



Book	Policy Manual
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#### 2260.01 - **SECTION 504/ADA PROHIBITION AGAINST DISCRIMINATION BASED ON DISABILITY**

Pursuant to Section 504 of the Rehabilitation Act of 1973 ("Section 504"), the Americans with Disabilities Act of 1990, as amended ("ADA"), and the implementing regulations (collectively "Section 504/ADA"), no otherwise qualified individual with a disability shall be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving Federal financial assistance solely by reason of disability. The School Board does not discriminate in admission or access to, participation in, treatment in, or employment in its programs or activities. As such, the Board's policies and practices will not discriminate against employees and students with disabilities, and the Board will make its facilities, programs, and activities accessible to qualified individuals with disabilities. Discrimination will not be permitted against any individual with a disability on the sole basis of that disability in any of the programs, activities, policies, and/or practices of the Board.

Notice of the Board's policy on nondiscrimination in employment practices and the identity of the School Corporation's Compliance Officer(s) (see below) will be published on the Corporation's website, posted throughout the Corporation, and included in the Corporation's recruitment statements or general information publications.

#### **Free Appropriate Public Education**

The Board is committed to identifying, evaluating, and providing a free appropriate public education ("FAPE") to students with disabilities within its jurisdiction who are determined eligible for special education and related services under the Individuals with Disabilities Education Act ("IDEA") or Section 504, regardless of the nature or severity of their disabilities.

If a student has a physical or mental impairment that significantly limits one or more major life activities (see Definitions below), the Board shall provide the student a FAPE. An appropriate education may include regular or special education and related aids and services to accommodate the unique needs of students with disabilities. For students with disabilities who are not eligible for specially designed instruction under the IDEA, the related aids and services (including accommodations/modifications/interventions) they need in order to have their needs met as adequately as the needs of students without disabilities are met shall be delineated, along with their placement, in a Section 504 Plan (Form 2260.01A F13). Parents/guardians/custodians ("parents") are invited and encouraged to participate fully in the evaluation process and development of a Section 504 Plan. The quality of education services provided to students with disabilities shall be equal to the quality of services provided to students without disabilities.

The Board is committed to educating (or providing for the education of) each qualified student with a disability within its jurisdiction with students without disabilities to the maximum extent appropriate. Generally, the Corporation will place a student with a disability in the general education environment unless it is demonstrated that the education of the student in the general education environment, even with the use of supplementary aids and services, cannot be achieved satisfactorily. If the Corporation places a student in a setting other than the general education environment, it shall take into account the proximity of the alternate setting to the student's home. If the Board operates a separate class or facility that is identified as being provided for students with disabilities, the facility, program, and activities and services must be comparable to the facilities, programs, and activities and services offered to students without disabilities.

The Corporation will provide non-academic extracurricular services and activities in such a manner as is necessary to afford qualified students with disabilities an equal opportunity for participation in such services and activities. Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special

interests groups or clubs sponsored by the Corporation, referrals to agencies that provide assistance to individuals with disabilities, and employment of students. In providing or arranging for the provision of meals and recess periods and nonacademic and extracurricular services and activities, including those listed above, the Corporation will verify that students with disabilities participate with students without disabilities in such services and activities to the maximum extent appropriate.

In accordance with Section 504, parents and students shall be notified of their right to file an internal complaint regarding an alleged violation, misinterpretation, or misapplication of Section 504. In addition, students and their parents shall be notified of their right to file a complaint with the U.S. Department of Education's Office for Civil Rights ("OCR"). Finally, students and parents shall be advised of their right to request a due process hearing before an Impartial Hearing Officer ("IHO") regarding the identification, evaluation, or educational placement of persons with disabilities, and their right to examine relevant education records. (See also AG 2260.01B - Section 504/ADA - Complaint and Due Process Procedures)

## Definitions

Words used in this policy shall have those meanings defined herein; words not defined herein shall be construed according to their plain and ordinary meanings.

**Complainant** is the individual who alleges or is alleged to have been subjected to unlawful discrimination/retaliation, regardless of whether the person files a formal complaint or is pursuing an informal resolution to the alleged discrimination/retaliation.

**Respondent** is the individual who is alleged to have engaged in unlawful discrimination/retaliation, regardless of whether the Complainant files a formal complaint or is seeking an informal resolution to the alleged discrimination/retaliation.

**Corporation community** means students, Corporation employees (i.e., administrators<sup>7</sup> and professional and support staff), and Board members, agents, volunteers, contractors, or other persons subject to the control and supervision of the Board.

