

Policy 1662 - Anti-Harassment and Violence (New)
Policy 3362 - Anti-Harassment and Violence (Revised)
Policy 4362 - Anti-Harassment and Violence (Revised)
Policy 5517 - Anti-Harassment and Violence (Revised)

To maintain consistency in procedures for complaints of discrimination and the grievance process, the policies, administrative guidelines and forms related to harassment on the basis of a protected class have been revised to comport with the new Title IX policy, administrative guidelines and forms.

You will notice that a number of provisions/options pertaining to prohibited staff-student relationships have been omitted from the anti-harassment policies listed above, including references to the sexual harassment of students and criminal sexual misconduct with minors. **Because the policies referenced above exclude Title IX matters, which instead are addressed in Policy 2266 - Nondiscrimination on the Basis of Sex in Education Programs or Activities, including the sexual harassment of students, those provisions are no longer applicable to the anti-harassment policies listed above.** However, the omitted provisions/options will be incorporated into a new policy regarding staff-student relations that will be included in the next update to be released in the Fall of 2021.

The revised policies should be recommended by the Superintendent for adoption by the Board, and the Board should adopt these policies to maintain consistency in its policies.

Policy 2260 - Nondiscrimination and Access to Equal Educational Opportunity (Revised)

To maintain consistency in procedures for complaints of discrimination and the grievance process, the policies, administrative guidelines and forms related to discrimination and harassment on the basis of a protected class have been revised to comport with the new Title IX policy, administrative guidelines and forms. Because of the number of revisions involved, this policy has been issued as a replacement policy.

The revised policies should be recommended by the Superintendent for adoption by the Board, and the Board should adopt these policies to maintain consistency in its policies.

Policy 2260.01 - Section 504/ADA Prohibition Against Discrimination Based on Disability (Revised)

Board Policy 2260.01 places particular emphasis on protections for students who are identified as having a disability under Section 504 and ADA, including accessibility to qualified individuals with regard to facilities, programs and activities, according to federal law. Revisions to this policy are based on recent Office for Civil Rights (OCR) investigations and reviews of compliance issues, particularly related to vocational education/Career-Technical education programs, with particular emphasis on vocational education. Other revisions have been made to address changes in the terminology used to refer to students with disabilities and to revise the Complaint and Grievance Procedure for the processing of complaints of discrimination or retaliation so this procedure is consistent with the other nondiscrimination and anti-harassment policies.

Revisions to this policy are based on recent Office for Civil Rights (OCR) investigations and reviews of compliance issues, particularly related to vocational education/Career-Technical education programs.

Policy 3123 - Section 504/ADA Prohibition Against Disability Discrimination in Employment (Revised)

Policy 4123 - Section 504/ADA Prohibition Against Disability Discrimination in Employment (Revised)

To maintain consistency in procedures for complaints of discrimination and the grievance process, the policies, administrative guidelines and forms related to discrimination on the basis of disability in employment have been revised to comport with the new Title IX policy, administrative guidelines and forms. Because of the number of revisions involved, these have been issued as replacement policies.

These revised policies should be recommended by the Superintendent for adoption by the Board, and the Board should adopt these policies to maintain consistency within its policies

Policy 3122 – Nondiscrimination and Equal Employment Opportunity (Revised)

To maintain consistency in procedures for complaints of discrimination and the grievance process, the policies, administrative guidelines and forms related to discrimination and harassment on the basis of a protected class have been revised to comport with the new Title IX policy, administrative guidelines and forms. Because of the number of revisions involved, these have been issued as replacement policies.

These revised policies should be recommended by the Superintendent for adoption by the Board, and the Board should adopt these policies to maintain consistency within its policies.

Book Policy Manual
 Section Special Update - Nondiscrimination and Anti-Harassment - May 2021
 Title Replacement Policy - Title IX Update - May 2021 - ANTI-HARASSMENT AND VIOLENCE
 Code po1662 ksj please have Supt. review
 Status

1662 - ANTI-HARASSMENT AND VIOLENCE

General Statement

Racial, sexual, and religious/ethnic harassment is a form of discrimination which violates Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, et seq., Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, et seq., and WV Code 5-11-1, et seq., the West Virginia Human Rights Act.

It is the policy of the Board of Education to maintain an education and work environment that is free from all forms of unlawful harassment and violence.

This policy applies to any student, staff member or member of the public during any school related activity or during any education sponsored event whether in a building or other property used or operated by the Board of Education or in any other facility being used by the Board.

The Board will vigorously enforce its prohibition against discriminatory harassment based on race, color, national origin, sex (including transgender-gender status, change of sex, or gender identity), disability, age, blindness, creed or religion, ancestry or genetic information, socioeconomic status, physical appearance, sexual orientation, mental/physical/developmental/sensory disability (collectively, "Protected Classes"), or any other characteristic that are protected by Federal civil rights laws (hereinafter referred to as "unlawful harassment"), and encourages those within the School County-District community as well as third parties Third Parties, who feel aggrieved to seek assistance to rectify such problems. The Board will investigate all allegations of harassment and in those cases where unlawful harassment is substantiated, the Board will take immediate steps to end the harassment, prevent its reoccurrence, and remedy its effects. Individuals who are found to have engaged in unlawful harassment will be subject to appropriate disciplinary action. (See West Virginia State Board of Education policy 4373)

~~{ } The County School District will offer counseling services to any person found to have been subjected to unlawful harassment, and, where appropriate, the person(s) who committed the unlawful harassment.~~

~~For purposes of this policy, "County School community" means students, administrators, and professional and classified staff, as well as Board members, agents, volunteers, contractors, or other persons subject to the control and supervision of the Board.~~

~~For purposes of this policy, "third parties" include, but are not limited to, guests and/or visitors on County School 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 County School community at school-related events/activities (whether on or off County School property).~~

The Board will act promptly and confidentially to investigate all harassment and violence complaints, formal or informal, verbal or written, and will take appropriate disciplinary action based upon the results of the investigation.

