



Ash Fork Joint Unified School District #31 Administrative Procedure

AP Title:

**Procedure for Complaints of
Discrimination, Harassment and
Retaliation**

Adoption Date:

2/8/2022

Schedule for Review & Update:

Every three years

Review Date(s):

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Sponsoring Unit/Department:

Human Resources

Policy Title(s) & No(s).:

Equal Employment Opportunity, ADA,
Non-Discrimination and Anti-
Harassment (including Sexual
Harassment),

Legal Reference:

Title VI & VII of the 1964 Civil Rights
Act; Title IX of the Education
Amendments of 1972; Executive Order
11246; Age Discrimination in
Employment Act of 1975;
Rehabilitation Act of 1973, Sections 503
& 504; Uniformed Services
Employment and Re-employment
Rights Act of 1994
(USERRA); Americans with Disabilities
Act of 1990 as amended; Equal Pay Act
of 1963; Arizona Civil Rights Act of
1965

Cross Reference:

PURPOSE

The purpose of this Administrative Procedure (AP) is to implement Board Policies ACAA and/or GBA, which prohibits discrimination, harassment and retaliation, as these terms are defined below.

The District will take prompt and appropriate action to thoroughly investigate a complaint that ACAA and/or GBA or this AP have been violated, to correct any discrimination harassment or retaliation that is determined to have occurred, and, if necessary, to discipline any individual who is found to have engaged in conduct that constitutes discrimination, harassment or retaliation.

SECTION 1: Definitions and Concepts

1.1 Discrimination

Discrimination occurs when an individual is treated adversely based on a protected classification. Protected classifications are race, color, religion, sex, national origin, age, disability, veteran status, sexual orientation, gender identity or other legally protected category. The failure to provide reasonable religious or disability accommodations when required by law or District policy also constitutes discrimination.

The District is committed to protecting the full and frank exchange of ideas. Discrimination does not include the use of materials about or discussion of race, color, religion, sex, national origin, or other protected classifications for scholarly purposes appropriate to the academic context, such as class discussions or meetings.

1.2 Harassment

Harassment is a specific form of discrimination. Harassment is unwelcome behavior based on a protected classification that:

- has the purpose or effect of creating an intimidating, hostile, or offensive employment or educational environment or
- has the purpose or effect of unreasonably interfering with an employee's work performance, an individual's employment opportunities, a student's academic performance, or a student's ability to receive the benefits of a District program or activity.

Prohibited harassment may take the form of, but is not limited to, offensive slurs, jokes, and other offensive or abusive oral, written, computer-generated, visual or physical conduct that is aimed at, or that adversely impacts, an employee or student because of his or her inclusion in a protected classification. It may also include negative stereotyping, including negative references about a person's language or accent.

The most common type of harassment is sexual harassment. Sexual harassment is a form of sex discrimination and may involve individuals of the same sex or different sex. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

- submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or a student's status;
- submission to or rejection of such conduct by an individual is used as the basis for employment decisions, or academic decisions affecting the individual; or
- such conduct has the purpose or effect of unreasonably interfering with an individual's work performance, a student's academic performance, or a student's ability to receive the benefits of a District program or activity or has the purpose or effect of creating an intimidating, hostile or offensive work or academic environment. This may include:
 - unwelcome sexual touching, advances or propositions;
 - lewd comments, sexual jokes and offensive personal references;
 - leering, demeaning, insulting, intimidating or sexually suggestive comments about an individual's dress or body;
 - the display in the workplace of demeaning, insulting, intimidating or sexually suggestive objects or pictures including nude photographs;
 - demeaning, insulting, intimidating or sexually suggestive written records or electronically transmitted images;
 - unwelcome touching

Sexual harassment does not include conduct of a socially acceptable nature. Nor does it refer to the use of materials or discussion related to sex and/or gender for scholarly purposes appropriate to the academic context, such as class discussions or meetings.