**Third Parties** include but are not limited to guests and/or visitors on Corporation property (e.g., visiting speakers, participants on opposing athletic teams, parents), vendors doing business with or seeking to do business with the Board, and other individuals who come in contact with members of the Corporation community at school-related events/activities (whether on or off Corporation property).

**Day(s)**: Unless expressly stated otherwise, the term "day" or "days" as used in this policy means business day(s) (i.e., a day(s) that the Corporation office is open for normal operating hours, Monday – Friday, excluding State-recognized holidays).

**Individual with a disability** means a person who has, has a record of, or is regarded as having a physical or mental impairment that substantially limits one or more major life activities.

## Major Life Activities

Major life activities are functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, eating, sleeping, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, sitting, reaching, interacting with others, and working.

Major life activities also include the operation of a major bodily function, including<sup>7</sup> but not limited to<sup>7</sup> functions of the immune system, special sense organs and skin, normal cell growth, and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, hemic, lymphatic, musculoskeletal and reproductive functions. The operation of a major bodily function includes the operation of an individual organ within a body system.

## Impairment That Substantially Limits a Major Life Activity

The determination of whether an impairment substantially limits a major life activity must be made without regard to the ameliorative effects of mitigating measures such as medication, medical supplies, equipment or appliances, low-vision devices (not including ordinary eyeglasses or contact lenses), prosthetics (including limbs and devices), hearing aids and cochlear implants or other implantable hearing devices, mobility devices, oxygen therapy equipment or supplies, assistive technology, reasonable accommodations or auxiliary aids or services, or learned behavioral or adaptive neurological modifications.

An impairment that is episodic in nature or in remission is considered a disability if it would substantially limit a major life activity when active.

## Qualified Individual with a Disability

With respect to public preschool, elementary and secondary educational services, a qualified individual with a disability means a student with a disability:

- A. who is of an age during which persons without disabilities are provided educational services;
- B. who is of any age during which it is mandatory under Indiana law to provide educational services to persons with disabilities;  
or
- C. to whom the State is required to provide a free appropriate public education pursuant to the IDEA.

With respect to vocational education services, a qualified individual with a disability means a student with a disability who meets the academic and technical standards requisite to admission or participation in the vocational program or activity. The Board will not deny a student with a disability access to its vocational education programs or courses due to architectural and/or equipment barriers or because the student needs related aids or services to receive an appropriate education.

With respect to employment, a qualified individual with a disability means the individual satisfies the requisite skill, experience, education and other job-related requirements of the employment position the individual holds or desires and can perform the essential functions of the job in question, with or without reasonable accommodation.

### Reasonable Accommodation

With respect to employment, the Board will provide a reasonable accommodation to a qualified individual who has an actual disability or who has a record of a disability, unless the accommodation would impose an undue hardship on the operation of the Board's program and/or activities. A reasonable accommodation is not required for an individual who is merely regarded as having a disability.

### Facilities

No qualified person with a disability will ~~be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which Section 504/ADA applies because the Corporation's facilities are inaccessible to or unusable by persons with disabilities.~~

For facilities constructed or altered after June 3, 1977, the Corporation will comply with applicable accessibility standards. For those existing facilities constructed prior to June 3, 1977, the Corporation is committed to operating its programs and activities so that they are readily accessible to persons with disabilities.

### Compliance Officer(s)

The Board designates the following individual(s) to serve as the Corporation's Compliance Officers (also known as Section 504 Compliance Officers/ADA Coordinators) (hereinafter referred to as the "COs").

**[DRAFTING NOTE: Neola suggests the Board appoint both a male and a female CO in order to provide complainants with the option to report their concerns to an individual of the gender with which they feel most comfortable. The COs also may serve as the Corporation's Section 504 Compliance Officer/ADA Coordinator and Title IX Coordinator. Additionally, by appointing two (2) COs, there always should be a CO available to investigate a claim of discrimination/retaliation that pertains to the other CO. The Board must list either the Name or Title of the CO; while the Board may list both the Name and Title, Neola suggests that the Board consider listing only the Title in this policy (so it does not need to revise/amend its policy whenever there is a change in the actual person(s) holding the designated position(s)), but list both the Name and Title in the requisite postings (e.g., website) and publications (e.g., handbooks) and in the Administrative Guideline.]**

Richard Stillson THS Principal

Name and/or Title

1051 South Main Street, Tipton, Indiana 46072

Address

765-675-2147

Telephone No.

rstillson@tcsc.k12.in.us

Email address

Lori Rayl, TES Principal

Name and/or Title

1051 South Main Street, Tipton, Indiana 46072

Address

765 675-2147-

Telephone No.

lrayl@tcsc.k12.in.us

Email address

The names, titles, and contact information of these individuals will be published annually on the Corporation's website and:

- A. ☒ in the staff handbooks.
- B. ☐ ~~in the Corporation's Annual Report to the public.~~
- C. ☒ on each individual school's website.
- D. ☐ ~~in the Corporation's calendar.~~
- E. ☐ \_\_\_\_\_.