Other Violations of the Anti-Harassment Policy

The Board will also take immediate steps to impose disciplinary action on individuals engaging in any of the following prohibited acts:

- A. Retaliating against a person who has made a report or filed a complaint alleging unlawful harassment, or who has participated as a witness in a harassment investigation.
- B. Filing a malicious or knowingly false report or complaint of unlawful harassment.
- C. Disregarding, failing to investigate adequately, or delaying investigation of allegations of harassment, when responsibility for reporting and/or investigating unlawful harassment charges comprises part of one's supervisory duties.

Furthermore, the Board is committed to providing an educational setting that is safe, secure, and free from harassment and bullying for all of its students and school employees. Policy 5517.01 - Bullying addresses those instances of bullying and harassment which do not rise to the level of legally protected harassment under Federal law, but are, nonetheless, behaviors that may occur on school grounds, at school-sponsored events, on school buses, at school bus stops and through school computer networks and through other electronic communication or transmission that will not be tolerated and must be appropriately identified, reported, investigated, and, when substantiated, be the subject of appropriate disciplinary action. An electronic act, communication, transmission or threat includes but is not limited to one which is administered via telephone, wireless phone, computer, pager or any electronic or wireless device whatsoever, and includes but is not limited to transmission of any image or voice, email or text message using any such device.

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 harassment, regardless of whether the person files a formal complaint or is pursuing an informal resolution to the alleged harassment.

Respondent is the individual who has been alleged to have engaged in unlawful harassment, regardless of whether the Reporting Party files a formal complaint or is seeking an informal resolution to the alleged harassment.

School District community means students and Board employees (i.e., administrators, and professional and classified staff), as well as 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 School District 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 School District community at school-related events/activities (whether on or off District 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 Board office is open for normal operating hours, Monday - Friday, excluding State-recognized holidays).

Bullying

Bullying rises to the level of unlawful harassment when one or more persons systematically and chronically inflict physical hurt or psychological distress on one (1) or more students or employees and that bullying is based upon one (1) or more Protected Classes, that is, characteristics that are protected by Federal civil rights laws. It is defined as any unwanted and repeated written, verbal, or physical behavior, including any threatening, insulting, or dehumanizing gesture, by an adult or student, that is severe or pervasive enough to create an intimidating, hostile, or offensive educational or work environment; cause discomfort or humiliation; or unreasonably interfere with the individual's school or work performance or participation; and may involve:

- A. **teasing;**
- B. **threats;**
- C. **intimidation;**
- D. **stalking;**
- E. **cyberstalking;**
- F. **cyberbullying;**
- G. **physical violence;**
- H. **theft;**
- I. **sexual, religious, or racial harassment;**
- J. **public humiliation; or**
- K. **destruction of property;**

"Harassment" means any threatening, insulting, or dehumanizing gesture, use of technology, or written, verbal or physical conduct directed against a student or school employee that:

- A. **places a student or school employee in reasonable fear of harm to his/her person or damage to his/her property;**
- B. **has the effect of substantially interfering with a student's educational performance, opportunities, or benefits, or an employee's work performance; or**
- C. **has the effect of substantially disrupting the orderly operation of a school.**

Sexual harassment – Sexual harassment consists of sexual advances, requests for sexual favors, sexually motivated physical conduct, or other verbal or physical conduct or communication of a sexual nature when:

- A. submission to the conduct or communication is made a term or condition either explicitly or implicitly of obtaining or retaining employment, or of obtaining an education;
- B. submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's employment or education;
- C. creating an intimidating, hostile or offensive or educational environment.

Sexual harassment may involve the behavior of a person of any gender against a person of the same or another gender.

Sexual Harassment covered by Policy 2266 - Nondiscrimination on the Basis of Sex in Education Programs or Activities is not included in this policy. Allegations of such conduct shall be addressed solely by Policy 2266.

Sexual harassment may include, but is not limited to:

- A. verbal or written harassment of a sexual nature or abuse;

- B. pressure for sexual activity;
 - C. inappropriate or unwelcome sexually motivated patting, pinching, **() obscene gestures,** or physical conduct;
 - D. **asking about, or telling about, sexual fantasies, sexual preferences, or sexual activities;**
 - E. **speculations about a person's sexual activities or sexual history, or remarks about one's own sexual activities or sexual history;**
 - F. **giving unwelcome personal gifts such as lingerie that suggests the desire for a romantic relationship;**
 - G. **leering or staring at someone in a sexual way, such as staring at a person's breasts, buttocks, or groin;**
 - H. sexual behavior or words, including demands for sexual favors, accompanied by implied or overt threats and/or promises concerning an individual's employment or educational status;
 - I. unwelcome behavior, verbal or written words or symbols, directed at an individual because of gender;
 - J. the use of authority to emphasize the sexuality of a student in a manner that prevents or impairs that student's full enjoyment of educational benefits, **climate** or opportunities;
 - K. unwelcome sexual flirtations, advances, or propositions from a member of the same or opposite sex;
 - L. verbal abuse of a sexual nature, without regard to whether the verbal abuse specifically refers to sexual characteristics at whom the verbal abuse is directed;
 - M. verbal or written comments about an individual's body;
 - N. sexually degrading word(s) or actions used to intimidate, describe an individual or to refer to some aspect of the individual's behavior, appearance, attitude, or conduct;
 - O. the display, use or dissemination of sexually suggestive gestures, objects, pictures, **graffiti, videos, posters,** and/or jokes by any means, including, but not limited to, printed materials and materials displayed by electronic means, sex based labeling or stereotyping with respect to mental, physical, or other abilities, talents, occupational or life goals, etc. **that may reasonably embarrass or offend individuals;**
 - P. nonsexual conduct, including words or actions, directed toward a person because of their gender that tends to ridicule, criticize, discriminate, or otherwise makes it more difficult for that person to perform their job and/or achieve an education.
- It is the responsibility of all students and employees to promote and to maintain an environment free of all types of sexual harassment. Any sexual harassment, as defined, when perpetrated on any student, volunteer, third party or employee by any student, volunteer, third party or employee will be treated as sexual harassment under this policy.
- Q. **consensual employee sexual relationships where such relationship leads to favoritism of a subordinate employee with whom the superior is sexually involved and where such favoritism adversely affects other employees or otherwise creates a hostile work environment;**
 - R. **inappropriate boundary invasions by a District employee or other adult member of the School District community into a student's personal space and personal life;**
 - S. **verbal, nonverbal or physical aggression, intimidation, or hostility based on sex or sex-stereotyping that does not involve conduct of a sexual nature;**

