

	Freeman School District #33-1	NEPN Code: AC
	Policies and Regulations	

EQUAL OPPORTUNITY / NONDISCRIMINATION

The Freeman School District will not violate any of the provisions of applicable federal programs, statutes, or regulations, including but not limited to Title IX, ESEA/Title I, Rehabilitation Act Section 504, Title II (Americans with Disabilities Act), NCLB and McKinney-Vento Act (homeless children). The Freeman School District will not discriminate in any of its policies and programs on the basis of age, race, color, creed, national origin, ancestry, religion, sex or disability.

The Freeman School District will provide the following:

1. an adequate, reliable, and impartial investigation of complaints, including the opportunity for the complainant and alleged perpetrator to present witnesses and provide evidence;
2. evaluation of all relevant information and documentation relating to a complaint of discrimination;
3. specific, reasonably prompt time frames at each stage of the grievance process;
4. written notice to all parties within a specified timeframe of the outcome or disposition of the grievance at each stage of the process;
5. an opportunity to appeal the findings or remedy, or both;
6. an assurance that the Freeman School District will take steps to prevent recurrence of any discrimination and correct discriminatory effects on others; and
7. language in the policies and grievance procedures indicating that any attempts to informally or voluntarily resolve the complaint or grievance should not delay the commencement of the Freeman School District's investigation.

In compliance with applicable federal laws and regulations, the Freeman School Board has appointed the Superintendent as the Freeman School District's Compliance Officer to coordinate program compliance with federal programs. The Superintendent can be reached at:

Freeman School District
1001 S. Wipf Street
Freeman, SD 57029
Phone #: (605) 925-4214

In compliance with applicable federal laws and regulations, the Freeman School Board has appointed Kristina Sage as the Freeman School District's Title IX Coordinator to coordinate the District's compliance responsibilities under Title IX of the Education Amendments of 1972, as amended. The Title IX Coordinator can be reached at:

Kristina Sage
1001 S. Wipf Street

Freeman, SD 57029
Phone #: (605) 925-4214

A complaint may also be filed with the United States Office for Civil Rights, U.S. Department of Education at: 1010 Walnut Street, Suite 320, Kansas City, Missouri 64106: Telephone: (816) 268-0550; Facsimile: (816)268-0599; Telecommunication Device for the Deaf: (877) 521-2172; E-mail: OCR.KansasCity@ed.gov.

COMPLAINT PROCEDURE

The Freeman School Board has adopted a specific procedure to ensure that parental/student/public complaints related to the provisions of applicable federal programs, statutes or regulations, including claims of retaliation. The Freeman School Board will not discriminate, in any of its policies and programs, on the basis of age, race, color, creed, national origin, ancestry, religion, sex or disability.

The purpose of this complaint procedure is to outline a procedure for addressing general parental/student/public complaints about federal program compliance and/or discrimination. *Complaints unrelated to federal programs are addressed through other School District policies and not through this policy.*

For the purposes of this policy, a “complaint” is a perceived or alleged violation of federal programs, statutes or regulations (e.g., Title IX, ESEA/Title I, Rehabilitation Act Section 504, Title II (Americans with Disabilities Act), NCLB, McKinney-Vento Act (homeless children), etc.) and/or discrimination in a policy and/or program on the basis of age, race, color, creed, national origin, ancestry, religion, sex or disability.

To protect the confidentiality of all concerned, it is imperative that any school employee in receipt of a complaint treat the complaint as confidential and that the complaint not be reproduced in any form, nor disclosed or discussed with any person other than those identified as proper recipients of the complaint (i.e., the principal, superintendent, Title IX Coordinator, or school board).

When a federal program compliance complaint or discrimination/harassment complaint based on race, color, national origin, age or sex (excluding sexual harassment complaints) is brought directly to an individual board member or the entire Freeman School Board, the board member or entire Freeman School Board may listen to the person’s complaint but shall take no action unless there has been compliance with this Policy. The person bringing the complaint will be directed to the procedure as set forth below. The following procedure is designed to ensure the proper balance in protecting the rights of the person(s) bringing the complaint and the rights of the employee against whom the complaint is made. It is only when the person having the complaint and the employee involved cannot resolve the problem, and the complaint cannot be resolved at the administrative level, will the Freeman School Board and board members become involved.

Should it be determined that discrimination or harassment occurred based on race, color, national origin, age or sex, the District will take steps to prevent recurrence of any discrimination or harassment and to correct its discriminatory effects on others, if appropriate.