The COs are responsible for coordinating the Corporation's efforts to comply with applicable Federal and State laws and regulations, including the Corporation's duty to address in a prompt and equitable manner any inquiries or complaints regarding discrimination/retaliation or denial of equal access. The COs also shall verify that proper notice of nondiscrimination for Title II of the Americans with Disabilities Act (as amended), Title VI and Title VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973 (as amended), and the Age Discrimination in Employment Act of 1975 is provided to staff members and the general public. ☐ Any sections of the Corporation's collectively-bargained, negotiated agreements dealing with hiring, promotion, and tenure need to contain a statement of nondiscrimination similar to that in the Board's statement above. In addition, any gender-specific terms should be eliminated from such contracts. **[END OF OPTION]** A copy of each of the Acts and regulations on which this notice is based will be made available upon request from the CO.

The Board will provide for the prompt and equitable resolution of complaints alleging violations of Section 504/ADA. See below. The Board further will establish and implement a system of procedural safeguards in accordance with Section 504, including the right to an impartial due process hearing, for parents of students with disabilities.

### Reports and Complaints of Unlawful Discrimination and Retaliation

Students and Corporation employees are required, and all other members of the Corporation community and Third Parties are encouraged, to promptly report incidents of unlawful discrimination and/or retaliation to an administrator, supervisor, or other Corporation official so that the Board may address the conduct. Any teacher, administrator, supervisor, or other Corporation employee or official who receives such a complaint shall file it with the CO within two (2) business days. **[NOTE: while students are advised to report discrimination/retaliation to administrators, supervisors, or other Corporation officials, the Board recognizes that some students may report discrimination/retaliation to a teacher. When a teacher receives such a report, the teacher must file it with the CO as indicated above.]**

Members of the Corporation community, which includes students or Third Parties, who believe they have been unlawfully discriminated/retaliated against are entitled to utilize the complaint process set forth below. Initiating a complaint, whether formally or informally, will not adversely affect the Complainant's employment or participation in educational or extra-curricular programs. While there are no time limits for initiating complaints under this policy, individuals should make every effort to file a complaint as soon as possible after the conduct occurs while the facts are known and potential witnesses are available.

A student and/or parent may initiate the internal complaint procedure when they believe that a violation, misapplication or misinterpretation of Section 504 has occurred. Additionally, the following procedure may be used for any disagreement with respect to actions regarding the identification, evaluation, or educational program or placement of students who are identified as having a disability or believed to have a disability pursuant to Section 504 and are not eligible under the IDEA, except in the case of disciplinary actions where the provisions of the Student Code of Conduct apply. Use of the internal complaint procedure is not a prerequisite to the pursuit of other remedies, including the filing of a complaint with the OCR or requesting an impartial due process hearing.

If during an investigation of alleged bullying, aggressive behavior and/or harassment in accordance with Policy 5517.01 - Bullying, the Principal believes that the reported misconduct may constitute unlawful discrimination based on a Protected Class, the Principal

shall report the act to one of the COs, who shall investigate the allegation in accordance with this policy. While the CO investigates the allegation, the Principal shall suspend the Policy 5517.01 investigation to await the CO's written report. The CO shall keep the Principal informed of the status of the Policy 2260 investigation and provide the Principal with a copy of the resulting written report.

The COs will be available during regular school/work hours to discuss concerns related to unlawful discrimination/retaliation. COs shall accept reports of unlawful discrimination/retaliation directly from any member of the Corporation community or a Third Party and ~~such~~ reports that initially are made to another Corporation employee. Upon receipt of a report of alleged discrimination/retaliation, the CO will contact the Complainant and begin either an informal or formal complaint process (depending on the Complainant's request and the nature of the alleged discrimination/retaliation) or designate a specific individual to conduct such a process.

The CO will provide a copy of this policy to the Complainant and the Respondent. In the case of a formal complaint, the CO will prepare recommendations for the Superintendent or oversee the preparation of such recommendations by a designee. All members of the Corporation community must report incidents of discrimination/retaliation that are reported to them to the CO within two (2) business days of learning of the incident/conduct.

