



Policy & Legal Services  
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To: Members of the Board of Education  
From: Doug Larson  
Re: Policy Readings  
Date: January 2, 2019

Policy and Legal Services will present one Second Reading during the next Board of Education meeting. A description of the policy identified is provided below.

Article V.C.1.            Prohibition of Discrimination, Harassment, and Retaliation

The District received some feedback asking for further clarification of certain provisions of the policy. Section C clarifies the identity of Designated District Officials. Section G contains further language regarding whether schools or the District will be responsible for any given investigation. The Office of Civil Rights has provided no further direction, and the policy is ready to present on second reading.

Article V.C.1.            Prohibition of Discrimination, Harassment, and Retaliation

A.        Statement of Policy

Granite School District endeavors to maintain safe and supportive learning and working environments where all students and employees can be successful. Federal and Utah State statutes and regulations mandate and provide authority to school districts to prohibit conduct that violates the civil rights of individuals. Granite School District prohibits discrimination, harassment (including sexual harassment), or retaliation on the basis of race, color, sex, pregnancy, religion, national origin, marital status, disability, sexual orientation, gender identity, or any other legally protected classification in all educational programs, activities, admissions, access, treatment, or employment practices and provides equal access to scouting groups and other designated youth groups. Related inquiries and complaints may be directed to a school administrator or to Charlene Lui, Director of Educational Equity, (385) 646-7413, 2500 South State Street, Salt Lake City, Ut. 84115. Individuals may also directly contact the Office for Civil Rights, Denver, CO 80204-3582, (303) 844-5695.

B.        Definitions

1.        “Administrative review” refers to the administrative process whereby the Superintendent or designee reviews the process of an investigation and/or the findings and conclusions of an investigator to determine if the obligations of due process, federal and state laws and regulations, and this policy were met.
2.        “Discrimination” refers to conduct including words, gestures, and/or other actions that unfairly disadvantages individuals based in whole or in part on that individual’s race, color, sex, pregnancy, religion, national origin, age, marital status, disability, sexual orientation, or gender identity, or because an individual conforms or fails to conform with a real or perceived stereotype.
3.        “Designated District Official” refers to the person responsible at the District level for resolving complaints involving this policy and relevant laws or regulations.
4.        “Harassment” refers to unwelcome conduct targeted at an individual, or group of individuals, that is derisive, demeaning, or disparaging in nature and is based in whole or in part on the individual’s age, race, color, sex, pregnancy, religion, national origin, marital status, disability, sexual orientation, or gender identity, or because an individual conforms or fails to conform with a real or perceived stereotype.
5.        “Protected class” refers to any individual or group of individuals protected from discrimination under federal and state laws or regulations including, but not limited to:
  - a.        Title IV and Title VI of the Civil Rights Act of 1964, which prohibit discrimination on the basis of race, color, sex, religion, or national origin by public schools or any public program receiving federal financial assistance;

- b. Title IX of the Education amendments of 1972, which prohibits discrimination on the basis of sex;
  - c. Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability; and
  - d. Utah Antidiscrimination Act, which prohibits discrimination in employment practices.
6. “Retaliation” refers to any form of sanction or adverse treatment including but not limited to intimidation, reprisal, or harassment of any individual because he/she:
- a. has asserted, or assisted another individual to assert, a complaint in either a formal or informal manner with the District or with any state or federal agency;
  - b. has provided information, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing related to a student or employee of the District; or
  - c. has engaged in another activity protected by federal or state laws and regulations.
7. “Sexual harassment” refers to unwelcome sexual advances, requests for sexual favors, or other verbal or written communications or physical conduct of a sexual nature when:
- a. submission to the conduct is made explicitly or implicitly a term or condition of employment or a student's education (including any aspect of the student's participation in school-sponsored activities);
  - b. submission to or rejection of the conduct is used as the basis for employment decisions or a student's education (including academic performance, participation in school-sponsored activities, or any other aspect of a student's education); or
  - c. the conduct has the purpose or effect of unreasonably interfering with an individual’s employment, education, or participation in a district-sponsored activity by creating an intimidating, hostile, or offensive learning or working environment.

