

4001 A

Procedures: Disability Non-Discrimination

Regulation

Original Adoption: 03/25/2008

Effective Date: 03/26/2008

Revision Dates:

I. PURPOSE

The purpose of this regulation is to establish the procedures for applications for reasonable accommodations in employment, or for registering a complaint, for allegations of discrimination in employment based on disability, fact-finding and response procedures.

II. APPLICATIONS FOR ACCOMMODATIONS

- A. Any job applicant or employee wishing to request the need for a reasonable accommodation in order to be employed by the District or to perform duties assigned while an employee of the District shall make such request in writing to the Director of the District's Office of Diversity and Equal Opportunity.
1. Requests for accommodation received by the human resources department, principals, site administrators, or other supervisory personnel of the District shall be forwarded to the District's Office of Diversity and Equal Opportunity.
 2. The Office of Diversity and Equal Opportunity will make available to school and district sites and departments the form to be used for requests.
- B. No principal, site administrator or other manager shall make accommodations based on a claim of disability for applicants or employees absent the consent of the Director of the District's Office of Diversity and Equal Opportunity which shall only be provided after a complete evaluation of whether the person is a qualified disabled person under the Americans with Disabilities Act.
- C. A written response to the request for accommodation shall be made to the applicant in a timely manner granting or denying the request for accommodation.
- D. The Director of Diversity and Equal Opportunity or her/his designee shall make findings of fact supporting the decision to grant or to deny the request for accommodation.

- E. The written response shall include a determination of
 - 1. whether or not the person is a qualified disabled person within the meaning of the Americans with Disabilities Act, and
 - 2. whether or not granting the accommodation would impose an undue hardship on the District.

III. COMPLAINT PROCEDURE

- A. Any person who believes he or she has been discriminated against in employment due to a disability should make a complaint of the alleged acts immediately to the Office of Diversity and Equal Opportunity.
- B. Complainants are encouraged to use the complaint form available from the principal, site administrator or other supervisory personnel or available from the District Offices.
- C. Allegations of discrimination should not be sent to the District General Counsel's office due to the positional conflict of interest regarding internal and external claims.

IV. FACT FINDING PROCEDURES

- A. Within two business days of the receipt of a written complaint of discrimination based on the disability or perceived disability of the complainant the Office of Diversity and Equal Opportunity shall commence fact finding.
 - 1. If the original complaint is oral the Office of Diversity and Equal Opportunity will request a written complaint.
 - 2. In the event that the complainant cannot or does not provide a written complaint the Office of Diversity and Equal Opportunity staff will convert the oral complaint into a written statement which shall be attested to by the complainant as to its accuracy.
- B. The fact-finding shall 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.
- C. The fact-finding may also consist of any other methods and documents deemed pertinent by the Office of Diversity and Equal Opportunity.

- D. The Office of Diversity and Equal Opportunity shall complete the fact-finding investigation as soon as practicable.
 - E. The Office of Diversity and Equal Opportunity will make a written report which shall include a determination of whether the allegations have been substantiated, unsubstantiated or found unable to be substantiated.
 - 1. In determining whether allegations have been substantiated, the fact finder shall consider all the circumstances, witness statements, and credibility of each person interviewed.
 - 2. Credibility of each person shall be determined on the basis of all the facts known, and the interviewer's observations, including, but not limited to:
 - a. the person's demeanor,
 - b. any bias exhibited during the interview, and
 - c. the person's prior conduct.
 - F. The report shall include a determination of whether the conduct which is the subject of the complaint and substantiated through the fact-finding process appears to be a violation of District policy prohibiting discrimination based upon the individual's disability or perceived disability.
 - 1. In determining whether alleged conduct constitutes a violation of this policy, the fact-finding should consider the surrounding circumstances:
 - a. the nature of the behavior,
 - b. past incidents of the behavior,
 - c. past or continuing patterns of behavior,
 - d. the relationship between the parties, and
 - e. the context in which the alleged incident(s) occurred.
- V. DISTRICT ACTION**
- A. In the case where a person is determined to be a qualified disabled person within the meaning of the Americans with Disabilities Act the written determination shall describe in specificity how and what accommodations shall be made.
 - 1. The Office of Diversity and Equal Opportunity will work in conjunction with the District employee relations and human resources departments, and the work location to establish the specifics of the implementation of the accommodation.
 - B. In the case of a substantiated claim of discrimination based on the disability or perceived disability of the complainant, the District will take appropriate action. Appropriate action may include, but is not limited to:
 - 1. a warning;

2. a letter of reprimand in an employee's personnel file;
 3. a suspension;
 4. exclusion;
 5. expulsion;
 6. transfer;
 7. remediation or retraining; and/or
 8. termination or discharge.
- C. Any discipline of an employee shall be in conformance with applicable Collective Bargaining Agreements, Contracts of Employment, and Federal and State Law.
- D. In a school, the principal or site administrator, working in conjunction with the Office of Diversity and Equal Opportunity shall take the appropriate action regarding students. In the case of an employee, the district's employee relations department shall take the appropriate action.
- E. In all other district facilities, discipline shall be handled by the individual's supervisor working in conjunction with the District's employee relations department and the Office of Diversity and Equal Opportunity.
- F. In the case of a substantiated claim of discrimination based on the disability of the complainant, the complainant and the individual against whom the allegations have been made may receive information from the report in conformance with the Data Practices Compliance Policy of the District, Federal and State Law following the completion of the investigation and after the decision regarding the appropriate action has been made.

Legal References:

42 U.S.C. §12101 *et seq.* (The Americans with Disabilities Act)
Minnesota Statutes chapter 363A (The Minnesota Human Rights Act)

Cross References:

MPS Policy 4000 (Equal Employment Opportunity)
MPS Policy 4002 (Harassment and Violence Prohibition)
MPS Policy 5000 (Equal Education Opportunity)
MPS Policy 5750 (Disability and Nondiscrimination)