVESTIGATION

Absent extenuating circumstances, the investigation should be completed within ten District business days from the date of the report. The investigator shall inform the complainant if additional time is necessary. Even if additional time is necessary, the investigation shall be completed within 30 calendar days from the date of the report, except only in the most extraordinary cases and with the approval of the Superintendent.

The investigator shall prepare a written report of the investigation. The report shall be filed with the District official overseeing the investigation. The complainant shall be informed of the results of the investigation.

DISTRICT ACTION

If the results of an investigation indicate that prohibited harassment occurred, the District shall promptly respond by taking appropriate disciplinary or corrective action reasonably calculated to address the harassment. Appropriate disciplinary or corrective action should be initiated as soon as feasible after the completion of the written investigative report.

The District may take action based on the results of an investigation, even if the conduct did not rise to the level of prohibited or unlawful conduct.

CONFIDENTIALITY

To the greatest extent possible, the District shall respect the privacy of the complainant, persons against whom a report is filed, and witnesses. Limited disclosures may be necessary in order to conduct a thorough investigation and comply with applicable law.

APPEAL

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A complainant who is dissatisfied with the outcome of the investigation may appeal through DGBA(LOCAL), beginning at the appropriate level.

The complainant may have a right to file a complaint with appropriate state or federal agencies.

RECORDS RETENTION Copies of reports alleging prohibited conduct, investigation reports, and related records shall be maintained by the District for a period of at least five years. [See CPC]

ACCESS TO POLICY This policy shall be distributed annually to District employees. Copies of the policy shall be readily available at each campus and the District administrative offices.