



Tri-Valley School District 49-6



Policy AC: Non-Discrimination

The District will not violate any of the provisions of applicable federal programs, statutes, or regulations, including but not limited to Title IX, ESEA/Title I, Rehabilitation Act Section 504, Title II (Americans with Disabilities Act), ESSA, and McKinney-Vento Act (homeless children). The District will not discriminate in any of its policies and programs on the basis of age, race, color, creed, national origin, ancestry, religion, sex, or disability.

The District will provide the following:

1. an adequate, reliable, and impartial investigation of complaints, including the opportunity for the complainant and alleged perpetrator to present witnesses and provide evidence;
2. evaluation of all relevant information and documentation relating to a complaint of discrimination;
3. specific, reasonably prompt time frames at each stage of the grievance process;
4. written notice to all parties within a specified timeframe of the outcome or disposition of the grievance at each stage of the process;
5. an opportunity to appeal the findings or remedy, or both;
6. an assurance that the District will take steps to prevent recurrence of any discrimination and correct discriminatory effects on others; and
7. language in the policies and grievance procedures indicating that any attempts to informally or voluntarily resolve the complaint or grievance should not delay the commencement of the District's investigation.

In compliance with applicable federal laws and regulations, the Board has appointed the Superintendent as the District's Compliance Officer to coordinate program compliance with federal programs. The Superintendent can be reached at:

Tri-Valley School District 49-6
46450 252nd St.
Colton, SD 57018
Phone: (605) 446-3538

A complaint may also be filed with the United States Office for Civil Rights, U.S. Department of Education at: 1010 Walnut Street, Suite 320, Kansas City, Missouri 64106: Telephone: (816) 268-0550; Facsimile: (816) 268-0599; Telecommunication Device for the Deaf: (877) 521-2172; E-mail: OCR.KansasCity@ed.gov. Or at: <https://www2.ed.gov/about/offices/list/ocr/complaintintro.html>.

COMPLAINT PROCEDURE

The Board has adopted a specific procedure to ensure that parental/student/public complaints related to the provisions of applicable federal programs, statutes, or regulations, including claims of retaliation. The Board will not discriminate, in any of its policies and programs, on the basis of age, race, color, creed, national origin, ancestry, religion, sex or disability.

The purpose of this complaint procedure is to outline a procedure for addressing parental/student/public complaints about federal program compliance and/or discrimination

For the purposes of this policy, a “complaint” is a perceived or alleged violation of federal programs, statutes, or regulations (e.g., Title IX, ESEA/Title I, Rehabilitation Act Section 504, Title II (Americans with Disabilities Act), ESSA, McKinney-Vento Act (homeless children), etc.) and/or discrimination in a policy and/or program on the basis of age, race, color, creed, national origin, ancestry, religion, sex, or disability.

To protect the confidentiality of all concerned, it is imperative that any school employee in receipt of a complaint treat the complaint as confidential and that the complaint not be reproduced in any form, nor disclosed or discussed with any person other than those identified as proper recipients of the complaint (i.e., the principal, superintendent, school board).

When a federal program compliance complaint or discrimination/harassment complaint based on race, color, national origin, age, or sex (excluding sexual harassment complaints) is brought directly to an individual board member or the entire Board, the board member or entire Board may listen to the person’s complaint but shall take no action unless there has been compliance with this Policy. The person bringing the complaint will be directed to the procedure as set forth below. The following procedure is designed to ensure the proper balance in protecting the rights of the person(s) bringing the complaint and the rights of the employee against whom the complaint is made. It is only when the person having the complaint and the employee involved cannot resolve the problem, and the complaint cannot be resolved at the administrative level, will the Board and board members become involved.

Should it be determined that discrimination or harassment occurred based on race, color, national origin, age or sex, the District will take steps to prevent recurrence of any discrimination or harassment and to correct its discriminatory effects on others, if appropriate.

STEP 1: Initial Complaint

- A. The person having the complaint related to federal program compliance or discrimination/harassment complaint based on race, color, national origin, age, or sex (excluding sexual harassment complaints), the person must initiate the complaint procedure in one of the following ways:
 - meet and discuss the concern with the Employee involved; OR
 - either meet with the employee’s principal or complete the complaint procedure form (File: AD) and submit it to the employee’s principal.
1. If the Complainant met with the Employee and the complaint was not resolved, the Complainant must complete the complaint form and may meet and discuss the complaint with the Employee’s Principal within ten (10) calendar days of the meeting with the Employee. The Complainant shall sign and date the Complaint Form verifying the accuracy of its content.

