

OAKLAND UNIFIED SCHOOL DISTRICT

Administrative Regulation

AR 4031
Personnel

Complaints Concerning Discrimination in Employment

Any complaint by an employee or job applicant alleging discrimination or harassment shall be addressed in accordance with the following procedures:

1. Notice and Receipt of Complaint: Any employee or job applicant (the "complainant") who believes he/she has been subjected to prohibited discrimination or harassment shall promptly inform his/her supervisor, or the district's Ombudsperson. An employee may bypass his/her supervisor if the supervisor is subject of the complaint.

The complainant may file a written complaint in accordance with this procedure, or if he/she is an employee, may first attempt to resolve the situation informally with his/her supervisor. Complaint forms are available from the Ombudsperson or at the following link:
<http://publicportal.ousd.k12.ca.us/19941081118225597/site/default.asp>
(Departments/Ombudsperson).

A supervisor or manager who has received information about an incident of discrimination or harassment, or has observed such an incident, shall report it to the district's Ombudsperson, whether or not the complainant files a written complaint.

The written complaint should contain the complainant's name, the name of the individual who allegedly committed the act, a description of the incident, the date and location where the incident occurred, any witnesses who may have relevant information, other evidence of the discrimination or harassment, and any other pertinent information which may assist in investigating and resolving the complaint.

(cf. 0410 - Nondiscrimination in District Programs and Activities)
(cf. 4030 - Nondiscrimination in Employment)
(cf. 4032 - Reasonable Accommodation)
(cf. 4119.11 - Sexual Harassment)

2. Investigation Process: The Ombudsperson will intake the complaint and refer it to the district's EEO Manager for investigation/handling. The EEO Manager shall initiate an impartial investigation of an allegation of discrimination or harassment within five school days of receiving notice of the behavior, regardless of whether a written complaint has been filed or whether the written complaint is complete.

The EEO Manager shall contact with the complainant to describe the district's complaint procedure and discuss the allegations and actions being sought by the complainant in response to

the allegation. After review of the complaint and/or further communication with complainant, the EEO Manager may determine that the complaint is best resolved at the site or departmental level in which case she/he will so notify the Complainant and supervisory employee to be responsible for handling the complaint. The EEO Manager shall inform the complainant that the allegations will be kept confidential to the extent possible, but that some information may be revealed as necessary to conduct an effective investigation and initiate any necessary subsequent action.

(cf. 3580 - District Records)

(cf. 4112 - Personnel Files)

(cf. 4119.23 - Unauthorized Release of Confidential/Privileged Information)

If the EEO Manager determines that a detailed fact-finding investigation is necessary, he/she shall begin the investigation promptly. As part of this investigation, the EEO Manager should interview the complainant, the person accused, and other persons who could be expected to have relevant information.

When necessary to carry out his/her investigation or to protect employee or student safety, the EEO Manager may discuss the complaint with appropriate District officials.

The EEO Manager also shall determine whether interim measures, such as scheduling changes, transfers, or leaves, need to be taken before the investigation is completed to facilitate the investigation or resolution of the concern. The EEO Manager shall ensure that such interim measures do not constitute retaliation.

3. **Written Report on Findings and Corrective Action:** No more than 30 school days after determining a fact-finding investigation is needed, the EEO Manager shall conclude the investigation and prepare a written report of his/her findings. This timeline may be extended for good cause. If an extension is needed, the EEO Manager shall notify the complainant and explain the reasons for the extension.

The report shall summarize the decision and the reasons for the decision and shall summarize the steps taken during the investigation.

The report shall be presented to the complainant, the person accused, and the Superintendent or designee.

4. **Appeal:** The complainant or the person accused may appeal any findings to the Director of Labor Relations within 10 working days of receiving the written report of the EEO Manager's findings. The Director of Labor Relations shall render his/her decision within 20 working days.

Other Remedies

In addition to filing a discrimination or harassment complaint with the district, a person may also file a complaint with either the California Department of Fair Employment and Housing (DFEH) or the Equal Employment Opportunity Commission (EEOC). The time limits for filing such complaints are as follows:

1. DFEH - within one year of the alleged discriminatory act(s), unless an exception exists pursuant to Government Code 12960 (Government Code 12960)
2. EEOC - within 180 days of the alleged discriminatory act(s) (42 USC 2000e-5)
3. To file a valid complaint with EEOC after first filing a complaint with DFEH, within 300 days of the alleged discriminatory act(s) or within 30 days after the termination of proceedings by DFEH, whichever is earlier (42 USC 2000e-5)

Legal Reference:

EDUCATION CODE

200-262.4 Prohibition of discrimination

GOVERNMENT CODE

12920-12921 Nondiscrimination

12940-12948 Discrimination prohibited; unlawful practices, generally

UNITED STATES CODE, TITLE 20

1681-1688 Title IX of the Education Amendments of 1972

UNITED STATES CODE, TITLE 29

621-634 Age Discrimination in Employment Act

794 Section 504 of the Rehabilitation Act of 1973

UNITED STATES CODE, TITLE 42

2000d-2000d-7 Title VI, Civil Rights Act of 1964, as amended

2001e-2001e-17 Title VII, Civil Rights Act of 1964, as amended

2000ff-2000ff-11 Genetic Information Nondiscrimination Act of 2008

2001h-2-2001h-6 Title IX of the Civil Rights Act of 1964

12101-12213 Americans with Disabilities Act

CODE OF FEDERAL REGULATIONS, TITLE 28

35.101-35.190 Americans with Disabilities Act

CODE OF FEDERAL REGULATIONS, TITLE 34

106.8 Designation of responsible employee for Title IX

Management Resources:

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION PUBLICATIONS

Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, October 2002

Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors, June 1999

WEB SITES

California Department of Fair Employment and Housing: <http://www.dfeh.ca.gov>

U.S. Equal Employment Opportunity Commission: <http://www.eeoc.gov>

8/25/04; 10/26/11A