C. Civil Rights Laws and Designated District Officials

Statutory civil rights protections and the Designated District Officials who administer and enforce civil rights protections and this policy are identified as follows:

- 1. Discrimination on the basis of disability:<sup>1</sup>

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<sup>1</sup> The Individuals with Disabilities in Education Act (IDEA) is not considered an anti-discrimination law and is not addressed in this policy. IDEA is a spending clause statute that requires states and public agencies to provide a free and appropriate public education to all students and dictates how education agencies provide special education, and related services to children with disabilities. The Special Education Department administers the IDEA for the District and all inquiries about the IDEA or special education should be directed to the school principal and/or the Director of Special Education.

- a. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) and its implementing regulations (34 C.F.R Part 104) relate to access by disabled individuals to all programs receiving any federal financial assistances, including schools. The Designated District Official is the Director of Educational Equity, (385) 646-4205, 2500 South State Street, Salt Lake City, Ut. 84115.
  - b. Title II of the Americans with Disabilities Act (42 U.S.C. §§ 12131 - 12134) and its implementing regulations (28 C.F.R. Part 35) relate to physical access to facilities of state and local government entities. The Designated District Official is the Director of Educational Equity, (385) 646-4205, 2500 South State Street, Salt Lake City, Ut. 84115.
2. Discrimination on the basis of sex or gender: Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681) and its implementing regulations (34 C.F.R. Part 106) relate to participation in and access to benefits of educational programing regardless of sex or gender. The Designated District Official is the Director of Educational Equity, (385) 646-4205, 2500 South State Street, Salt Lake City, Ut. 84115.
  3. Discrimination on the basis of race, color, national origin, or religion: Title IV, VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000(d)) and its implementing regulations (34 C.F.R. Part 100) relate to relate to participation in programming and access to benefits of education regardless of sex or gender. The Designated District Official is the Director of Educational Equity, (385) 646-4205, 2500 South State Street, Salt Lake City, Ut. 84115.
  4. Employment discrimination on the basis of age: The Age Discrimination Act of 1975 (29 U.S.C. § 631) and its implementing regulations (34 C.F.R. Part 110) relate to employment discrimination based on an individual's age. The Designated District Official is the Director of Human Resources, (385) 646-4517, 2500 South State Street, Salt Lake City, Ut. 84115.
  5. Employment discrimination based on race, color, national origin, religion, or sex: Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000(e)) relates to employment discrimination based on an individual's sex, race, color, national origin, and religion. The Designated District Official is the Director of Human Resources, (385) 646-4517, 2500 South State Street, Salt Lake City, Ut. 84115.

D. Accommodations

The District will take into consideration any requests for accommodations made by individuals related to, or regardless of a protected classification. The District will address requests for accommodations and work with students, parents, patrons, and employees on a case-by-case basis related to the specific circumstances.

E. Prohibitions

1. The District prohibits discrimination, harassment (including sexual harassment), and retaliation on all district property, at all school-related or sponsored events or

activities, during all educational programming, in all aspects of employment with the District, and by all District students and employees. The District will investigate all complaints of harassing conduct, regardless of whether the alleged conduct was committed by a student, co-worker, supervisor, or third party, and the District shall determine the appropriate corrective action for each complaint after a thorough investigation is completed.