STEP 1: Initial Complaint

- A. The person having the complaint related to federal program compliance or a discrimination complaint based on race, color, national origin, age or sex (excluding sexual harassment complaints, which are addressed by Policy ACAA), the person must initiate the complaint procedure in one of the following ways:
- meet and discuss the concern with the Employee involved; OR
 - meet and discuss the concern with the Employee's Principal; OR
 - if the complaint includes a claim of discrimination on the basis of sex, meet and discuss the concern with the Title IX Coordinator. The Title IX Coordinator shall complete a Complaint Form, Exhibit AC-E(1). The Complainant may sign and date the Complaint Form verifying the accuracy of its content. The Title IX Coordinator shall deliver a copy of a signed Complaint Form to the Principal or Principals of the Employees involved.
1. If the Complainant met with the Employee and the complaint was resolved, the Employee shall notify the Title IX Coordinator of the complaint and resolution if the complaint involved an assertion of sex discrimination. If the Complainant met with the Employee and the complaint was not resolved, the Complainant must meet and discuss the complaint with the Employee's Principal within ten (10) calendar days of the meeting with the Employee. The Principal shall complete a Complaint Form, Exhibit AC-E(1). The Complainant shall sign and date the Complaint Form verifying the accuracy of its content.
 2. If the Complainant initiates the complaint by meeting with the Principal, the Principal shall complete a Complaint Form, Exhibit AC-E(1). The Complainant shall sign and date the Complaint Form verifying the accuracy of its contents. If the complaint asserts discrimination on the basis of sex, the Principal shall deliver a copy of the Complaint Form to the Title IX Coordinator.
- B. Upon the Complaint Form being signed and dated by the Complainant and received by the Principal, the Principal shall give a copy of the complaint to the District's Compliance Officer (Superintendent). The Principal shall also give a copy of the complaint to any party alleged to have discriminated unjustly (the "Respondent"), and schedule an informal meeting with only the Complainant, Respondent, and Principal present. At the meeting, the Principal shall attempt to facilitate discussion between the Complainant and Respondent by seeking clarification of the issue(s) and seeking a resolution to the complaint. However, attempts to informally or voluntarily resolve the complaint should not delay the commencement of the District's investigation. Should a resolution be obtained, the resolution shall be noted on the Complaint Form and, if the complaint involved an allegation of sex discrimination, a copy of the amended Complaint Form shall be sent to the Title IX Coordinator. Should a resolution not be obtained, the Complainant and/or the Respondent may request a decision by the Principal on the merits of the complaint by making the request on the Complaint Form.
- C. If the Principal is asked to make a decision on the merits of the complaint, the Principal has the authority to investigate the complaint beyond the information

received from the Complainant and Respondent during the meeting with the Complainant, Respondent, and Principal. During the Principal's investigation the Complainant and Respondent shall both have the opportunity, at separate times, to present witnesses and provide evidence to the Principal. The Principal shall evaluate all relevant information and documentation related to the complaint of discrimination and shall render a decision in writing within fourteen (14) calendar days of the request for a decision on the merits of the complaint. The time frame for rendering a decision by the Principal may be extended by the Principal for good cause and upon written notification to the Complainant and Respondent. The notification shall identify the reason for the extension and the date on or before which the decision shall be rendered. The Complainant and the Respondent shall receive written notification of the Principal's determination/resolution. If the complaint involved an allegation of sex discrimination, a copy of the Principal's determination/resolution shall be sent to the Title IX Coordinator.

- D. The Principal's decision may be appealed by the Complainant or Respondent to the Superintendent within (10) ten calendar days of receipt of the Principal's written decision pursuant to Step 2. If the Principal does not render a written decision within the required time frame (14 days unless extended) the Complainant or Respondent may appeal to the Superintendent pursuant to Step 2.

Should the complaint be against a Principal, the Superintendent shall address the complaint through the procedure set forth in Step 1. An appeal by the Complainant pursuant to Step 1D may be filed with the Freeman School Board pursuant to Step 3.

Should the complaint be against the Superintendent (or the Principal who also is the Superintendent) the Complaint Form, Exhibit AC-E(1), shall be given to the Business Manager. The Business Manager shall give the Complaint Form to the School Board President or Chairperson. At the next Freeman School Board meeting, the Freeman School Board will designate a person who is not an Employee of the District to address the complaint through the procedure set forth in Step 1. An appeal by the Complainant pursuant to Step 1D may be filed with the Freeman School Board pursuant to Step 3.