Any Corporation employee who directly observes unlawful discrimination/retaliation of a student is obligated, in accordance with this policy, to report such observations to one of the COs within two (2) business days. Additionally, any Corporation employee who observes an act of unlawful discrimination/retaliation is expected to intervene to stop the misconduct unless circumstances make such an intervention dangerous, in which case the staff member should immediately notify other Corporation employees and/or local law enforcement officials, as necessary, to stop the misconduct. Thereafter, the CO/designee must contact the Complainant if age eighteen (18) or older or the Complainant's parents/guardians if the student is under the age eighteen (18) within two (2) school days to advise of the Board's intent to investigate the alleged wrongdoing.

### **Investigation and Complaint Procedures (See Form 2260.01B F2)**

Any person who alleges to have been subjected to unlawful discrimination or retaliation on the basis of disability may seek resolution of the complaint through the procedures described below. The formal complaint procedures involve an investigation of the individual's claims of discrimination/retaliation and a process for rendering a decision regarding whether the charges are substantiated.

Due to the sensitivity surrounding complaints of unlawful discrimination or retaliation, timelines are flexible for initiating the complaint process; however, individuals are encouraged to file a complaint within thirty (30) calendar days after the conduct occurs. Once the formal complaint process is begun, the investigation will be completed in a timely manner (ordinarily, within fifteen (15) business days of the complaint being received).

The procedures set forth below are not intended to interfere with the rights of any individual to pursue a complaint of unlawful discrimination or retaliation with the United States Department of Education Office for Civil Rights ("OCR"), the Indiana Civil Rights Commission ("ICRC") or the Equal Employment Opportunity Commission ("EEOC").

### **Informal Complaint Procedure**

The goal of the informal complaint procedure is to ~~promptly~~ stop inappropriate behavior promptly and facilitate resolution through an informal means, if possible. The informal complaint procedure is provided as a less formal option for an individual who alleges unlawful discrimination or retaliation. This informal procedure is not required as a precursor to the filing of a formal complaint. The informal process is available only when the Complainant and the Respondent mutually agree to participate in it.

The Complainant may proceed immediately to the formal complaint process, and individuals who participate in the informal procedure may request that the informal process be terminated at any time to move to the formal complaint process.

All complaints involving a Corporation employee or any other adult member of the Corporation community and a student will be ~~formally~~ investigated formally.

As an initial course of action, if a Complainant feels comfortable and safe doing so, the Complainant should tell or otherwise inform the Respondent that the allegedly discriminatory/retaliatory conduct is inappropriate and must stop. The Complainant should address the alleged misconduct as soon after it occurs as possible. The COs are available to support and counsel the Complainant when taking this initial step or to intervene on behalf of the individual if requested to do so. A Complainant who is uncomfortable or unwilling to ~~directly~~ approach the Respondent directly about the inappropriate conduct may file an informal or a formal complaint.

In addition, with regard to certain types of unlawful discrimination (e.g., sex discrimination), the CO may advise against the use of the informal complaint process.

A Complainant who alleges unlawful discrimination/retaliation may make an informal complaint, either orally or in writing to: 1) ~~to a~~ building administrator; 2) ~~directly to~~ one of the COs; ~~and/or~~ 3) ~~to~~ the Superintendent or other Corporation-level employee.

All informal complaints must be reported to one of the COs, who either will facilitate an informal resolution as described below or appoint another individual to facilitate an informal resolution.

The Corporation's informal complaint procedure is designed to provide the Complainant with a range of options aimed at bringing about a prompt resolution of the Complainant's concerns. Depending upon the nature of the complaint and the wishes of the Complainant, informal resolution may involve but is not limited to one or more of the following:

- A. Advising the Complainant about how to communicate concerns to the Respondent.
- B. Distributing a copy of Policy 2260.01 - Section 504/ADA Prohibition Against Discrimination Based on Disability to the individuals in the school building or office where the Respondent works/attends school.
- C. If both parties agree, the CO may arrange and facilitate a meeting or mediation between the Complainant and the Respondent to work out a mutual resolution.

While there are no set time limits within which an informal complaint must be resolved, the CO or designee is directed to attempt to resolve all informal complaints within fifteen (15) business days of receiving the informal complaint.

If the Complainant is dissatisfied with the informal complaint process, the Complainant may proceed to file a formal complaint. And, as stated above, either party may request that the informal process be terminated at any time to move to the formal complaint process.

### Formal Complaint Procedure

If a complaint is not resolved through the informal complaint process, one of the parties requested that the informal complaint process be terminated to move to the formal complaint process, the Complainant elects to file a formal complaint from the outset, or the CO determines the allegations are not appropriate for resolution through the informal process, the formal complaint process shall be implemented.

