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# Trumbull County ESC Compliance Officer Training

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# Types of Discrimination



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# Types of Discrimination

- Race
- Color
- Age
- Religion
- *Sex* \*
- National Origin
- Disability
- Socioeconomic Background
- Genetics



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# Race & Color Discrimination

- Discrimination based on race or color involves treating someone unfavorably because he/she is of a certain race or because of personal characteristics associated with a particular race (such as hair, skin color, facial features).
- It can also involve treating someone differently because of a connection to a race-based group or organization.



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# Age Discrimination

- Laws that prohibit discrimination against individuals who are 40 and over in any employment practice.
- Employment practices include hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment.



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# Religious Discrimination

- Religious-based discrimination involves treating someone unfavorably because of his or her religious beliefs.
- The law protects not only people who belong to traditional organized religions, such as Buddhism, Christianity, Hinduism, Islam, and Judaism, but also others who have sincerely held religious, ethical or moral beliefs.
- Religious discrimination can also involve treating someone differently because that person is married to (or associated with) an individual of a particular religion or because of his or her connection with a religious organization or group.



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# Sex Discrimination

- Laws addressing sex/gender discrimination prohibit treating one sex differently from another.
- Sex and gender discrimination includes discrimination for being transgender, cisgender, gender nonconforming, genderqueer, gender dysphoria, or in the transition process.
- Although less common, men can be subject to sex discrimination as well!



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# National Origin Discrimination

- Laws that prohibit national origin discrimination make it illegal to discriminate because of a person's birthplace, ancestry, culture, or language.
- Individuals cannot be denied equal opportunity because they or their family are from another country, have a name or accent associated with a national origin group, participate in certain customs associated with a national origin group, or are married to or associate with people of a certain national origin.



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# Disability Discrimination

- State and federal law mandate that individuals who have **either a real or perceived disability** must be treated equally as nondisabled peers to the extent possible.
- A number of laws ensure that individuals with disabilities have equal access to facilities and programs.



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# Genetics Discrimination

- Laws that prevent treating individuals differently because they have a gene mutation that causes or increases the risk of an inherited disorder.
- Much more recent area of law that impacts employers and insurance companies in particular (since 2008).



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# Discrimination on the Basis of Socioeconomic Factors

- Includes protections against discrimination based on economic factors, including income and place of residence.
- Often implicates other areas of discrimination such as race.
- Fourteenth Amendment and Section 1983 are vehicles to file cases of socioeconomic discrimination in court.



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# Relevant Board Policies

- Review relevant Board policies containing prohibitions on discrimination and harassment.
  - Nondiscrimination and Access to Equal Educational Opportunity
  - Nondiscrimination and Access to Equal Employment Opportunity
  - Nondiscrimination Based on Genetic Information
  - Section 504/ADA Prohibition Against Discrimination in Employment
  - Anti-Harassment
- Specific policies pertaining to administration, professional staff, classified staff and students.



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# Who is a Compliance Officer?

- If you can't figure this out, chances are members of the school community cannot figure it out either – and that's a problem!
- Federal law requires that public agencies designate individuals and make available all information necessary for public to get in touch.



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# Who is a Compliance Officer?

- Policy – the names, titles, and contact information of these individuals will be published annually:
  - In staff handbooks
  - In the district's annual report to the public
  - On the district's website
  - On each individual school's website
  - In the district calendar

# Who is a Compliance Officer?

- Bottom line – your organization needs to take down any barriers that would prevent a person from contacting the compliance officer.
- **Recommended best practice** – appoint at least one male and one female officer, if possible.
  - BONUS – if one is not available at any particular time, then you have a backup.



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# Job Responsibilities of a Compliance Officer

1. Takes complaints
2. Investigates
3. Reports findings
4. Recommends solutions
5. Coordinates district efforts to comply Board Policies and anti-discrimination and harassment laws.

Sounds simple, right?!!

# Who may make a complaint?

- Students
- Employees
- Visitors
- Board Members
- Contractors
- Vendors
- Simply put.....ANYONE!!!!

# How does a Compliance Officer receive a complaint?

- Directly (during regular business hours)
- Through referral from a building or district-level school administrator
- From school employees
- From others who heard about or witnessed an unlawful act
- What about anonymous complaints?

# When must a complaint be submitted?

- There are no timelines to initiate a complaint.
  - Statutes of limitations don't really confine board duty to investigate.
  - Policy recommends that individuals make every effort to report within 30 days.
- However, from an investigation standpoint, the sooner the better.
- Policy indicates that all members of the school community must report incidents of discrimination or retaliation that are reported to them to the CO within two business days.
  - Again, failure to adhere to this deadline **is not** sufficient reason to ignore investigation process.



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# Formal v. Informal Complaint Procedures

- Under policy, formal and informal complaints will trigger a different procedure
- Review board policies thoroughly and have a good working knowledge of process and timelines under them.
- When in doubt . . . ?