STEP 2: Appeal to the Superintendent

The following procedure shall be used to address an appeal of the Principal's decision made in Step 1, or if the Principal failed to render a decision in the required time frame:

- A. The appeal shall be in writing using Exhibit AC-E(2). The appealing party must attach the complaint and the Principal's written decision, if a decision was rendered.
- B. Upon receipt of an appeal, the Superintendent will provide a copy of the appeal to the other party. Within five (5) calendar days, the other party may submit a written response to the appeal. The Superintendent shall provide a copy of the response to the appealing party.
- C. In the Superintendent's sole discretion, the Superintendent may (a) meet and discuss the matter with the Complainant and Respondent, (b) meet and discuss the matter with the Complainant, Respondent and Principal, or (c) meet and discuss the matter with the Principal.

- D. Within fourteen (14) calendar days from the date the appeal was filed with the Superintendent, the Superintendent shall render a decision in writing. The time frame for rendering a decision by the Superintendent may be extended by the Superintendent for good cause and upon written notification to the Complainant and Respondent; the notification shall identify the reason for the extension and the date on or before which the decision shall be rendered. The Complainant, Respondent and Principal shall receive copies of the decision and, if the complaint involved an allegation of sex discrimination, a copy of the decision shall be sent to the Title IX Coordinator. The Superintendent may uphold, reverse or modify the Principal's decision. The Superintendent may also refer the matter back to the Principal for further investigation. The Principal may uphold, modify or reverse his or her initial decision. After a matter has been referred back to the Principal, and the Principal rendered a second decision, that decision may also be appealed to the Superintendent.
- E. The Superintendent's decision may be appealed by the Complainant or non-Employee Respondent to the Freeman School Board within (10) ten calendar days of receipt of the Superintendent's written decision pursuant to Step 3. If the Superintendent does not render a written decision within the required time frame (14 calendar days unless extended) the Complainant or non-Employee Respondent may appeal to the Freeman School Board pursuant to Step 3.
- F. If an Employee believes the Superintendent's decision constitutes a violation, misinterpretation or inequitable application of Freeman School Board policy or collective bargaining agreement applicable to the Employee, the Employee may file a grievance pursuant to the applicable grievance policy. A grievance filed pursuant to this provision shall be initiated at the Superintendent level.

STEP 3: Complainant's Appeal to the Freeman School Board

The following procedure shall be used to address an appeal of the Superintendent's decision made in Step 2, or if the Superintendent failed to render a decision in the required time frame:

- A. An appeal to the Freeman School Board shall be in writing using Exhibit AC-E(3). The Appellant must attach the complaint, the Principal's written decision if a decision was rendered, the appeal to the Superintendent, the response to the appeal if any, and the Superintendent's decision if one was rendered.
- B. The appeal must be filed with the President/Chairperson of the Freeman School Board or Business Manager within ten (10) calendar days of Appellant's receipt of the Superintendent's written decision, or within ten (10) days of the deadline for the Superintendent's written decision, whichever comes first.
- C. Upon receipt by the Freeman School Board President/Chairperson of an appeal by the Appellant, a copy of the appeal shall be given to the other party or parties involved.
- D. Upon receipt of an appeal to the Freeman School Board, the Freeman School Board shall schedule a date, time and location for the appeal hearing.

E. The following procedure shall be applicable at the appeal hearing before the Freeman School Board:

1. The Freeman School Board shall appoint a school board member or a person who is not an employee of the school district as the Hearing Officer.
2. Within thirty (30) calendar days of an appeal being filed with the Freeman School Board, the Freeman School Board shall conduct a hearing in executive session.
3. The Complainant, Respondent, and Superintendent each have the right to be represented at the hearing.
4. The Freeman School Board shall make a verbatim record of the hearing by means of an electronic device or a court reporter. This record and any exhibits must be sealed and must remain with the Hearing Officer until the appeal process has been completed.
5. The issue on appeal is whether the Superintendent's decision should be upheld, reversed or modified by the Freeman School Board; in the absence of a decision by the Superintendent, the Freeman School Board will make a decision on the merits of the complaint.
6. All parties shall be given the opportunity to make an opening statement, with the Complainant being given the first opportunity, followed by the Respondent and then the Superintendent.
7. The Complainant shall present his or her case first, and the Respondent shall then present his or her case. Both parties shall have the opportunity to ask questions of the other's witnesses. The Hearing Officer and school board members may ask questions of any witness.
8. After the Complainant and the Respondent have presented their respective cases, the Superintendent shall then present the basis of his/her decision which led to the appeal, if a decision was rendered. The Complainant and Respondent shall have the opportunity to ask the Superintendent questions. The Hearing Officer and board members may also ask questions of the Superintendent.
9. Unless a witness is a party to the appeal, witnesses may be present only when testifying unless the Hearing Officer rules otherwise. All witnesses must take an oath or affirmation administered by the Freeman School Board President/ Chairperson, Hearing Officer or other person authorized by law to take oaths and affirmations.
10. The Hearing Officer shall admit all relevant evidence. The Hearing Officer may limit unproductive or repetitious evidence. The strict rules of evidence do not apply. *Moran v. Rapid City Area School Dist.*, 281 N.W.2d 595. 602 (S.D. 1979) ("This [school board hearing related to teacher contract non-renewal] does not mandate nor necessitate the use of strict evidentiary rules.").