A Complainant may file a formal complaint<sup>7</sup>; either orally or in writing<sup>7</sup>; with a ~~P~~Principal, the CO, the Superintendent, or other Corporation~~-level~~ official.

Due to the sensitivity surrounding complaints of unlawful discrimination and retaliation, timelines are flexible for initiating the complaint process; however, individuals should make every effort to file a formal complaint within thirty (30) calendar days after the conduct occurs while the facts are known and potential witnesses are available. If a Complainant informs a ~~P~~Principal, the Superintendent, or other Corporation~~-level~~ official<sup>7</sup>; either orally or in writing<sup>7</sup>; about any complaint of discrimination/retaliation, that employee must report such information to the CO within two (2) business days.

Throughout the course of the process, the CO should keep the parties reasonably informed of the status of the investigation and the decision-making process.

All formal complaints must include the following information to the extent known: the identity of the Respondent; a detailed description of the facts upon which the complaint is based (i.e., when, where, and what occurred); a list of potential witnesses; and the resolution sought by the Complainant.

If the Complainant is unwilling or unable to provide a written statement including the information set forth above, the CO shall ask for such details in an oral interview. Thereafter, the CO will prepare a written summary of the oral interview, and the Complainant will be asked to verify the accuracy of the reported charge by signing the document.

Upon receiving a formal complaint, the CO will consider whether any action should be taken in the investigatory phase to protect the Complainant from further discrimination or retaliation, including<sup>7</sup>; but not limited to<sup>7</sup>; a change of work assignment or schedule for the Complainant and/or the Respondent. In making such a determination, the CO should consult the Complainant to assess whether the individual agrees with the proposed action. If the Complainant is unwilling to consent to the proposed change, the CO still may take whatever actions are deemed appropriate in consultation with the Superintendent.

Within two (2) business days of receiving the formal complaint, the CO or designee will initiate a formal investigation to determine whether the Complainant has been subjected to unlawful discrimination/retaliation.

Simultaneously, the CO will inform the Respondent that a formal complaint has been received. The Respondent will be informed about the nature of the allegations and provided with a copy of any relevant policies and/or administrative guidelines, including Policy 2260.01 - Section 504/ADA Prohibition Against Discrimination Based on Disability~~1623 - Section 504/ADA Prohibition Against Disability Discrimination in Employment~~. The Respondent also must be informed of the opportunity to submit a written response to the formal complaint within five (5) business days.



Although certain cases may require additional time, the CO or a designee will attempt to complete an investigation into the allegations of discrimination/retaliation within fifteen (15) business days of receiving the formal complaint.

The investigation will include:

- A. interview(s) with the Complainant;
- B. interview(s) with the Respondent;
- C. interviews with any other witnesses who reasonably may be expected to have any information relevant to the allegations; and,
- D. consideration of any documentation or other information presented by the Complainant, Respondent, or any other witness that is reasonably believed to be relevant to the allegations.

At the conclusion of the investigation, the CO or the designee shall prepare and deliver a written report to the Superintendent that summarizes the evidence gathered during the investigation and provides recommendations based on the evidence and the definition of unlawful discrimination/retaliation as provided in Board policy and State and Federal law as to whether the Respondent has engaged in unlawful harassment/retaliation of the Complainant. The CO's recommendations must be based upon the totality of the circumstances. In determining if discrimination or retaliation occurred, a preponderance of evidence standard will be used.

☒ The CO may consult with the Board's legal counsel before finalizing the report to the Superintendent.

Absent extenuating circumstances, within five (5) business days of receiving the report of the CO or the designee, the Superintendent either must issue a written decision regarding whether the charges have been substantiated or request further investigation. A copy of the Superintendent's final written decision will be delivered to both the Complainant and the Respondent.

If the Superintendent requests additional investigation, the Superintendent must specify the additional information that is to be gathered, and such additional investigation must be completed within five (5) business days. At the conclusion of the additional investigation, the Superintendent must issue a final written decision as described above.

If the Superintendent determines the Respondent engaged in unlawful discrimination/retaliation ~~against~~<sup>toward</sup> the Complainant, the Superintendent must identify what corrective action will be taken to stop, remedy, and prevent the recurrence of the discrimination/retaliation. The corrective action should be reasonable, timely, age-appropriate, effective, and tailored to the specific situation.

☒ The decision of the Superintendent shall be final.