Not all behavior with sexual connotations constitutes unlawful sexual harassment. Sex-based or gender-based conduct must be sufficiently severe, pervasive, and persistent such that it adversely affects, limits, or denies an individual's employment or education, or such that it creates a hostile or abusive employment or educational environment.

[DRAFTING NOTE: Sexual conduct/relationships with students by County-District employees or any other adult member of the County-School District community is prohibited, and any teacher, administrator, coach, or other school authority who engages in sexual conduct with a student may also be guilty of the criminal charge of "sexual abuse or sexual assault as set forth in Article 8B, Chapter 61 of the West Virginia Code. The issue of consent may be irrelevant in regard to such criminal charge. In addition, under certain circumstances, sexual harassment may constitute child and/or sexual abuse under Chapter 49 of the West Virginia Code. In such situations, the Board shall comply with the provisions of law for reporting such abuse.]

Racial Harassment – Racial harassment consists of physical, verbal, or written conduct relating to an individual's race when the conduct:

- A. has the purpose or effect of creating an intimidating, hostile or offensive working or academic environment;
- B. has the purpose or effect of substantially or unreasonably interfering with an individual's work or academic performance;
- C. otherwise adversely affects an individual's employment or academic opportunities;
- D. racial harassment includes racially degrading word(s) or actions used to intimidate, describe an individual or to refer to some aspect of the individual's behavior, appearance, attitude, or conduct;
- E. the display, use, or dissemination of racially motivated gestures, objects, pictures, and/or jokes by any means, including, but not limited to, printed materials displayed by electronic means;
- F. race based labeling or stereotyping with respect to mental, physical, or other abilities, talents, occupational or life goals, etc.;
- G. unwelcome behavior, verbal or written words or symbols, directed at an individual because of race;
- H. conduct, including word(s) or actions, directed toward a person because of their race that tends to distract or otherwise make it more difficult to perform their job and/or achieve an education.
It is the responsibility of all students and employees to promote and to maintain an environment free of all types of racial harassment. Any racial harassment, as defined, when perpetrated on any student, volunteer, third party or employee by any student, volunteer, third party or employee will be treated as racial harassment under this policy.

Religious/Ethnic Harassment – Religious/ethnic harassment consists of physical, verbal or written conduct which is related to an individual's religion or ethnic background when the conduct:

- A. has the purpose or effect of creating an intimidating, hostile or offensive working or academic environment;
- B. has the purpose or effect of substantially or unreasonably interfering with an individual's work or academic performance;
- C. otherwise adversely affects an individual's employment or academic opportunities;
- D. religious/ethnic degrading word(s) or actions used to intimidate, describe an individual or refer to some aspect of the individual's behavior, appearance, attitude or conduct;
- E. the display, use or dissemination of degrading religious/ethnic suggestive gestures, objects, pictures, and/or jokes by any means including, but not limited to, printed materials and materials displayed by electronic means;

- F. religious/ethnic based labeling or stereotyping with respect to mental, physical or other abilities, talents, occupational or life goals, etc.;
- G. conduct, including word(s) or actions, directed toward a person because of their religion or ethnicity that tends to distract or otherwise make it more difficult to perform their job and/or achieve an education.
- It is the responsibility of all students and employees to promote and to maintain an environment free of all types of religious/ethnic harassment. Any religious/ethnic harassment, as defined, when perpetrated on any student, volunteer, third party or employee by any student, volunteer, third party or employee will be treated as religious/ethnic harassment under this policy.

Sexual Violence – Sexual violence is a physical act of aggression or force or the threat thereof which involves the touching of another's intimate parts or forcing a person to touch any person's intimate parts. Intimate parts include the primary genital area, groin, inner thigh, buttocks, or breast, as well as the clothing covering these areas.

Sexual violence may include, but is not limited to:

1. touching, patting, grabbing or pinching another person's intimate parts, whether that person is of the same sex or the opposite sex;
2. coercing, forcing or attempting to coerce or force the touching of anyone's intimate parts;
3. coercing, forcing or attempting to coerce or force sexual intercourse or a sexual act on another;
4. threatening to force or coerce sexual acts, including the touching of intimate parts or intercourse, on another;
5. threatening or forcing exposure of intimate apparel or body parts by removal of clothing.
6. **Racial Violence** - Racial violence is a physical act of aggression or assault upon another because of, or in a manner reasonably related to, race.
7. **Religious/Ethnic Violence** - Religious/ethnic violence is a physical act of aggression or assault upon another because of, or in a manner reasonably related to, religion or ethnicity.
8. **Assault** - Assault is defined as an act done with intent to cause fear in another of immediate bodily harm or death; or the threat to do bodily harm to another with present ability to carry out the threat.