In determining whether the conduct at issue is sufficient to be harassment in violation of ACAA and/or GBA or this AP, the conduct will be analyzed from the objective

standpoint of a “reasonable person.” No violation of ACAA and/or GBA or this AP will be found if the conduct would not create a hostile or offensive environment when judged from the context of a reasonable person facing similar circumstances.

1.3 Retaliation

Retaliation occurs when adverse action is taken against an employee or student as a result of the employee’s or student’s good faith participation in a protected activity. Retaliation becomes a separate complaint that can be claimed even if the original discrimination complaint was not substantiated. Retaliation can involve any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits and any other term or condition of employment.

Protected activities include (a) raising or reporting or filing allegations of discrimination, harassment or retaliation and/or (b) participating in any review or investigation of a claim of discrimination, harassment or retaliation.

Adverse action is any action that (a) materially affects an individual’s terms and conditions of employment or a student’s academic status, or (b) is reasonably likely to deter that individual or others from engaging in a protected activity.

1.4 Complainant and Respondent

“Complainant” is the person making the complaint that he or she is the subject of discrimination. “Respondent” is the person whose alleged conduct is the subject of concern under this AP.

1.5 Student

“Student” means a person who is admitted to the District as a student.

1.6 Employee

“Employee” includes a District direct employee as well as a person who has filed an application for employment with the District.

1.7 Contractor

“Contractor” An agent or other non-employee of the District who is working on District-related business, including but not limited to: contracted consultants, technical and professional contractors.

1.8 Due Process

For the complainant, due process means having a reasonable opportunity to tell his or her version of events. For the respondent, due process means receiving reasonable notice of allegations and a reasonable opportunity to tell his or her version of events.

SECTION 2: Discrimination, Harassment and Retaliation are Prohibited

The District prohibits discrimination, harassment and retaliation as set out in ACA and/or GBA and this AP. This prohibition against engaging in discriminatory conduct applies to District employees, students, contractors, vendors and other agents of the District, and to anyone participating in a District-sponsored program or activity.

Conduct that constitutes discrimination, harassment, or retaliation may result in a written warning or directive and/or discipline, including, but not limited to, possible termination of employment, suspension or expulsion of a student, or exclusion of an individual from a District program or activity. Nonemployees may be directed to discontinue the discriminatory conduct and are subject to such other consequences as are appropriate for the circumstances.

SECTION 3: Duty to Create an Environment Free of Discrimination, Harassment and Retaliation

All members of the School community are responsible for participating in the creation of an educational and/or work environment that is free from discrimination, harassment and retaliation.

SECTION 4: Duty of Administrators, Supervisors and Instructors to Report Possible Discrimination, Harassment and Retaliation

Employees of the District who (a) are administrators, (b) supervise employees, students, contractors, vendors or other agents of the District, or (c) instruct or advise students are required to immediately report possible discrimination, harassment or retaliation to the Superintendent or Title IX Coordinator. See Section 5 below.

The duty to report arises whenever one of the above-designated employees (a) witnesses possible discrimination, harassment or retaliation or (b) is provided with written or verbal notice or otherwise learns of possible discrimination, harassment or retaliation.

SECTION 5: Filing a Complaint of Discrimination, Harassment or Retaliation

If an employee or student believes that he or she has been the victim of discrimination, harassment, or retaliation, he or she is encouraged to promptly report or file a complaint about the incident as detailed below.

District employees shall cooperate with an authorized investigation and act in accordance with the Code of Conduct as contained in the Personnel Policy statements.

5.1 Report or Complaint against Student

If the person alleged to have violated ACAA and/or GBA and this AP is a student, the report or complaint should be made and investigated by the Superintendent. The Student Code of Conduct (including timelines) applies in these situations. During the investigation of a report or complaint made against a student, the Superintendent shall consult with the District's Title IX Coordinator, as appropriate.