#### [OR]

~~[ ] A Complainant or Respondent who is dissatisfied with the final decision of the Superintendent may appeal through a signed written statement to the Board within five (5) business days of the party's receipt of the Superintendent's decision. The written statement of appeal must be submitted to the ( ) Treasurer/CFO ( ) Board President ( ) Board Attorney ( ) \_\_\_\_\_.~~

In an attempt to resolve the complaint, the Board shall meet with the concerned parties and their representatives within twenty (20) business days of the receipt of such an appeal. A copy of the Board's disposition of the appeal shall be sent to each concerned party within ten (10) business days of this meeting. The decision of the Board will be final.

#### [END OF OPTIONS]

The Board reserves the right to investigate and resolve a complaint or report of unlawful discrimination/retaliation regardless of whether the Complainant pursues the complaint. The Board also reserves the right to have the formal complaint investigation conducted by an external person in accordance with this policy or in such other manner as deemed appropriate by the Board or its designee.

The parties may be represented, at their own cost, at any of the above-described interviews/meetings.

The right of a person to a prompt and equitable resolution of the complaint shall not be impaired by the person's pursuit of other remedies, such as the filing of a complaint with the OCR, ~~EEOC~~ or ICRC, the filing of charges with local law enforcement, or the filing of a civil action in court. Use of this internal complaint process is not a prerequisite to the pursuit of other remedies.

#### Privacy/Confidentiality

The Corporation will employ all reasonable efforts to protect the rights of the Complainant, the Respondent(s), and the witnesses as much as possible, consistent with the Corporation's legal obligations to investigate, take appropriate action, and ~~comply~~conform with any discovery or disclosure obligations.

All records generated under the terms of this policy shall be maintained as confidential to the extent permitted by law. Confidentiality, however, cannot be guaranteed. Additionally, the Respondent must be provided the Complainant's identity.

During the course of a formal investigation, the CO or designee will instruct each person who is interviewed about the importance of maintaining confidentiality. Any individual who is interviewed as part of an investigation is expected not to disclose to third parties any information that is learned or provided during the course of the investigation.

### **Remedial Action and Monitoring**

If warranted, appropriate remedial action shall be determined and implemented on behalf of the Complainant, including but not limited to counseling services, reinstatement of leave taken due to the discrimination, the opportunity to complete assignments missed due to absences related to the discrimination, or other appropriate action.

The Board may appoint an individual, who may be a Corporation employee, to follow up with the Complainant to ensure no further discrimination or retaliation has occurred and to take action to address any reported occurrences promptly.

### **Sanctions and Disciplinary Action**

The Board shall vigorously enforce its prohibitions against unlawful discrimination by taking appropriate action reasonably calculated to stop and prevent further misconduct.

While observing the principles of due process, a violation of this policy may result in disciplinary action up to and including the discharge of an employee or the suspension/expulsion of a student. All disciplinary action will be taken in accordance with applicable State law and the terms of any relevant collective bargaining agreement ~~(s)~~ or student code of conduct.

When imposing discipline, the Superintendent shall consider the totality of the circumstances involved in the matter, including the age and maturity level of any student involved. In those cases where unlawful discrimination/retaliation is not substantiated, the Board may consider whether the alleged conduct nevertheless warrants discipline in accordance with other Board policies, consistent with the terms of any relevant collective bargaining agreement ~~(s)~~ or student code of conduct.

Where the Board becomes aware that a prior disciplinary action has been taken against the Respondent ~~an employee~~, all subsequent sanctions imposed by the Board and/or Superintendent shall be reasonably calculated to end such conduct, prevent its recurrence, and remedy its effect.

### **Impartial Due Process Hearing**

A student and/or parent may request an impartial due process hearing regarding the identification, evaluation, or placement of a student with a disability. The student and/or parent may but are not required to first exhaust the above complaint procedure before requesting an impartial due process hearing. The parent of a student with a disability and a student over 18 years old (if not under guardianship) or an emancipated student has the right to: (1) examine records or documents that the school relied on in making its decision about the student; (2) request an impartial due process hearing that provides the parent and/or student with an opportunity to participate and permits representation by an attorney; and (3) have an opportunity for review of the decision made at the hearing.

A request for an impartial due process hearing should be made as soon as possible following a dispute in order to ensure that witnesses are available but no more than two years following the date of the matter in dispute. A request for an impartial due process hearing must be put in writing, identify the specific circumstances or areas of dispute that have given rise to the request for a hearing, and offer possible solutions to the dispute. The request for due process hearing must be filed with a Corporation CO within the time limits specified above. The CO is available to assist individuals in filing a request for an impartial due process hearing.