Disability Harassment

Prohibited disability harassment occurs when unwelcome physical, verbal, or nonverbal conduct is based upon an individual's disability and when the conduct has the purpose or effect of interfering with the individual's work or educational performance; of treating an intimidating, hostile, or offensive working and/or learning environment; or of interfering with one's ability to participate in or benefit from a class or an educational program or activity. Such harassment may occur where conduct is directed at the characteristics of a person's disability, such as negative comments about speech patterns, movement, physical impairments or defects/appearances, or the like. Such harassment may further occur where conduct is directed at or pertains to a person's genetic information.

Anti-Harassment Compliance Officers

The following individual(s) shall serve as the District's Anti-Harassment Compliance Officer(s) (hereinafter, "the Compliance Officer(s)").

[DRAFTING NOTE: Neola suggests the Board appoint both a male and a female Compliance Officer 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 same individual(s) assigned to serve as Compliance Officer(s) may also be assigned to serve as the District's Section 504 Compliance Officer(s) /ADA Coordinator(s) and/or Title IX Coordinator(s). Additionally, by appointing two (2) Compliance Officers, there should also be a Compliance Officer available to investigate a claim of harassment that pertains to the other Compliance Officer.]

Rockie DeLorenzo
(Name)

Administrative Assistant for Human Services
(School District Title)

1516 Mary Lou Retton Drive
(Office Address)

304-367-2104
(Telephone Number)

rdeloren@k12.wv.us
(E-mail Address)

Dr. Christina Hare
(Name)

Supervisor of Student Services
(School District Title)

1516 Mary Lou Retton Drive
(Office Address)

304-367-2100
(Telephone Number)

Chare@k12.wv.us
(E-mail Address)

Kristin DeVaul
(Name)

Supervisor of Secondary Education, Testing, and Policies
(District Title)

304-367-2100
(Telephone Number)

1516 Mary Lou Retton Drive
(Office Address)

kdevaul@k12.wv.us

The names, titles, and contact information of these individuals will be published annually on the District's web site ~~()~~ and:

- A. ~~()~~ in the parent and staff handbooks.
- B. ~~()~~ in the School District Annual Report to the public.
- C. ~~()~~ in the School District's calendar.
- D. ~~()~~ _____.

The Compliance Officer(s) (x) is () are responsible for coordinating the District's efforts to comply with applicable Federal and State laws and regulations, including the District's duty to address in a prompt and equitable manner any inquiries or complaints regarding harassment.

The Compliance Officer(s) will be available during regular school/work hours to discuss concerns related to unlawful harassment, to assist students, other members of the District community, and third parties who seek support or advice when informing another individual about "unwelcome" conduct, or to intercede informally on behalf of the individual in those instances where concerns have not resulted in the filing of a formal complaint and where all parties are in agreement to participate in an informal process.

Compliance Officers shall accept reports of unlawful harassment directly from any member of the School District community or a Third Party or receive reports that are initially filed with an administrator, supervisor, or other District-level official. Upon receipt of a report of alleged harassment, the Compliance Officer(s) will contact the Complainant and begin either an informal or formal complaint process (depending on the request of the Complainant or the nature of the alleged harassment), or the Compliance Officer(s) will designate a specific individual to conduct such a process. The Compliance Officer(s) will provide a copy of this policy to the Complainant and Respondent. In the case of a formal complaint, the Compliance Officer(s) will prepare recommendations for the Superintendent or will oversee the preparation of such recommendations by a designee. All Board employees must report incidents of harassment that are reported to them to the Compliance Officer within two (2) days of learning of the incident.

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

Reports and Complaints of Harassing Conduct

Members of the County-School community, which includes all staff, and third parties along with Third Parties are encouraged to promptly report incidents of harassing conduct to an administrator, supervisor or other County-School District official so that the Board may address the conduct before it becomes severe, pervasive, or persistent. Any administrator, supervisor, or other District official who receives such a report shall file it with the Compliance Officer within two (2) days of receiving the report of harassment.

Members of the County-School community or third parties and Third Parties who believe they have been unlawfully harassed by another member of the County-School community or a third party-Third Party are entitled to utilize the Board's complaint process that is set forth below. Initiating a complaint, whether formally or informally, will not adversely affect the complaining individual's Complainant's employment unless the complaining individual makes the complaint maliciously or with knowledge that it is false.

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 have created a hostile work environment and may have constituted unlawful discriminatory harassment based on a Protected Class, the Principal shall report the act of bullying, aggressive behavior and/or harassment to one of the Anti-Harassment-Compliance Officers who shall investigate the allegation in accordance with this policy. If the alleged harassment involves Sexual Harassment as defined by Policy 2266, the matter will be handled in accordance

~~With the grievance process and procedures outlined in Policy 2266. While the Compliance Officer investigates the allegation, the Principal shall suspend his/her Policy 5517.01 Investigation to await the Compliance Officer's written report. The Compliance Officer shall keep the Principal informed of the status of the Policy 1662 investigation and provide him/her with a copy of the resulting written report. Likewise, the Title IX Coordinator will provide the Principal with the determination of responsibility that results from the Policy 2266 grievance process.~~

Reporting procedures are as follows:

- A. Any employee who believes s/he has been the victim of harassment prohibited under this policy is encouraged to report the alleged harassment to the appropriate school official as identified in D below.
 - B. Teachers, administrators, and other school officials who have or receive notice that an employee has or may have been the victim of harassment prohibited under this policy shall immediately report the alleged harassment to the appropriate school official as defined in D below.
 - C. Any other person with knowledge or belief that an employee has or may have been the victim of harassment prohibited by this policy shall be encouraged to immediately report the alleged acts to an appropriate school official as identified in D below.
 - D. Appropriate school officials are as follows:
 - 1. Any complaint under this policy shall be reported to the ~~County's District's~~ CO unless the complaint is regarding the CO. In such cases, the complaints shall be reported to the District Administrator, who shall assume the role of the District CO for such complaints.
 - 2. Any complaint under this policy regarding the District Administrator or Board Member that is received by the District CO shall be referred to the School Board's legal counsel, who shall assume the role of the District CO for such complaints.
 - 3. Any complaint under this policy regarding the principal, who serves as the Building CO, shall be reported to the ~~County's District's~~ CO, and the ~~County District~~ CO shall conduct the investigation.
 - E. The reporting party or complainant shall be encouraged to use a report form available from the principal of each building or available from the District office, but oral reports shall be considered complaints as well. Use of formal reporting forms shall not be mandated. However, all oral complaints shall be reduced to writing. Further, nothing in this policy shall prevent any person from reporting harassment directly to the Superintendent.
 - F. To provide individuals with options for reporting harassment to an individual of the gender with which they feel most comfortable, the District shall designate both a male and a female District CO.
 - G. The investigation should be conducted by the CO or by the Superintendent within ten (10) school days of receiving the complaint, the investigating party shall provide a written status report to the Superintendent.
 - H. The investigation may be conducted by school officials or by a third party designated by the school officials if necessary.
- Anti-Harassment Compliance Officers**
~~The Board designates the following individuals to serve as "Anti-Harassment Compliance Officers" for the District (hereinafter referred to as the "COs").~~
~~[NOTE: County Schools are advised to 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 may also serve as the District's Section 504 and Title IX Coordinators.]~~

(Name)

<County Title>

<Telephone Number>

<Office Address>

<E-mail Address>

<Name>

<County Title>

<Telephone Number>

<Office Address>

<E-mail Address>

In each school building, the building principal is the person responsible for receiving oral or written reports of racial, sexual or religious/ethnic harassment or violence at the building level. Upon receipt of a report of student conduct, the principal must notify the CO promptly, and shall commence investigation of the complaint. No later than ten (10) school days of receiving the complaint, a written report will be forwarded to the CO and to the Superintendent. [NOTE: For school buildings/facilities which do not have a building principal, such as the transportation and maintenance departments, the Director of such building or facility will be the person responsible for receiving oral or written reports of racial, sexual or religious/ethnic harassment or violence. All other provisions of the paragraph above apply to such situations, except that the term "Director" shall be substituted for the term "building principal".]

The names, titles, and contact information of these individuals will be published annually: [NOTE: Please select more than one (1) option.]

- A. in the parent and staff handbooks.
- B. in the County School Annual Report to the public.
- C. on the County School's web site.
- D. on each individual school's web site.
- E. in the County School's calendar.
- F. _____.

The name of the CO, including a mailing address and telephone number, shall be conspicuously posted in the office of each school building and in other buildings to which employees of the Board are assigned to work.

The CO will be available during regular school/work hours to discuss concerns related to unlawful harassment, to assist students, other members of the District community, and third parties who seek support or advice when informing another individual about "unwelcome" conduct, or to intercede informally on behalf of the individual in those instances where concerns have not resulted in the filing of a formal complaint and where all parties are in agreement to participate in an informal process.

COs shall accept complaints of unlawful harassment directly from any member of the County School community or a visitor to the District, or receive complaints that are initially filed with a school building administrator. Upon receipt of a complaint either directly or through a school building administrator, a CO will begin either an informal or formal process (depending on the request of the person alleging the harassment or the nature of the alleged harassment), or the CO will designate a specific individual to conduct such a process. In the case of a formal complaint, the CO will prepare recommendations for the Superintendent or will oversee the preparation of such recommendations by a designee. All members of the County School community must report incidents of harassment that are reported to them to the CO at his/her first opportunity, but no later than two (2) business days of learning of the incident.

~~All alleged incidents of harassment or violence observed by faculty, staff or other employees of the Board must report the incident to either the building principal or the District's Anti Harassment CO within twenty four (24) hours of observing the incident. Additionally, any Board employee who observes an act of unlawful harassment is expected to intervene to stop the harassment, unless circumstances make such an intervention dangerous, in which case the staff member should immediately notify other Board employees and/or local law enforcement officials, as necessary, to stop the harassment. Thereafter, the CO, or designee must contact the student, if age eighteen (18) or older, or the student's parents if under the age eighteen (18), within two (2) business days to advise s/he/them of the Board's intent to investigate the alleged misconduct, including the obligation of the CO or designee to conduct an investigation following all the procedures outlined for a formal complaint. The Board's investigation of racial, sexual or religious/ethnic harassment or violence complaints will be conducted with maximum effort to protect the confidentiality of all those involved in the complaint or investigative process and to facilitate prompt resolution of the complaint. School officials may, in their discretion, take immediate steps to protect individual privacy and safety pending resolution.~~

Investigation, Complaint Procedure and Recommendation

~~An Except for Sexual Harassment that is covered by Policy 2266 - Nondiscrimination on the Basis of Sex in Education Programs or Activities, any individual who believes s/he has they have been subjected to harassment and/or violence (hereinafter referred to as the "Complainant"), may file a complaint, either orally or in writing, with a principal, the CO, Superintendent, or other County-level employee. 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 complaint within thirty (30) calendar days after the conduct occurs. If a Complainant informs a principal, Superintendent, or other County-level District-level employee, either orally or in writing, about any complaint of discrimination/retaliation, that employee must report such information to the CO at his/her first opportunity, but no later than (2) business days.~~

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

All complaints must include the following information to the extent it is available: the identity of the individual believed to have engaged in, or be engaging in, the discriminatory/retaliatory conduct; a detailed description of the facts upon which the complaint is based; 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 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, but not limited to, a change of work assignment or schedule for the Complainant and/or the person who allegedly engaged in the misconduct.