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# Informal Complaint Procedure

- The goal of the informal complaint: facilitate quick resolution.
- Keep in mind: someone does not need to complete informal process before he/she files a formal complaint, and may terminate informal process at any time to start formal process.
- All parties must agree to participate in informal procedures.



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# Informal Complaint Procedure

- May involve:
  - Advising about how to communicate concerns – individuals are encouraged to address matter with accused under CO's support and counsel.
  - Distributing applicable policies to parties involved to establish/remind about expectations.
  - Facilitating a meeting between the parties involved to work out and resolve issues informally.
- Timeline for resolution – CO will attempt resolution within 15 business days.
- Documentation – all documents generated as part of informal process **will be retained** in accordance with board retention policy.

# Formal Complaint Procedure

- Individual can elect the formal procedure anytime.
  - Again, can terminate informal process at any time and move into formal process.
- ***CHECK YOUR POLICY: All complaints involving a district employee or any other adult member of the school district community against a student must be formally investigated.***



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# Formal Complaint Procedure

- Individual files complaint either verbally or in writing.
- CO must initiate investigation within **two** business days.
- When available, must include in the complaint:
  - Identity of the individual(s) who engaged in discriminatory conduct
  - Detailed description of the facts
  - List of potential witnesses
  - Resolution sought by complainant

# Formal Complaint Procedure

- What happens when the complainant refuses to include this information in writing?
  - Conduct oral interview
  - Prepare written summary of oral interview (date and time included)
  - Verify accuracy with complainant
- What if he/she will not provide some of the information at all?

# Formal Complaint Procedure

- During initial assessment and investigation, CO must consider whether any action must be taken to protect complainant from further discrimination or retaliation
- Complainant should be consulted in this decision but need not consent!



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# Formal Complaint Procedure

- Accused must be notified “simultaneously”:
  - that a complaint has been received, as well as the nature of the complaint, and
  - of the right to submit a written response within five (5) business days.
- Accused must also receive a copy of applicable policies.



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# Formal Complaint Procedure

- Investigation must (at a minimum) include:
  - Interview of the complainant
  - Interview of the accused
  - Interviews with any other witnesses who may reasonably be expected to have any information relevant to the allegations
  - Consideration of any documentation or other information presented by any knowledgeable party
- Query: Do you have the time, resources, and support to dispatch these responsibilities?

# Formal Complaint Procedure

- Investigation should be completed within 15 days when possible.
  - Need to be able to articulate reason(s) about why it took longer.
- At the conclusion of the investigation, CO is expected to prepare and deliver written report to the superintendent that:
  - Summarizes evidence gathered
  - Provides recommendations based on evidence and the definition of unlawful discrimination/retaliation about whether complainant has been subjected to discrimination
- Documentation – all documents generated as part of informal process **will be retained** in accordance with board retention policy.
- Are these public records?



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# Formal Complaint Procedure

- CO recommendations must be based on “totality of circumstances.”
- Preponderance of the evidence standard will be used.
- It is recommended that you consult with legal counsel at this stage, if not earlier!
  - Issue identification
  - Investigatory feedback
  - Interviews and document collection
  - Documentation pointers



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# Formal Complaint Procedure

- Within five days (absent extenuating circumstances), the superintendent must either issue a final decision regarding the charges or request further investigation.
- A copy of the superintendent's decision must be delivered to both the accused and the complainant.
- If superintendent concludes that discrimination/retaliation occurred, notice must identify corrective action that will be taken to **stop, remedy, and prevent** recurrence.
- Corrective actions should be **reasonable, timely, age-appropriate, tailored to the specific situation, and effective.**



# Formal Complaint Procedure

- Policy will specify one of two options:
  - Superintendent's decision is final, or
  - Appeal through signed written statement submitted to the board within 5 business days after receipt of notice from superintendent (Check your policy: not all policies have the right to appeal the Superintendent's decision)
- If additional appeal step through the board:
  - Must meet with parties within 20 business days.
  - Must issue decision to each concerned party within 10 business days after meeting.
  - Board reserves the right to initiate separate investigation and appoint an external investigator and may resolve the complaint through separate means.



# Options for Resolution of Complaint

- Actions must be “reasonably calculated” to stop and prevent further violations of policies/laws.
- We will get to specifics later!



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# Other Obligations?

- Please note, there may be other processes or obligations that need to occur simultaneously with the complaint procedures.
  - Police Involvement
  - Child Protective Services
  - Union Involvement
  - Public Relations Response



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# Reminder Regarding Retaliation

- The Board may not retaliate in any way against someone who made a complaint.
- This requirement to refrain from engaging in retaliation extends to the individual who has been accused.