When a request for an impartial due process hearing is received, the aggrieved party will have the opportunity to receive a hearing conducted by an IHO (i.e., by a person not employed by the Corporation, not involved in the education or care of the child, and not having a personal or professional interest that would conflict with the IHO's objectivity in the hearing). The Corporation will maintain a list of trained IHOs that may include IDEA/Article 7 hearing officers, attorneys, and Directors of Special Education outside the Corporation. The Corporation CO will appoint an IHO from that list, and the Corporation will bear the costs of the hearing. The appointment of an IHO will be made within fifteen (15) school days after the request for an impartial due process hearing is received.

A party to an impartial due process hearing has the right to:



- A. ~~to~~ be accompanied and advised by legal counsel and ~~by~~ individuals with special knowledge or training with respect to the problems of students with disabilities at the party's own cost;
- B. present evidence and confront, cross-examine and compel the attendance of witnesses;
- C. a written or electronic verbatim record of the hearing; and
- D. written findings of fact and conclusions of law setting forth the reasons for the decision.

The IHO shall conduct the impartial due process hearing within a reasonable period of time (i.e., not to exceed ninety (90) calendar days from the request for a hearing, unless this time-frame is mutually waived by the parties or is determined by the IHO to be impossible to comply with due to extenuating circumstances). The IHO will give the parent and/or student written notice of the date, time and place of the hearing. Notice will be given no less than twenty-one (21) calendar days prior to the date of the hearing, unless otherwise agreed to by the parent and/or student. The notice shall include:

- A. a statement of the time, place and nature of the hearing;
- B. a statement of the legal authority and jurisdiction under which the hearing is being held;
- C. a reference to the particular section(s) of the statutes and rules involved;
- D. a statement of the availability of relevant records for examination;
- E. a short and plain statement of the matters asserted; and
- F. a statement of the right to be represented by counsel.

The IHO shall conduct the hearing in a manner that will afford all parties a full and fair opportunity to present evidence and otherwise to be heard. The parent and/or student may be represented by another person of the parent or student's choice, including an attorney. The IHO shall make a full and complete record of the proceedings.

The IHO shall render a decision in writing to the parties within thirty (30) calendar days following the conclusion of the hearing. The decision will be based solely on the testimony and demonstrative evidence presented at the hearing and include a summary of the evidence (i.e., findings of fact) and the reason for the decision (conclusions of law). The IHO's decision shall include a statement that either party may appeal the decision.

Appeal of the IHO's decision may be made to a Federal court of competent jurisdiction.

### OCR Complaint

At any time, if a student or parent believes that the student has been subjected to discrimination based upon disability in violation of Section 504 or the ADA, the student or parent may file a complaint with the OCR. The OCR can be reached at:

U.S. Department of Education  
Office for Civil Rights  
Chicago Office  
John C. Kluczynski Federal Building  
230 S. Dearborn Street, 37th Floor  
Chicago, IL 60604  
Telephone: 312-730-1560  
FAX: 312-730-1576  
TDD: 800-877-8339  
E-mail: OCR.Chicago@ed.gov  
Web: <http://www.ed.gov/ocr>

Except in extraordinary circumstances, the OCR does not review the result of individual placement and other educational decisions, so long as the Corporation complies with the "process" requirements of Subpart D of Section 504.

### Retaliation

Retaliation against a person who makes a report or files a complaint alleging unlawful ~~discrimination~~ ~~harassment~~/retaliation or participates as a witness in an investigation is prohibited. Neither the Board nor any other person may intimidate, threaten, coerce or interfere with any individual because the person opposed any act or practice made unlawful by any Federal or State civil rights law,

made a report/formal complaint, testified, assisted or participated, or refused to participate in any manner in an investigation, proceeding, or hearing under those laws ~~and~~ or this policy, or exercised, enjoyed, aided or encouraged any other person in the exercise or enjoyment of any right granted or protected by those laws ~~and~~ or this policy.

Retaliation against a person for making a report of discrimination, filing a formal complaint, or participating in an investigation or meeting is a serious violation of this policy that can result in imposition of disciplinary sanctions/consequences and/or other appropriate remedies.

Formal complaints alleging retaliation may be filed according to the internal complaint process set forth above.

The exercise of rights protected under the First Amendment of the United States Constitution does not constitute retaliation prohibited under this policy.

## Education and Training

In support of this policy, the Board promotes preventative educational measures to create greater awareness of unlawful discriminatory practices. The Superintendent shall provide appropriate information to all members of the Corporation community related to the implementation of this policy and shall provide training for Corporation students and staff where appropriate. All training and information provided regarding the Board's policy and discrimination in general will be age and content appropriate.