Pursuant to West Virginia State Board of Education policy 4373, upon receiving a complaint, the CO, in consultation with the Superintendent, will take reasonable steps to protect the Complainant, students, teachers, administrators, or other personnel in any manner throughout the pending investigation.

In making such a determination, the CO should consult the Complainant to assess his/her agreement to the proposed action. If the Complainant is unwilling to consent to the proposed change, the CO may still take whatever actions s/he deems appropriate in consultation with the Superintendent.

Within two (2) business days of receiving the complaint, the CO 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~~ individual alleged to have engaged in the discriminatory or retaliatory conduct (hereinafter referred to as the "Respondent"), that a 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 1422 - Nondiscrimination and Equal Employment Opportunity. The Respondent must also be informed of the opportunity to submit a written response to the complaint within five (5) business days.

Although certain cases may require additional time, the CO/designee will complete an investigation into the allegations of discrimination/retaliation as soon as practical, but no later than ten (10) business days of receiving the formal complaint. The investigation, at a minimum, must include:

- A. Interviews with the Complainant;
- B. interviews with the Respondent;
- C. interviews with any other witnesses who may reasonably be expected to have any information relevant to the allegations;
- 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.

In determining whether alleged conduct constitutes racial, sexual, or religious/ethnic harassment or violence, consideration shall be given to the surrounding circumstances, the nature of the conduct involved, relationships between the parties involved, and the context in which the alleged incidents occurred.

At the conclusion of the investigation, the CO 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 Complainant has been subjected to unlawful discrimination/retaliation. 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 must either issue a final decision regarding whether the charges have been substantiated or request further investigation. A copy of the Superintendent's final 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 Complainant was subjected to unlawful discrimination/retaliation, s/he 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 and effective, and tailored to the specific situation.

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 his/her ~~the party's~~ receipt of the Superintendent's ~~final~~ decision. ~~The written statement of appeal must be submitted to the Treasurer/CFO.~~

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. (See Policy 9130 – Public Complaints and West Virginia State Board of Education policy 7211 – Appeals Procedure for Citizens)

The Board reserves the right to investigate and resolve a complaint or report of unlawful discrimination/retaliation regardless of whether the employee alleging the unlawful discrimination/retaliation 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 Complainant may be represented, at his/her own cost, at any of the above-described meetings/hearings.

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.

Privacy/Confidentiality

Confidentiality of the filing of complaints, the identity of subjects and witnesses of any complaint, and of any action taken as a result of such complaints is essential to the effectiveness of this policy. Only those individuals necessary for the investigation and resolution of the complaint shall be given information about it.

The ~~County District~~ 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 Board's legal obligations to investigate, to take appropriate action, and to 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. ~~All Complainants proceeding through the formal investigation process will be advised that their identities may be disclosed to the Respondent(s). Additionally, the Respondent must be provided the Complainant's identity.~~

During the course of a formal investigation, the CO~~2~~ 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 ~~s/he learns and/or provides~~ is learned or provided during the course of the investigation.

All public records created as a part of an investigation of a complaint of discrimination/retaliation will be maintained by the CO in accordance with the School Board's records retention policy.

Results of the Investigation

The result of the investigation of each complaint filed under these procedures will be reported in writing to the complainant and his/her legal guardian by the Superintendent, or, if the Superintendent is the subject of the complaint, by the President of the Board.

Discipline and Other Actions

In determining the appropriate response and/or punishment, the appropriate school official shall consider the surrounding circumstances, the nature of the behavior, past incidents or past or continuing patterns of behavior, the relationships between the parties involved and the context in which the alleged incident occurred.

- A. Upon receipt of a finding that the complaint is substantiated, the appropriate school official shall take action appropriate to the status of the offender (student, staff, or public guest). Such action for students may include all options listed in West Virginia State Board of Education policy 4373 and Policy 5600 – Student Discipline. Actions for staff may include but not be limited to, warning, suspension, termination, revocation of licensure, notification of law enforcement and/or human services. Actions for public guests may include but not be limited to removal from school property and school sponsored functions, notification of law enforcement and/or human services.
- B. The appropriate school official shall also initiate such other action as is appropriate to ease tensions and affirm the values of respect and understanding in accordance with this policy.

- C. The Superintendent shall immediately file a report with the West Virginia Department of Education of all reports of harassment or violence when an investigation shows that harassment or violence did occur and all actions taken in response to the incident.

Nothing in this policy shall prohibit contacting law enforcement or other personnel, including the Human Rights Commission, regarding the actions of any party subject to a complaint.

Retaliation

Submission of a complaint or report of racial, sexual, or religious/ethnic harassment or violence will not affect the future employment, grades, or work assignments of the person who submits the complaint or report.

Retaliation against a person who makes a report or files a complaint alleging anti-harassment and violence, or participates as a witness in an investigation is prohibited. Specifically, the Board will not retaliate against, coerce, intimidate, threaten or interfere with any individual because the person opposed any act or practice made unlawful by any Federal or State civil rights law, or because that individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under those laws, or because that individual exercised, enjoyed, aided, or encouraged any other person in the exercise or enjoyment of any right granted or protected by those laws. "Retaliation" includes, but is not limited to, any form of retaliation or intimidation, reprisal, coercion, provocation, or harassment.

Retaliation against a person 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 sanction/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.

The Board will discipline, as appropriate, any individual who retaliates against any person who reports allegations of racial, sexual or religious/ethnic harassment or violence, or any person who cooperates, testifies, assists, or participates in any racial, sexual or religious/ethnic harassment or violence investigation, proceeding, or hearing. The Board will also discipline, as appropriate, any person who falsely reports religious/ethnic, racial or sexual harassment.