2. Prohibitions of this policy shall be enforced for conduct occurring outside of school, during school hours, or at school-related activities and events or work if the conduct disrupts the educational environment.
3. Any student who engages in discrimination, harassment, or retaliation may be subject to discipline up to and including suspension, alternative placement, or expulsion.
4. Any employee who engages in discrimination, harassment, or retaliation may be subject to discipline up to and including termination.
5. Any discrimination, harassment, or retaliation that violates state or federal criminal law shall be reported to law enforcement.
6. Prohibited discrimination and harassment can generally be classified as conduct intended to exclude, harm, demean, or intimidate an individual or group of individuals based on one or more identification factors. Discriminating or harassing conduct targeted at an individual or group of individuals may include, but is not limited to:
  - a. aggressive or violent physical conduct or threats of the same;
  - b. excluding an individual(s) participation in or access to any facilities, programming, activities, employment, or other benefits offered by the District;
  - c. use of epithets, slurs, negative stereotypes, name calling, verbal abuse, and derogatory comments;
  - d. creating graffiti, drawings, or other symbolic communication with threatening messages, degrading descriptions, or stereotypical caricatures;
  - e. unwelcome communication, jokes, stories, pictures, gestures, or displays of offensive or degrading material; and
  - f. failure to make reasonable accommodations or intentional acts committed for the purpose of intimidating, ridiculing, or discouraging individual religious expression, particularly outward expressions such as wearing religious apparel, head wear, hairstyles, jewelry, or cosmetics.
7. Sexual harassment is a sub-category of prohibited harassment that involves offensive or unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or communication of a sexual nature targeted at another individual based on that individual's sex, sexual orientation, gender identity, or conformance/non-conformance with a real or perceived stereotype. Sexual harassment may include, but is not limited to:
  - a. *quid pro quo* sexual harassment, which is a request, invitation, or demand for some type of sexual activity in exchange for grades, participation in

- curricular or extracurricular activities, promotions, positive evaluation, or other favors;
- b. hostile environment sexual harassment, which is conduct that unreasonably interferes with an individual's academic or work performance or that creates an intimidating, hostile, or offensive environment such as:
- i. unwelcome or offensive public displays of affection, inappropriate touching of oneself or other, massages, etc.;
  - ii. offensive communication, leers, stares, or gestures that are sexually suggestive, sexually degrading, or imply sexual motives or intentions, such as sexual remarks or innuendoes about an individual's clothing, appearance, or activities, sexual gestures, public conversations or social media posts about sexual activities, sexual rumors, catcalls or whistles, sexually graphic messages or games; etc.;
  - iii. offensive name calling, slang, or profanity of a sexual nature;
  - iv. offensive physical contact or closeness of a sexual nature such as spanking, pinching, hugging, stalking, following, etc.;
  - v. offensive physical pranks such as touching or pulling the clothes of another, bra-snapping, "panting," etc.;
  - vi. offensive exposure such as "mooning" or streaking;
  - vii. offensive written or visual displays or distribution of pornographic or sexually explicit materials such as magazines, videos, films, posters, etc.;
  - viii. a staff member engaging in romantic or sexually-based contact or communication with a student regardless of the age of the staff member or the student; or
  - ix. unlawful sexual activity such as actual or attempted sexual abuse, sexual assault, rape, lewdness, possessing or distributing pornography, and other sexual or gender-based activities defined by Utah Criminal Code.
8. Retaliation generally takes the form of reprisal against a person who has filed a complaint or has testified, assisted, or participated in any manner in an investigation, proceeding, or hearing conducted by the District. Retaliation may include, but is not limited to, further harassment, threats, taunting, spreading rumors, unauthorized disclosure of the details of an investigation, ostracism, assault, destruction of property, or other negative conduct.

F. Reporting Procedures

1. Any person who witnesses or believes he/she has been subjected to discrimination, harassment, or retaliation involving a student, employee, patron or other person affiliated with the District may submit, personally or through a representative, a written or verbal report or complaint of the alleged prohibited conduct to school administrators and/or to department supervisors. Additionally, an individual may make a report or complaint directly to a Designated District Official identified in this policy and/or the Office for Civil Rights, Denver, CO 80204-3582, (303) 844-5695 at any time.

2. While not required, the District encourages the reporting party or complainant to use the report form attached to this policy. The form is also available from school administration, on the District website, and from the District office.
3. School administrators who receive reports or complaints shall be clearly identified and contact information shall be posted on the school's website and in other conspicuous locations.
4. Reports or complaints of discrimination, harassment, or retaliation shall be forwarded to the appropriate Designated District Official. The District Compliance Officer in the Department of Policy and Legal Services shall assist the Designated District Officials to ensure thorough investigations are completed (*see* section G below).
5. It is the duty of every student and every District employee to report violations, or alleged violations of this policy. Failure to do so may result in disciplinary action.
6. Good faith submission of a report or complaint of discrimination, harassment, or retaliation will not adversely affect the individual's future participation in school programs or activities, grades, employment, or work assignments.
7. Because false accusations of discrimination, harassment, and retaliation can have a serious detrimental effect on innocent parties, false complaints may subject the complainant to discipline.