11. Both parties shall be given the opportunity to make a closing statement, with the Complainant having the first opportunity, followed by the Employee, and then the Superintendent. The Complainant shall be given the opportunity for a brief rebuttal.
12. After the evidentiary hearing, the Freeman School Board shall continue to meet in executive session for deliberations. No one other than the Hearing Officer may meet with the Freeman School Board during deliberations. During deliberations, the Freeman School Board may seek advice from an attorney who did not represent any of the parties in the hearing. Consultation with any other person during deliberation may occur only if a representative of the Complainant, Respondent, and Superintendent are present. The Freeman School Board may, in its sole discretion, continue the proceedings and make a final decision on the appeal at a later date.
13. Within twenty (20) calendar days of the hearing, the Freeman School Board shall render its decision and issue its written Findings of Fact, Conclusions of Law and Decision. The timeframe for rendering a decision may be extended by the Freeman School Board President for good cause and upon written notification to the Complainant, Respondent, and Superintendent. The notification shall identify the reason for the extension and the date on or before which the decision shall be rendered.
14. The decision of the Freeman School Board must be based solely on the evidence presented at the hearing and must be formalized by a motion made in open meeting. The Freeman School Board will reconvene in open session. The Freeman School Board may uphold, reverse, or modify the Superintendent's decision, or render a decision on the merits of the complaint in the absence of a Superintendent's decision. Findings of Fact, Conclusions of Law and Decision, consistent with the Board motion, shall be in writing and approved by the Freeman School Board. The Complainant, Respondent, Principal and Superintendent will receive copies after the Findings of Fact, Conclusions of Law and Decision are approved by the Freeman School Board. If the complaint involved an allegation of sex discrimination, a copy of the Findings of Fact, Conclusions of Law, and Decision shall be sent to the Title IX Coordinator.
15. If the Appellant is dissatisfied with the Freeman School Board's decision, the Appellant may appeal the decision by filing an appeal to the circuit court pursuant to SDCL Ch. 13-46.

LEGAL REFERENCES:

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| - SD Constitution Article 6 | <u>Bill of Rights</u> |
| - SDCL 13-28-14 | <u>School privileges of persons honorably discharged from military service</u> |
| - SDCL 13-28-5 | <u>Public school privileges free to children of legal age</u> |

- SDCL 13-28-6 [Continuation of privileges to pupil becoming twenty-one during school year](#)
- SDCL 13-37 [Special assistance and related services](#)
- SDCL 20-13 [Human rights](#)
- CFR Title 34 Part 104 [Rehabilitation Act Section 504](#)
- CFR Title 34 Part 300 [Education of Children with Disabilities](#)
- CFR Title 45 Part 81 [Practice and procedure for hearings](#)
- CFR Title 45 Part 86 [Nondiscrimination on the basis of sex in education programs](#)
- USC Title 20 §1681-1688 [Nondiscrimination on the Basis of Sex in Educational Programs and Activities](#)
- USC Title 20 §6301 et.seq. [Every Student Succeeds Act](#)
- USC Title 20 Chapter 33 [Education of Individuals with Disabilities](#)
- USC Title 29 Chapter 14 [Age Discrimination in Employment](#)
- USC Title 29 Chapter 16 [Vocational Rehabilitation](#)
- USC Title 42 §11431 [McKinney-Vento Homeless Assistance Act](#)
- USC Title 42 §2000 [Civil rights Act of 1964 \(Prohibits discrimination by covered employers on the basis of race, color, religion, sex or national origin\)](#)
- USC Title 42 §6101-6103 [Age discrimination in Federally Assisted Programs](#)