- A. If the Complainant initiates the complaint by meeting with the Principal, the Principal shall complete a Complaint Form (File: AD). The Complainant shall sign and date the Complaint Form verifying the accuracy of its contents.
2. Upon receipt of a signed complaint against any employee, the principal shall meet privately with the employee and shall provide the employee with a copy of the complaint and discuss the complaint. If the principal feels that the complaint presents grounds for further action or if the complaint is to be made part of the employee's record, the employee must be informed of this fact in writing. An employee so notified shall have the right to request a meeting with the Superintendent and the complaining party or the right to attach a written rebuttal to the complaint or both. The principal shall render a decision in writing without undue delay and provide a copy of the decision and action to both parties.
- B. The Principal's decision may be appealed by the Complainant or Employee to the Superintendent within (10) ten calendar days of receipt of the Principal's written decision pursuant to Step 2. If the Principal does not render a written decision within the required time frame (14 days unless extended) the Complainant or Employee may appeal to the Superintendent pursuant to Step 2.

Should the complaint be against a Principal, the Superintendent shall address the complaint through the procedure set forth in Step 1. Should the complaint be against the Superintendent the Complaint Form shall be given to the Business Manager. The Business Manager shall give the Complaint Form to the School Board President or Chairperson. At the next School Board meeting, the School Board will designate a person who is not an Employee of the District to address the complaint through the procedure set forth in Step 1. An appeal by the Complainant or superintendent may be filed with the School Board pursuant to the procedures described above.

STEP 2: Appeal to the Superintendent

The following procedure shall be used to address an appeal of the Principal's decision made in Step 2, or if the Principal failed to render a decision in the required time frame:

- A. The request for the appeal shall be in writing. The appealing party must attach the complaint and the Principal's written decision if a decision was rendered.
- B. Upon receipt of an appeal, the Superintendent will provide a copy of the appeal to the other party. Within five (5) calendar days, the other party may submit a written response to the appeal. The Superintendent shall provide a copy of the response to the appealing party.
- C. In the Superintendent's sole discretion, the Superintendent may (a) meet and discuss the matter with the Complainant and Employee, (b) meet and discuss the matter with the Complainant, Employee and Principal, or (c) meet and discuss the matter with the Principal.
- D. Within fourteen (14) calendar days from the date the appeal was filed with the Superintendent, the Superintendent shall render a decision in writing. The time frame

for rendering a decision by the Superintendent may be extended by the Superintendent for good cause and upon written notification to the Complainant and Employee; the notification shall identify the reason for the extension and the date on or before which the decision shall be rendered. The Complainant, Employee and Principal shall receive copies of the decision. The Superintendent may uphold, reverse, or modify the Principal's decision. The Superintendent may also refer the matter back to the Principal for further investigation. The Principal may uphold, modify, or reverse his or her initial decision. After a matter has been referred back to the Principal, and the Principal rendered a second decision, that decision may also be appealed to the Superintendent.

- E. The Superintendent's decision may be appealed by the Complainant to the School Board within (10) ten calendar days of receipt of the Superintendent's written decision. If the Superintendent does not render a written decision within the required time frame (14 calendar days unless extended) the Complainant may appeal to the School Board.
- F. If the Employee believes the Superintendent's decision constitutes a violation, misinterpretation or inequitable application of School Board policy or collective bargaining agreement applicable to the Employee, the Employee may file a grievance pursuant to the applicable grievance policy. A grievance filed pursuant to this provision shall be initiated at the Superintendent level.