# Disclaimers

- The procedures set forth below [in policy] 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, the Ohio Civil Rights Commission (“OCRC”) or Equal Employment Opportunity Commission (“EEOC”) . . .
- 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 Office for Civil Rights or the filing of a court case. Use of this internal complaint procedure is not a prerequisite to the pursuit of other remedies.



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# The Investigation



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# Four Stages of Investigations

1. Preparation and planning
2. Witness interviews and document/data collection
3. Investigation report and recommendations



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# 1. Preparation and Planning



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# Receiving the Initial Complaint

- Who received the Complaint?
  - Building level administrator
  - Teacher or colleague
  - Compliance Officer?
- First Inquiry: Are employees aware of their obligation to report and how well does your district inform employees of who to report complaints and allegations to?
- Assess the credibility of the complainant and the viability of the claim.



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# Designate the Investigator

- Options?
  - Compliance Officer or other designated districtwide representative (check policy)
  - Board counsel (supportive role or conducting the investigation)
  - Outside support company
- Who should **not** conduct these investigations?



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# Temporary and Immediate Action

- Consider implementing intermediate measures before conducting/completing the investigation to ensure that further harassment does not occur.
  - Assign employee to home – paid administrative leave.
  - Reassign employee to different location within the building or to a different building entirely.
  - Separate students during school hours.
- Is this a criminal matter? Potential child abuse?
  - Ensure we are complying with reporting obligations.



# Review Board Policy and CBA

- Policy
  - Informal/formal complaint procedure
  - Specific and strict timelines
  - Required forms
  - Don't forget about Ags
- Collective bargaining agreements
  - Nondiscrimination article?
  - Procedure requirements
    - “Bargaining unit members are entitled to representation in meetings that may result in disciplinary action.”



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## 2. Witness Interviews and Document/Data Collection



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# Document.. Document.. Document!!

- Written complaint by the victim:
  - Who, what, where, and when
  - Alleged harasser
  - Relevant documents – i.e., emails, texts, Facebook
  - Individuals involved (think potential witness list)
- Notify alleged harasser



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# Witness Interviews

- Develop a preliminary witness list for interviews and arrange for a logical ordering and discreet method of conducting the interviews.
- Develop a “script” listing areas of inquiry.
- How will information be recorded?
- Will children/students be interviewed?



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# Witness Interviews

- Stress the need for both factual information and confidentiality.
- Elicit and record facts and first-hand knowledge – avoid giving significance to conclusion, innuendo, and unreliable hearsay.
- Remain flexible – you may have to go off script.
- Ask if additional people have relevant information.
- Make arrangements for follow-up with the witness and request that he/she communicate any additional relevant information.



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# Interviewing the Accused

- Union leadership to protect the employee's right to representation.
- Adequate notice of charges.
- Stress the objectivity of the investigation and that this is the harasser's opportunity to tell his/her side of the story.
- Document (there may be critical admissions)!
- Ask if there is additional information the district should consider.
- Close the interview by providing the alleged harasser with an update on his/her status relative to the district's present expectations – home assignment, reassignment, etc.
- Provide a time frame for the completion of the investigation.



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### 3. Investigation Report and Recommendations



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# Finalizing the Investigation Report

- Once you completed all follow-up interviews and collected all evidence, draft a concise and factual investigation report with appropriate signature and date (lawyers and/or outside company can help).
- Make the call: Set forth a finding on each allegation made and investigated, citing your authority as an investigator, and specifically reference all relevant facts determined by the process.
- Utilize chronological accounting.
- Address how you reached factual conclusions in areas of dispute (but record contrary assertions).

# Finalizing the Investigation Report

- **Cite violation(s) to board policy, work rules, directives, law.**
- Emphasize admissions by the employee, corroboration by witness, and direct evidence while downplaying unreliable circumstantial evidence, hearsay, and/or innuendo.
- Attach relevant documentation relied upon the report.
- Incorporate and reference any prior known acts of misconduct by the offender.
- Develop recommendations based upon specific findings of fact and conclusions.

# Additional Considerations

- Consequences for the victim
  - No retaliation-based reports or complaints of discrimination or harassment
- Do you have to contact law enforcement/child protective services?
- If a licensed employee – conduct unbecoming? ODE reporting?
- Are we considering nonrenewal or termination?
- Disciplinary measures: Do they include follow-up obligations? If so, monitor them and document.



# Practical Guidance and Best Practices

- Familiarize yourself with key anti-discrimination policies and guidelines.
- Then...FOLLOW THEM!!
- Take prompt steps to investigate and end discrimination or harassment.
- Take remedial and/or disciplinary action when and as appropriate.
- Document each step of the complaint process.
- Avoid “bad facts” – don’t burn bridges, fail to investigate.
- Eliminate problems and implement monitoring, prevention and training.
  - Follow through on promised interventions and actions.
  - Communicate with affected parties.
  - Be alert to any retaliation if and when it occurs.



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