G. Investigating and Correcting Discrimination, Harassment, and Retaliation

The District promptly investigates all reports or complaints of discrimination, harassment, and retaliation, regardless of whether the alleged conduct is committed by an employee, student, or other individual, and the District shall administer appropriate discipline to any student or employee who violates this policy. The District will take appropriate steps to eliminate the discrimination, harassment, or retaliation; address its effects; and prevent the discrimination, harassment, or retaliation from recurring.

1. The District Compliance Officer shall provide investigation support and regular training to principals and assistant principals regarding conducting prompt, thorough, and impartial investigations.
2. After a report or complaint is received, school administrators, Designated District Officials, Directors of Accountability, and the District Compliance Officer shall determine whether a school-level or District-level investigation is warranted. The District retains discretion to determine whether a school-level or District-level investigation is warranted. However, generally speaking:
  - a. If a report or complaint involves a member of the school administration or District-level personnel, the investigation shall be conducted at the District-level; and

a.b. If a report or complaint involves a student or students, the investigation shall be conducted by principals or assistant principals trained to conduct such investigations.

3. If the principal(s) and/or assistant principal(s) fail to conduct a thorough and impartial investigation in a timely manner at the school level, the individual(s) who brought the report or complaint may request that the District conduct an administrative review (see section H below).

~~— If a report or complaint involves a member of the school administration, the investigation shall be conducted at the District level. Investigations of matters that pertain to allegations of civil rights violations shall be conducted by principals or assistant principals trained to conduct such investigations. The District Compliance Officer shall provide investigation support and regular training to administrators regarding conducting prompt, thorough, and impartial investigations. principals and assistant principals.~~

2. In matters specifically involving reports or complaints of sexual harassment committed by District personnel, the District Sexual Harassment Committee shall conduct investigations and report findings directly to the Superintendent. If the report involves a member of the District Sexual Harassment Committee, the report or complaint may be filed directly with the Superintendent, Granite School District Superintendent, (385) 646-5000, 2500 South State Street, Salt Lake City, Ut. 84115. ~~The District Compliance Officer shall also chair the District Sexual Harassment Committee, which is tasked specifically with investigating matters involving sexual harassment involving District personnel.~~ Investigations may also be conducted by a designated third-party investigator at the District's discretion.

23. The appropriate investigator(s) shall conduct a prompt, thorough, and impartial investigation allowing all parties to provide information, proffer evidence (directly or through witness statements), and offer explanations and rebuttals of the allegations made. The investigation shall include gathering information and evidence from all relevant parties including taking written statements from and/or interviewing the complainant, the individuals against whom the complainant filed, and others who have knowledge of the alleged incident(s) or circumstances giving rise to the report or complaint. The investigation may also consist of any other appropriate investigative methods and gathering documentary evidence deemed pertinent by the investigator.

4. The school or the District shall take prompt remedial action, including appropriate disciplinary actions, after the individual against whom the report or complaint was made has had an opportunity to respond to the allegations orally or in writing. Investigators shall work with District officials, including Directors of School Accountability, Granite Police Officers, the Director of Educational Equity, the Director of Human Resources, Directors of Special Education, and the District Compliance Officer, to resolve issues at the lowest possible level working collaboratively with parents/guardians, students, patrons, and employees.