Student-Employee Relationships Prohibited

Amorous relationships between employees of the Board and students are prohibited, and staff members found to have violated this prohibition shall be subject to the penalties and disciplinary action defined herein.

Non-Harassment

The Board recognizes that not every advance, conduct, or interaction of a racial, sexual or religious/ethnic or violent nature constitutes harassment. Whether a particular act, conduct, interaction, or incident is a personal, consensual, welcome interaction or social relationship without discriminatory motivation or effect on employment or education status will be determined based upon consideration of all facts and surrounding circumstances.

The Board recognizes that not all reports of allegations of sexual, racial, and/or religious/ethnic harassment will result in findings that such an incident has occurred. However, the Board encourages all persons who believe that they are a victim of such harassment to come forward and affirms its policy that no adverse action will be taken upon the filing of a complaint under this policy, unless it is shown, through investigation, that the complaint is patently false.

Right to Alternative Complaint Procedures

These procedures do not deny the right of any individual to pursue other avenues of recourse which may include the filing charges with the West Virginia Human Rights Commission, filing an employee grievance under WV Code 18-29-1, et seq., filing a citizen's appeal under West Virginia State Board of Education policy 7211, filing a Title IX grievance under the appropriate procedures, filing charges with the Federal Equal Employment Opportunity Commission, or initiating civil or criminal action under State and/or Federal law.

Sexual Harassment as Abuse

Under certain circumstances, sexual harassment may constitute child and/or sexual abuse under Chapter 49 of the West Virginia Code. In such situations, the ~~School County District~~ and its employees shall comply with the provisions of law for reporting such abuse.

State law requires any school teacher or school employee who knows or suspects that a child with a disability under the age of twenty-one (21) or that a child under the age of eighteen (18) has suffered or faces a threat of suffering a physical or mental wound, disability or condition of a nature that reasonably indicates abuse or neglect of a child to immediately report that knowledge or suspicion to the county children's services agency. If, during the course of a harassment investigation, the Compliance Officer or a designee has reason to believe or suspect that the alleged conduct reasonably indicates abuse or neglect of the Complainant, a report of such knowledge must be made in accordance with State law and Board Policy.

State law defines certain contact between a teacher and a student as "sexual battery." If the Compliance Officer or a designee has reason to believe that the Complainant has been the victim of criminal conduct as defined in West Virginia's Criminal Code, such knowledge should be immediately reported to local law enforcement.

Any reports made to a county children's services agency or to local law enforcement shall not terminate the Compliance Officer or a designee's obligation and responsibility to continue to investigate a complaint of harassment. While the Compliance Officer or a designee may work cooperatively with outside agencies to conduct concurrent investigations, in no event shall the harassment investigation be inhibited by the involvement of outside agencies without good cause after consultation with the Superintendent.

Allegations Involving Conduct Unbecoming the Teaching Profession/Suspension

The Superintendent will, for the matters of misconduct on the part of licensed professional staff members convicted of sexual battery, take action as prescribed in Policy 3141, to recommend to the Board the suspension of an employee during the pendency of any criminal action for which that person has been arrested, summoned and/or indicted. Upon the recommendation of the Superintendent, pursuant to Policy 3141, the Board may take necessary steps to suspend or dismiss any person in its employment at any time should the health, safety, and welfare of students has been jeopardized or the learning environment of other students has been impacted.

Dissemination of the Policy

This policy or a summary shall be conspicuously posted throughout each school or facility of the Board in areas accessible to students and staff members.

This policy shall appear in the Student and Staff Handbooks and, if no handbook is available, a copy shall be distributed to all students, faculty, and staff.

The students and staff of the Board shall be trained on these regulations and on means for effectively promoting the goals of this policy.

The Board policy shall be reviewed at least bi-annually to assure compliance with State and Federal law and with West Virginia State Board of Education policy.

Groups and persons utilizing school properties for curricular and extra-curricular activities shall be provided a copy of this policy prior to the use of any Board facility. Failure to comply with this policy by a non-student group will result in the immediate forfeiture of the group's use of the school properties.

Education and Training

The District's CO shall develop a program designed to raise the awareness of the different types of harassment, how it manifests itself, and its emotional, educational and legal consequences. Multi-cultural education programs must be established to foster an attitude of understanding and acceptance of individuals from a variety of cultural, ethnic, racial and religious backgrounds.

The CO shall present written and verbal information to all faculty, staff and students at least once annually. Dissemination of written and verbal information may be made by a designee(s) of the CO as appropriate, and such presentation must be age-appropriate for students K-4, 5-8, and 9-12.

Retention of Investigatory Records and Materials

The Compliance Officer(s) 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 not be 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 District personnel or individuals contracted or appointed by the Board to fulfill its responsibilities related to the investigation and/or the District's response to the alleged violation of this policy;
- D. written witness statements;
- E. narratives, notes from, or audio, video, or digital recordings of witness interviews/statements;
- F. e-mails, texts, or 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 or 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/or 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/or procedures/guidelines used by the District to conduct the investigation, and any documents used by the District 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 Code of Conduct and/or Employee Handbooks);**
- 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 district concludes that the following items are not adequately encompassed in the preceding paragraphs.]

- N. ~~(-) documentation of any training provided to District 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 District 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, and a copy of the materials reviewed and/or presented during the training.]~~
- O. ~~(-) documentation that any rights or opportunities that the District made available to one party during the investigation were made available to the other party on equal terms;~~
- P. ~~(-) copies of any notices sent to the alleged perpetrator/responding party of the allegations constituting a potential violation of this policy;~~
- Q. ~~(-) copies of any notices sent to the Complainant and the Respondent in advance of any interview, meeting, or hearing;~~
- R. ~~(-) 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.~~

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 law (e.g., W. Va. Code 29B-1-4) – e.g., 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, but longer if required by the District's records retention schedule.