## Retention of Investigatory Records and Materials

The CO is responsible for overseeing retention of all records that must be maintained pursuant to this policy. All individuals charged with conducting investigations under this policy shall retain all documents, electronically stored information ("ESI"), and electronic media (as defined in Policy 8315) created and/or received as part of an investigation, which may include but are not limited to:

- A. all written reports/allegations/complaints/grievances/statements/responses pertaining to an alleged violation of this policy;
- B. any narratives that memorialize oral reports/allegations/complaints/grievances/statements/responses pertaining to an alleged violation of this policy;
- C. any documentation that memorializes the actions taken by Corporation personnel or individuals contracted or appointed by the Board to fulfill its responsibilities related to the investigation and the Corporation's response to the alleged violation of this policy;
- D. written witness statements;
- E. narratives, notes from, and audio, video, or digital recordings of witness interviews/statements;
- F. e-mails, texts, and social media posts that directly relate to or constitute evidence pertaining to an alleged violation of this policy (i.e., not after-the-fact commentary about or media coverage of the incident);
- G. notes ~~and~~ summaries prepared contemporaneously by the investigator in whatever form made (e.g., handwritten, keyed into a computer or tablet, etc.), but not including transitory notes whose content is otherwise memorialized in other documents;
- H. written disciplinary sanctions issued to students or employees and other documentation that memorializes oral disciplinary sanctions issued to students or employees for violations of this policy;
- I. dated written determinations/reports (including summaries of relevant exculpatory and inculpatory evidence) and other documentation that memorializes oral notifications to the parties concerning the outcome of the investigation, including any consequences imposed as a result of a violation of this policy;
- J. documentation of any supportive measures offered and/or provided to the Complainant ~~and~~ the Respondent, including no contact orders issued to both parties, the dates the no contact orders were issued, and the dates the parties acknowledged receipt of the no contact orders;
- K. documentation of all actions taken, both individual and systemic, to stop the discrimination or harassment, prevent its recurrence, eliminate any hostile environment, and remedy its discriminatory effects;
- L. copies of the Board policy and procedures/guidelines used by the Corporation to conduct the investigation and any documents used by the Corporation at the time of the alleged violation to communicate the Board's expectations to students and staff with respect to the subject of this policy (e.g., Student Codes of Conduct and/or Employee Handbooks); ~~copies of the Board~~

~~policy and procedures/guidelines used by the Corporation to conduct the investigation, and any documents~~

- M. copies of any documentation that memorializes any formal or informal resolutions to the alleged discrimination or harassment;

**[DRAFTING NOTE: The following options should be selected if the Corporation concludes that the following items are not adequately encompassed in the preceding paragraphs.]**

- N. (X) documentation of any training provided to Corporation personnel related to this policy, including but not limited to notification of the prohibitions and expectations of staff set forth in this policy and the role and responsibility of all Corporation personnel involved in enforcing this policy, including their duty to report alleged violations of this policy and/or conducting an investigation of an alleged violation of this policy; **[REMINDER: Documentation of training should be maintained regardless of whether there is an investigation of an alleged violation of this policy. It is best practice to maintain a log of all staff members who participate in a training, along with the date, time, and location of the training, the name and title (or credentials) of the presenter, and a copy of the materials reviewed and/or presented during the training.]**
- O. (X) documentation that any rights or opportunities that the Corporation made available to one party during the investigation were made available to the other party on equal terms;
- P. (X) copies of any notices sent to the Respondent of the allegations constituting a potential violation of this policy;
- Q. (X) copies of any notices sent to the Complainant and the Respondent in advance of any interview or meeting;
- R. (X) copies of any documentation or evidence used during informal and formal disciplinary meetings and hearings, including the investigation report, and any written responses submitted by the Complainant or the Respondent.

Additionally, the CO shall retain copies of any written request for an impartial due process hearing, the IHO's notices to the parties, the evidence entered in the hearing, any transcript of the hearing, and the IHO's decision.

The documents, ESI, and electronic media (as defined in Policy 8315) retained may include public records and records exempt from disclosure under Federal (e.g., FERPA, ADA) and/or State (e.g., I.C. 5-14-3-4) law, such as student records and confidential medical records.

The documents, ESI, and electronic media (as defined in Policy 8315) created or received as part of an investigation shall be retained in accordance with Policy 8310, Policy 8315, Policy 8320, and Policy 8330 for not less than three (3) years and longer if required by the Corporation's records retention schedule.

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Legal	29 U.S.C. 794, Section 504 Rehabilitation Act of 1973, as amended
	42 U.S.C. 12101 et seq., Americans with Disabilities Act of 1990, as amended
	29 C.F.R. Part 1630, ADA Regulations
	34 C.F.R. Part 104, Section 504 Regulations