5. Investigators shall preserve all information and evidence, including written statements, investigation notes, surveillance camera footage, photos, physical evidence, documents, correspondence, and any relevant electronic information such as text messages, videos, and social media postings. Investigation files shall be retained for a period of at least three (3) years.
6. In determining whether alleged conduct constitutes discrimination, harassment, or retaliation, the investigator shall consider the surrounding circumstances, the nature of the unwelcome or unlawful conduct, the relationships between the parties involved, and the context in which the alleged incidents occurred.
7. At any time during or after the completion of an investigation, allegations involving criminal conduct and/or child abuse shall be reported directly to law enforcement and the Department of Child and Family Services (DCFS) as appropriate. A criminal investigation may occur concurrently with, and shall not replace or supplant an administrative investigation by the school or District.
8. The District and school administrators shall take reasonable steps to protect the complainant and witnesses during an investigation and prevent retaliation.
9. The District and school administrators will protect the confidentiality of the complainant, the individual(s) against whom a complaint is made, and witnesses to the extent possible consistent with the District's legal obligations and the necessity to thoroughly investigate and take appropriate administrative action. The District retains the right to disclose the identity of parties and witnesses in appropriate circumstances.
10. Investigators shall make findings and conclusions and draft a summary report promptly. The report shall include a summary of at least the following information:
  - a. a description of the allegations made;
  - b. a description of the response to allegations;
  - c. a summary of the factual findings the investigator deems true by a preponderance of the evidence;
  - d. conclusions of the investigator regarding violations of District policies and practices (identifying the specific policies or practices) or violations of federal or state laws and regulations (identifying the laws or regulations).
11. School administrators conducting investigations shall work with directors/supervisors and an assistant superintendent, as required, to impose appropriate discipline.
12. Subsequent to an investigation, the District will take reasonable steps to correct current policies and practices, provide additional protections and supports, and increase and improve education and training as needed.
13. School or District administrators charged with investigating and/or taking administrative action will communicate the outcomes of the investigation to the complainant or the alleged victim and the respondent within a reasonable time

after the completion of the investigation. Maintaining current privacy laws, regulations, and policies, the administrator shall communicate steps the District will take to eliminate, address, and prevent further discrimination, harassment, or retaliation.

#### H. Administrative Review

1. Within fifteen (15) days after receiving a summary report of the findings and conclusions of the investigator, any person impacted by the outcome of the investigation may request an administrative review. Any request for an administrative review must be submitted in writing to the Office of the Superintendent, 2500 south State Street, Salt Lake City, Utah 84115. Failure to file a written appeal and request for an administrative review in accordance with the procedures set forth above shall constitute a waiver of the right.
2. An administrative review may be requested for three reasons:
  - a. to provide new evidence that was not available during the investigation;
  - b. to offer evidence that an investigation was inadequate or the administrative procedures outlined in this policy were not followed; or
  - c. to offer evidence of bias on the part of the investigator.

If the request for administrative review does not offer clear and supportable allegations of one or more of the enumerated reasons for an administrative review, the request shall be denied. Disagreement with the outcome of an investigation or with an investigator's findings and conclusions is not grounds for an administrative review under this policy.

3. A request for an administrative review must be in writing and must include:
  - a. requester's name, home address, and telephone number;
  - b. a brief description of the alleged discrimination, harassment, or retaliation including the date, place, and time of alleged incidents;
  - c. a brief description of the actions taken or efforts made to address the issue; and
  - d. a statement of the appellant's position regarding one or more of the reasons for an administrative review listed above.
4. A request for an administrative review under this section does not preclude an appeal of discipline or other administrative action by a student or employee under a separate policy or negotiated agreement (e.g. policies related to discipline, safe school, etc.).
5. Within ten (10) business days of the request, the superintendent, or a designee, shall meet with the appellant requesting the administrative review to discuss the request, gather facts, and explore possible resolutions.
6. The Superintendent or designee shall review the investigation and the conclusions of the investigation, the corrective actions taken, and any additional evidence or information provided. The Superintendent or designee may also conduct further investigation if deemed appropriate. The Superintendent or designee shall either

uphold the prior administrative action or take additional administrative action if the investigation or the outcomes were deficient.

7. Within fifteen (15) business days of the initial meeting, the Superintendent or designee shall respond in writing to explain the findings and conclusions of the administrative review and any additional administrative actions. Further, the Superintendent or designee may discuss other options for resolution.

## I. General Provisions

### 1. Parties' Rights to Records

- a. Parties may request access to information and records in the possession of the District that bear upon the validity of the matter. Records must be requested with reasonable specificity. If obtaining the information requires unreasonable interference with other District duties and responsibilities or unreasonable District expenditure, the District may require that the requesting party pay the District reasonable fees for actual costs incurred in procuring and duplicating the records.
- b. The District is not required to create a record in response to a request.
- c. Information in requested records about subjects or persons not relevant to the complaint or which is otherwise private, controlled, or protected shall be excluded and/or expunged from the record.
- d. Records will only be provided in accordance with Family Educational Rights and Privacy Act (FERPA), Government Records Access and Management Act (GRAMA), and other records or privacy laws.

