

Adopted: \_\_\_\_\_

MSBA/MASA Model Policy 402

Orig. 1995

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Rev. 2015

## **402 DISABILITY NONDISCRIMINATION POLICY**

### **I. PURPOSE**

The purpose of this policy is to provide a fair employment setting for all persons and to comply with state and federal law.

### **II. GENERAL STATEMENT OF POLICY**

- A. The school district shall not discriminate against qualified individuals with disabilities because of the disabilities of such individuals in regard to job application procedures, hiring, advancement, discharge, compensation, job training, and other terms, conditions, and privileges of employment.
- B. The school district shall not engage in contractual or other arrangements that have the effect of subjecting its qualified applicants or employees with disabilities to discrimination on the basis of disability. The school district shall not exclude or otherwise deny equal jobs or job benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association.
- C. The school district shall make reasonable accommodations for the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless the accommodation would impose undue hardship on the operation of the business of the school district.
- D. Any job applicant or employee wishing to discuss the need for a reasonable accommodation, or other matters related to a disability or the enforcement and application of this policy, should contact \_\_\_\_\_ (list the name, title, office address, telephone number, and e-mail address). This individual is the school district's appointed ADA/Section 504 coordinator.

**Legal References:** Minn. Stat. Ch. 363A (Minnesota Human Rights Act)  
29 U.S.C. 794 *et seq.* (Rehabilitation Act of 1973, § 504)  
42 U.S.C., Ch. 126 § 12112 (Americans with Disabilities Act)  
29 C.F.R. Part 32  
34 C.F.R. Part 104

**Cross References:** MSBA/MASA Model Policy 521 (Student Disability Nondiscrimination)

## **GRIEVANCE PROCEDURE FOR COMPLAINTS OF DISCRIMINATION**

The following grievance procedure applies to claims of sex, disability, and racial discrimination:

A. Any person who believes he or she has been the victim of unlawful discrimination or any person with knowledge or belief of conduct that may constitute unlawful discrimination shall report the alleged acts immediately to an appropriate school district official designated by this policy. The complaint must be filed within 90 calendar days of the alleged violation.

B. The Human Rights Officer is responsible for receiving oral or written complaints of unlawful discrimination toward an employee or student. However, nothing in this policy shall prevent any person from reporting unlawful discrimination toward an employee or student directly with the Human Rights Officer, the school board or other school district official.

C. While the school board has designated the Human Rights Officer to receive complaints of unlawful discrimination, if the complaint involves the Human Rights Officer, the complaint shall be made to the superintendent.

D. Upon receipt of a complaint, the Human Rights Officer shall immediately notify the superintendent. If the superintendent is the subject of the complaint, the Human Rights Officer shall immediately notify the school board.

E. The Human Rights Officer may request but not insist upon a written complaint. Alternative means of filing a complaint, such as through a personal interview or by tape recording, shall be made available upon request for qualified persons with a disability. If the complaint is oral, it shall be reduced to writing within 24 hours and forwarded to the superintendent. Failure to do so may result in disciplinary action. The school district encourages the reporting party to complete the complaint form for written complaints. It is available from the principal of each building or the school district office.

F. The school district shall respect the privacy of the complainant, the individual(s) against whom the complaint is filed, and the witnesses, consistent with the school district's legal obligations to investigate, take appropriate action, and comply with any discovery or disclosure obligations.

### **INVESTIGATION**

A. The Human Rights Officer, upon receipt of a complaint alleging unlawful discrimination shall promptly undertake an investigation if deemed appropriate. The investigation may be conducted by the Title IX coordinator for complaints of sex discrimination or the Section 504 Coordinator for complaints of disability discrimination, or a school district official or neutral third party designated by the Title IX coordinator, Section 504 coordinator or Human Rights Officer. The investigation shall be completed within 30 days of the complaint, unless impracticable.

B. The investigation may consist of personal interviews with the complainant, the individual(s)

against whom the complaint is filed, and others who may have knowledge of the alleged incident(s) or circumstances giving rise to the complaint. The investigation may also consist of other methods deemed pertinent by the investigator.