5.2. Report or Complaint against the Superintendent, an Executive Administrator or the Title IX Coordinator

5.2.a Report or Complaint against the Superintendent

If the person alleged to have violated ACAA and/or GBA and this AP is the Superintendent, the complaint shall be reported to the President of the Governing Board or the District's Attorney, who shall inform each other. The Board President and the District's Attorney shall inform the other members of the Governing Board. The investigation of the facts concerning an alleged violation by the Superintendent shall be conducted by an independent, third party reviewer who shall report the results to the Governing Board and the District's Attorney.

5.2.b Report or Complaint against an Executive Administrator

If the person alleged to have violated ACAA and/or GBA and this AP is an Executive Administrator, the complaint shall be reported to the Superintendent

5.2.c Report or Complaint against the Title IX Coordinator

If the person alleged to have violated ACAA and/or GBA and this AP is the Title IX Coordinator, the report or complaint shall be reported to the head of the Superintendent

5.3 Student Report or Complaint of Disability Discrimination

A student who wishes to make a report or complaint of disability discrimination shall do so using the procedures (and timelines) set out in policy JII.

5.4 Report of Complaint Against a Contractor

If the person alleged to have violated ACAA and/or GBA and this AP is a Contractor engaged by the District, the report or complaint will be made to and investigated by the Superintendent.

5.5 All Other Reports or Complaints

In all cases other than those set out in subsections 5.1 through 5.3 above, a report or complaint of discrimination, harassment or retaliation shall be made or referred to the Superintendents Office.

5.6 Time for Making Report or Complaint

To be considered timely, a report or complaint must be made or filed within 30 calendar days of the alleged incident of discrimination, harassment, or retaliation. If the alleged discrimination, harassment or retaliation is of an ongoing nature, the report or complaint must be filed within 30 calendar days of the most recent incident.

Reports or complaints received by the District that are outside of the 30 calendar day timeline may, at the discretion of the Superintendent, (a) be investigated in the same manner as if a timely report or complaint had been made or filed, (b) be reviewed, but in a different manner than would have occurred had the report or complaint been timely, or (c) not be processed further. In addition, recommendations and/or remedies resulting from an investigation may differ based on whether a report or complaint was timely.

5.7 Contacting the District's Compliance Officer and Title IX Coordinator

The District's Compliance Officer may be contacted via e-mail, telephone or in person at:

Compliance Officer /Superintendent
Ash Fork JUSD #31
PO Box 247
Ash Fork, AZ 86320
928-637-2561

The District's Title IX Coordinator may be contacted via email, telephone or in person at:

Title IX Coordinator
Katherine Williams
PO Box 247
Ash Fork, AZ 86302
928-637-2561

SECTION 6: Investigation of Reports or Complaints of Discrimination, Harassment or Retaliation by the District's Superintendents Office

6.1 Assignment of an Compliance Investigator and Prompt Investigation

In cases investigated by the Superintendents Office, the Superintendent shall conduct an investigation or assign an Investigator to conduct an investigation into any timely filed written report or complaint of discrimination, harassment or retaliation.

The Superintendent may also investigate any verbal, informal timely report or complaint of discrimination, harassment or retaliation.

Investigations will be completed promptly, generally within 5 to 15 calendar days of receipt of the report or complaint to allow time for due process. If the investigation cannot be concluded in the 5 to 15 calendar day timeframe, the Complainant can petition the Governing Board which has 30 days to respond.

6.2 Course of Investigation

Investigations shall be conducted in a manner that provides the complainant and respondent due process. Any investigation may include the Superintendent meeting and interviewing the Complainant and the Respondent, interviewing and/or consulting with other persons, reviewing pertinent documents, and/or making any other appropriate inquiries. The Superintendent may require the Complainant and Respondent to both submit an affidavit under oath that the factual statements made in the affidavit are true and correct.

No adverse determination will be made against a Respondent prior to the Respondent being informed about the allegations contained within the report or complaint and having the opportunity to respond to those allegations.

At the commencement of, or at any time during the course of an investigation, interim measures may be imposed in order to protect all parties until the investigation is completed, including, but not limited to, the Superintendent issuing a temporary directive to a Respondent or other person relating to conduct that may constitute discrimination, harassment or retaliation.