### 2. Right to Assistance

- a. Both parties have the right to be represented by counsel or assisted by knowledgeable persons, organizations, or groups of their selection at their own expense at any point during the investigation or administrative review process.
- b. The District shall, upon request, provide assistance to the parties in understanding rights and obligations under this policy and other pertinent District, state, or federal regulations, policies, or other related materials. Other assistance, such as legal advice regarding claims or defenses, will not be provided.
- c. The District will provide translation or interpreter services, auxiliary aids, or other reasonable services or accommodations necessary for the parties to participate fully in the administrative process.

### 3. Records

Records from investigations and administrative reviews shall be kept by the investigator, the Designated District Official, and/or the Compliance Officer for a period no less than three (3) years. Records shall include the names and positions of parties, dates of filing, descriptions of the allegations, findings and conclusions,

and a statement of final resolution or outcomes. Such records shall be designated as protected under Utah Code §63-2-304.

4. Financial Responsibility

Except as otherwise provided by this policy, costs involved in the administration of the policy shall be borne by the District.

5. Notice and Dissemination

A summary of this policy and a reference to the full policy shall be delivered to each patron of the District annually and shall appear on the District website, school websites, and in other conspicuous locations.

6. Outside Reporting

Nothing in this policy shall prohibit an individual from filing a discrimination or harassment claim at any time with:

- a. the Utah Anti-Discrimination and Labor Division (UALD), 160 East 300 South, 3rd Floor, P.O. Box 146600, Salt Lake City, UT 84114-6600; or
- b. the Office for Civil Rights, Region VIII, U.S. Department of Education, Federal Building, Suite 310, 1244 Speer Boulevard, Denver, Colorado, 80204-3582.

References

20 U.S.C. §1681-86, Title IX of the Education Amendments of 1972; 34 C.F.R. Part 106  
29 U.S.C. §206(d), The Equal Pay Act of 1963  
29 U.S.C. §621 *et seq.*, Age Discrimination in Employment Act of 1967, 29 C.F.R. §621-634  
29 U.S.C. §794, Section 504 of the Rehabilitation Act of 1973, 34 C.F.R. §104 *et seq.*  
42 U.S.C. §2000(d), Title VI Civil Rights Act of 1964, 34 C.F.R. §100 *et seq.*  
42 U.S.C. §2000(e), Title VII of the Civil Rights Act of 1964, 29 C.F.R. §1604 *et seq.*  
42 U.S.C. §6101-6107, Age Discrimination Act of 1975, 34 C.F.R. §110 *et seq.*  
20 U.S.C. §7905, Boy Scouts of America Equal Access Act, 34 C.F.R. §108 *et seq.*  
42 U.S.C. §12101 *et seq.*, ADA Amendments Act of 2008, 29 C.F.R. §1630  
42 U.S.C. §12111 *et seq.*, Title II of the Americans with Disabilities Act of 1990 (ADA),  
Utah Code §76-5-401 through 407, Sexual Offenses  
Utah Code §76-9-702 through 702.7, Offenses Against Public Order and Decency  
Utah Code §34A-5-101 *et seq.*, Utah Antidiscrimination Act  
Utah Admin. Code R277-112, Prohibiting Discrimination in the Public Schools

**Discrimination, Harassment, and Retaliation Complaint Form**

**CONTACT INFORMATION:**

Name:

Home/Work Phone:

Home Address:

**NAME OF DEPARTMENT OR SCHOOL INVOLVED:**

Name:

Phone:

Address:

**COMPLAINT BASED ON (please circle those that apply):**

Race    Color    Sex/Gender    Religion    National Origin    Disability    Sexual Orientation  
Other (please specify):

Date of Occurrences: Earliest    /    /                      Most Recent    /    /

**EXPLANATION OF THE COMPLAINT:**

Please use the back of this page or additional pages if desired

I declare that the foregoing is true and correct.  
Signature and Date