C. In determining whether the alleged conduct constitutes a violation of this policy, the school district shall consider the facts and the surrounding circumstances such as the nature of the behavior, past incidents or continuing patterns of behavior, the relationships between the parties involved and the context in which the alleged incident occurred.

D. The school district may take immediate steps to protect the parties involved in the complaint process, pending completion of an investigation of alleged unlawful discrimination.

E. Upon completion of the investigation, the school district investigator shall make a written report to the Human Rights Officer. If the complaint involves the Human Rights Officer, the report may be filed directly with the superintendent or school board. The report shall include the facts, a determination of whether the allegations have been substantiated, whether a violation of this policy has occurred as well as a description of any proposed resolution which may include alternative dispute resolution.

F. The district shall comply with federal and state law pertaining to retention of records.

## **APPEAL**

If the grievance has not been resolved to the satisfaction of the complainant, s/he may appeal to the Human Rights Officer within ten (10) school days of receipt of the findings of the school district investigation. The school district investigator shall conduct a review of the appeal and within ten (10) school days of receipt of the appeal, shall affirm, reverse, or modify the findings of the report. The decision of the school district investigator is final but does not preclude pursuit of alternative complaint procedures noted in the section entitled “Right to Alternative Complaint Procedures.”

## **SCHOOL DISTRICT ACTION**

A. Upon conclusion of the investigation and receipt of the findings, the school district shall take appropriate action. If it is determined that a violation has occurred, such action may include, but is not limited to, warning, suspension, expulsion, transfer, remediation or termination.

School district action taken for violation of this policy shall be consistent with the requirements of applicable collective bargaining agreements, Minnesota and federal law and school district policies.

B. The result of the school district’s investigation of each complaint filed under these procedures shall be reported in writing to the complainant by the school district in accordance with state and federal law regarding data or records privacy.

## **RETALIATION**

The school district shall take appropriate action against any student, teacher, administrator or

other school personnel who retaliates against any person who reports alleged unlawful discrimination toward an employee or student or any person who testifies, assists or participates in an investigation or hearing relating to such unlawful discrimination. Retaliation includes, but is not limited to, any form of intimidation or harassment.

### **CONFLICT OF INTEREST**

If there is a conflict of interest with respect to any party affected by this policy, appropriate action shall be taken such as, but not limited to, appointing or contracting with a neutral third party investigator to conduct the investigation or recusal from the process by the person for whom a conflict or potential conflict of interest exists.

### **DISSEMINATION OF POLICY**

The school district shall adopt and publish these procedures.

### **RIGHT TO ALTERNATIVE COMPLAINT PROCEDURES**

These procedures do not deny the right of any individual to pursue other avenues of recourse, which may include filing charges with the agencies listed below or initiating action in state or federal court.

### **Claims of discrimination may also be pursued through the following agencies where appropriate:**

U.S. Department of Education  
Office for Civil Rights, Region V  
500 W. Madison Street – Suite 1475  
Chicago, IL 60661  
Tel: 312-730-1560  
TDD: 312-730-1609

MN Department of Human Rights  
190 E 5<sup>th</sup> Street  
St. Paul, MN 55101  
800.657.3704  
651.296.5663  
TDD 651.296.1283

### **For complaints of employment discrimination:**

Equal Employment Opportunity Commission  
330 S. 2<sup>nd</sup> Avenue  
Suite 430  
Minneapolis, MN 55401  
800.669.4000  
612.335.4040  
TDD 612.335.4045

This document provides general information and is not to be a substitute for legal advice. Changes in the law, including timelines for filing a complaint, may affect your rights.

***Legal References:***

34 C.F.R. Section 104.7(b) (Section 504 of the Rehabilitation Act)

34 C.F.R. Section 106.8(b) (Title IX of the Education Amendments of 1972)

***Resources:***

U.S. Department of Education

Office for Civil Rights, Region V

500 W. Madison Street – Suite 1475

Chicago, IL 60661

Tel: 312-730-1560

TDD: 312-730-1609

Reading Room, U.S. Department of Education, Office for Civil Rights:

<http://www2.ed.gov/about/offices/list/ocr/publications.html>