STEP 3: Complainant's Appeal to the School Board

The following procedure shall be used to address an appeal of the Superintendent's decision, or if the Superintendent failed to render a decision in the required time frame:

- A. An appeal to the School Board shall be requested in writing. The Complainant must attach the complaint, the Principal's written decision if a decision was rendered, the appeal to the Superintendent, the response to the appeal if any, and the Superintendent's decision if one was rendered.
- B. The appeal must be filed with the Superintendent or Business Manager within ten (10) calendar days of Complainant's receipt of the Superintendent's written decision, or within ten (10) days of the deadline for the Superintendent's written decision, whichever comes first.
- C. Upon receipt of an appeal by the Complainant, a copy of the appeal shall be given to the Employee involved.
- D. Upon receipt of an appeal to the School Board, the School Board shall schedule a date, time, and location for the appeal hearing.
- E. The following procedure shall be applicable at the appeal hearing before the School Board:
 - 1. The School Board shall appoint a school board member or a person who is not an employee of the school district as the Hearing Officer.
 - 2. Within thirty (30) calendar days of an appeal being filed with the School Board, the School Board shall conduct a hearing in executive session.
 - 3. The Complainant, Employee and Superintendent each have the right to be represented at the hearing.
 - 4. The School Board shall make a verbatim record of the hearing by means of an electronic device or a court reporter. This record and any exhibits must be sealed and must remain with the Hearing Officer until the appeal process has been completed.

5. The issue on appeal is whether the Superintendent's decision should be upheld, reversed, or modified by the School Board; in the absence of a decision by the Superintendent, the School Board will make a decision on the merits of the complaint.
6. All parties shall be given the opportunity to make an opening statement, with the Complainant being given the first opportunity, followed by the Employee and then the Superintendent.
7. The Complainant shall present his or her case first, and the Employee shall then present his or her case. Both parties shall have the opportunity to ask questions of the other's witnesses. The Hearing Officer and school board members may ask questions of any witness.
8. After the Complainant and the Employee have presented their respective cases, the Superintendent shall then present the basis of his/her decision which led to the appeal, if a decision was rendered. The Complainant and Employee shall have the opportunity to ask the Superintendent questions. The Hearing Officer and board members may also ask questions of the Superintendent.
9. Unless a witness is a party to the appeal, witnesses may be present only when testifying unless the Hearing Officer rules otherwise. All witnesses must take an oath or affirmation administered by the School Board President/ Chairperson, Hearing Officer or other person authorized by law to take oaths and affirmations.
10. The Hearing Officer shall admit all relevant evidence. The Hearing Officer may limit unproductive or repetitious evidence. The strict rules of evidence do not apply. *Moran v. Rapid City Area School Dist., 281 N.W.2d 595. 602 (S.D. 1979) ("This [school board hearing related to teacher contract nonrenewal] does not mandate nor necessitate the use of strict evidentiary rules.")*.
11. Both parties shall be given the opportunity to make a closing statement, with the Complainant having the first opportunity, followed by the Employee, and then the Superintendent. The Complainant shall be given the opportunity for a brief rebuttal.
12. After the evidentiary hearing, the School Board shall continue to meet in executive session for deliberations. No one other than the Hearing Officer may meet with the Board during deliberations. During deliberations, the Board may seek advice from an attorney who did not represent any of the parties in the hearing. Consultation with any other person during deliberation may occur only if a representative of the Complainant, Employee and Superintendent are present. The Board may, in its sole discretion, continue the proceedings and make a final decision on the appeal at a later date.
13. Within twenty (20) calendar days of the hearing, the School Board shall render its decision and may issue its written Findings of Fact, Conclusions of Law and Decision. The time frame for rendering a decision may be extended by the Board President for good cause and upon written notification to the Complainant, Employee and Superintendent. The notification shall identify the reason for the extension and the date on or before which the decision shall be rendered.
14. The decision of the School Board must be based solely on the evidence presented at the hearing and must be formalized by a motion made in open meeting. The Board will reconvene in open session. The Board may uphold, reverse, or modify the Superintendent's decision, or render a decision on the merits of the complaint in the absence of a Superintendent's decision. Any Findings of Fact, Conclusions of Law and Decision, consistent with the Board motion, shall be in writing and approved by the

Board. The Complainant, Employee, Principal and Superintendent will receive copies after the Findings of Fact, Conclusions of Law and Decision are approved by the School Board.

15. If the Complainant is dissatisfied with the School Board's decision, the Complainant may appeal the decision by filing an appeal to the circuit court pursuant to SDCL Ch. 13-46.

Adopted: 10/12/09

First Reading for Amendment: 10/11/21

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