6.3 Cooperation of all Employees

Employees, as a condition of employment, and students, as a condition of continuing student status, are required to cooperate with, and provide truthful information to, the District during an investigation of a complaint alleging discrimination, harassment, or retaliation.

Time spent participating in a District investigation at the request of the Human Resources Department which includes the Superintendent's Office is work time.

6.4 Support

At any interview or meeting held as part of an investigation, the Complainant and Respondent may be accompanied by a person of their choice who is not an attorney. The person accompanying either the Complainant or the Respondent will be allowed to be present during the interview or meeting but may not actively participate in any manner in the interview or meeting. If the individual is a District employee, time spent accompanying either the Complaint or Respondent shall be considered time worked.

6.5 Confidentiality

Every reasonable effort will be made to protect the privacy and confidentiality of all parties involved in the investigation, consistent with and subject to the District's need to investigate the report or complaint and/or implement decisions made in order to resolve the report or complaint or remedy conduct that is determined to constitute discrimination, harassment or retaliation. No representative of the District is authorized to promise complete confidentiality to any person who possesses information relevant to the investigation of a report or complaint, including the Complainant.

Documentation resulting from any investigation shall be maintained as confidential in the Business Office. Access to documents or any other kind of information related to a complaint is permitted only for District officials with a "need to know" or as allowed or required by law.

6.6 Good Faith Allegations

No adverse action will be taken against an individual who makes a good faith allegation of discrimination, harassment, or retaliation, even if an investigation fails to substantiate the allegation.

6.7 Withdrawal of a Report or Complaint

A Complainant may withdraw a report or complaint at any time. The District, however, has the discretion to continue an investigation and take appropriate remedial action regardless of such withdrawal.

SECTION 7: Findings, Recommendations, Disciplinary and Corrective Action

At the close of an investigation, the Superintendent may make one of the following determinations, and related recommendations concerning each allegation of discrimination, harassment, or retaliation:

- Unable to confirm that the Respondent violated ACAA and/or GBA and this AP. (In some cases, the determination may be that the Respondent did not violate ACAA and/or GBA and this AP.) In such a case, the recommendations shall include a recommendation that the matter be closed.
- Unable to confirm that the Respondent violated ACAA and/or GBA and this AP (or a violation did not occur), but Respondent's conduct may have violated another District policy or AP. In such a case, the Superintendent shall refer the matter to the employee's supervisor and/or Governing Board for further review. Superintendent may also make recommendations concerning possible action to remedy the matter and/or recommendations to prevent possible retaliation in the future.
- The Respondent violated ACAA and/or GBA and this AP. The Superintendent shall (a) refer the matter to the employee's supervisor and Governing Board for further action, and (b) make recommendations concerning possible action to remedy the violation or violations that were found to have occurred and make recommendations to prevent possible retaliation in the future.
- If the Respondent is a visitor, vendor, or volunteer and the Superintendent finds that the Respondent violated this ACAA and/or GBA and this AP, the Superintendent may make recommendations to the appropriate supervisor and, if applicable, Governing Board concerning possible action to remedy the matter.

A Respondent who has been found to have engaged in conduct that involves discrimination, harassment, or retaliation may be subject to written warnings or directives and/or disciplinary action, up to and including termination of employment for a Respondent who is an employee (GCQF, GDQD) and/or suspension or expulsion of a Respondent who is a student. (JII)

The Respondent may also be required to participate in training and/or counseling.

Disciplinary action may be taken against any person who knowingly files a false claim of discrimination, harassment, or retaliation, who knowingly provides false testimony during an investigation, or who intentionally interferes with an investigation.

SECTION 8: Appeal

Either or both the Complainant and/or the Respondent have the right to appeal to the Superintendent a decision of the investigation. The appeal must be in writing, must be filed within ten (10) calendar days of the issuance of the Superintendents decision, and must include all supporting materials and arguments that the person bringing the appeal believes support the appeal. Decisions not appealed within such time are deemed final.

The Superintendent will conduct any additional fact-finding he deems necessary and shall issue a written decision on the appeal, providing a copy to all parties involved. Normally this decision will be made within thirty (30) calendar days from the date the appeal was received, but this time period may be extended in appropriate circumstances. The written decision of the Superintendent shall be final.

If the Superintendent participated in a significant fashion in the original investigation, the appeal shall be handled by Human Resources.

If the investigator is the Human Resources Officer, any appeal shall be handled by the Governing Board or designee.

SECTION 9: Right to Make Complaints to Outside Agency

In addition to use of the District's internal procedures referenced by this AP, District employees and students have the right to file claims of discrimination, harassment, or retaliation with outside agencies. At the time this AP was adopted, the timeframe for filing a charge with the Arizona Civil Rights Division was 180 days from the last act of discrimination, harassment or retaliation. The timeframe for filing a charge with the Equal Employment Opportunity Commission was 300 calendar days from the last act of discrimination, harassment or retaliation. These time frames for filing a charge with the ACRD and EEO generally will not be

extended while the Complainant attempts to resolve a dispute through the Districts's internal grievance procedure. A Complainant should verify these timeframes with the applicable agency.

External agencies include:

United States Department of Education
Office for Civil Rights (OCR)
1244 Speer Blvd., Suite 310
Denver, Colorado 80204-3582
Phone: (303) 844-5695
Fax: (303) 844-4303
Email: OCR.Denver@ed.gov

The Office of the Arizona Attorney General
Civil Rights Division (ACRD)
402 W. Congress Street, Suite S215
Tucson, Arizona 85701-1367
Phone: (520) 628-6500
TDD: (520) 628-6872

The United States Equal Employment Opportunity Commission
(EEO/AA/ADAC)
3300 N. Central Avenue, Suite 690
Phoenix, Arizona 85012-2504
Phone: (602) 640-5000
Phone: (800) 669-4000
TTY: (800) 669-6820
Fax: (602) 640-5071

GBA-E ©

EXHIBIT

EQUAL EMPLOYMENT OPPORTUNITY

COMPLAINT FORM

(To be filed with the compliance officer as provided in GBA-R)

Please print:

Name _____ Date _____

Address _____

Telephone _____ Another phone where you can be reached _____

During the hours of _____

E-mail address _____

I wish to complain against:

Name of person, school (department), program, or activity _____

Address _____

Specify your complaint by stating the problem as you see it. Describe the incident, the participants, the background to the incident, and any attempts you have made to solve the problem. Be sure to note relevant dates, times, and places.

ACA-E ©

EXHIBIT

SEXUAL HARASSMENT

COMPLAINT FORM

(To be filed with the compliance officer as provided in ACA-R)

Please print:

Name _____ Date _____

Address _____

Telephone _____ Another phone where you can be reached _____

During the hours of _____

E-mail address _____

I wish to complain against:

Name of person, school (department), program, or activity _____

Address _____

Specify your complaint by stating the problem as you see it. Describe the incident, the participants, the background to the incident, and any attempts you have made to solve the problem. Be sure to note relevant dates, times, and places.

JII-EA ©

EXHIBIT

**STUDENT CONCERNS, COMPLAINTS,
AND GRIEVANCES**

COMPLAINT FORM

**(To be filed with a school administrator or the administrator's immediate supervisor, or a school staff member who will forward this form to the school administrator or the administrator's immediate supervisor)
*Additional pages may be attached if more space is needed.***

Please print:

Name _____ Date _____

Address _____

Telephone _____ Another phone where you can be reached _____

During the hours of _____

E-mail address _____

I wish to complain against:

Name of person, school (department), program, or activity _____

Address _____

Specify your complaint by stating the problem as you see it. Describe the incident, the participants, the background to the incident, and any attempts you have made to solve the problem. Be sure to note relevant dates, times, and places.