© Neola-2014, 2021

Legal West Virginia State Board of Education policy 4373
 WV Code 18-2-7b and 49-6A-2
 20 U.S.C. 1681 et seq.
 29 U.S.C. 621 et seq.
 29 U.S.C. 794
 29 C.F.R. Part 1635
 42 U.S.C. 12101 et seq.
 42 U.S.C. 2000d et seq.
 42 U.S.C. 2000e et seq.
 42 U.S.C. 2000ff et seq., The Genetic Information and Nondiscrimination Act

42 U.S.C. 1983

National School Boards Association Inquiry and Analysis - May 2008

Book	Policy Manual
Section	Special Update - Nondiscrimination and Anti-Harassment - May 2021
Title	Replacement Policy - Special Update - Title IX Update - May 2021 - ANTI-HARASSMENT AND VIOLENCE
Code	po3362 ksj 4/25/23
Status	
Adopted	October 18, 2010
Last Revised	June 18, 2012

3362 - ANTI-HARASSMENT AND VIOLENCE

General Statement

Racial, sexual, and religious/ethnic harassment is a form of discrimination which violates Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, et seq., Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, et seq., and WV Code 5-11-1, et seq., the West Virginia Human Rights Act.

It is the policy of the Board of Education to maintain an education and work environment that is free from all forms of unlawful harassment and violence.

This policy applies to any student, staff member or member of the public during any school related activity or during any education sponsored event whether in a building or other property used or operated by the Board of Education or in any other facility being used by the Board.

The Board will vigorously enforce its prohibition against harassment based on race, color, national origin, sex (including transgender gender status, change of sex, or gender identity), disability, age, blindness, creed or religion, ancestry, socioeconomic status, physical appearance, sexual orientation, mental/physical/developmental/sensory disability, or genetic information (collectively, "Protected Classes") that are protected by Federal civil rights laws (hereinafter referred to as "unlawful harassment"), and encourages those within the District community, as well as ~~third parties~~ **Third Parties**, who feel aggrieved to seek assistance to rectify such problems. The Board will investigate all allegations of harassment and in those cases where unlawful harassment is substantiated, the Board will take immediate steps to end the harassment, prevent its reoccurrence, and remedy its effects. Individuals who are found to have engaged in unlawful harassment will be subject to appropriate disciplinary action. (See West Virginia State Board of Education policy 4373)

~~{ } The District will offer counseling services to any person found to have been subjected to unlawful harassment, and, where appropriate, the person(s) who committed the unlawful harassment.~~

~~For purposes of this policy, "District community" means students, administrators, and professional and classified staff, as well as Board members, agents, volunteers, contractors, or other persons subject to the control and supervision of the Board.~~

~~For purposes of this policy, "third parties" include, but are not limited to, guests and/or visitors on District 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 District community at school related events/activities (whether on or off District property).~~

The Board will act promptly and confidentially to investigate all harassment and violence complaints, formal or informal, verbal or written, and will take appropriate disciplinary action based upon the results of the investigation.

Other Violations of the Anti-Harassment Policy

The Board will also take immediate steps to impose disciplinary action on individuals engaging in any of the following prohibited acts:

- A. Retaliating against a person who has made a report or filed a complaint alleging unlawful harassment, or who has participated as a witness in a harassment investigation.
- B. Filing a malicious or knowingly false report or complaint of unlawful harassment.
- C. Disregarding, failing to investigate adequately, or delaying investigation of allegations of harassment, when responsibility for reporting and/or investigating unlawful harassment charges comprises part of one's supervisory duties.

Furthermore, the Board is committed to providing an educational setting that is safe, secure, and free from harassment and bullying for all of its students and school employees. Policy 5517.01 - Bullying addresses those instances of bullying and harassment which do not rise to the level of legally protected harassment under Federal law, but are, nonetheless, behaviors that may occur on school grounds, at school-sponsored events, on school buses, at school bus stops, and through school computer networks and through other electronic communication or transmission that will not be tolerated and must be appropriately identified, reported, investigated, and, when substantiated, be the subject of appropriate disciplinary action. An electronic act, communication, transmission, or threat includes but is not limited to one which is administered via telephone, wireless phone, computer, pager, or any electronic or wireless device whatsoever, and includes but is not limited to transmission of any image or voice, email or text message using any such device.

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 harassment, regardless of whether the person files a formal complaint or is pursuing an informal resolution to the alleged harassment.

Respondent is the individual who has been alleged to have engaged in unlawful harassment, regardless of whether the Reporting Party files a formal complaint or is seeking an informal resolution to the alleged harassment.

School District community means students and Board employees (i.e., administrators, and professional and classified staff), as well as 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 School District 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 School District community at school-related events/activities (whether on or off District 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 Board office is open for normal operating hours, Monday - Friday, excluding State-recognized holidays).

Bullying

Bullying rises to the level of unlawful harassment when one or more persons systematically and chronically inflict physical hurt or psychological distress on one (1) or more students or employees and that bullying is based upon one (1) or more Protected Classes, that is, characteristics that are protected by Federal civil rights laws. It is defined as any unwanted and repeated written, verbal, or

physical behavior, including any threatening, insulting, or dehumanizing gesture, by an adult or student, that is severe or pervasive enough to create an intimidating, hostile, or offensive educational or work environment; cause discomfort or humiliation; or unreasonably interfere with the individual's school or work performance or participation; and may involve:

- A. teasing;
- B. threats;
- C. intimidation;
- D. stalking;
- E. cyberstalking;
- F. cyberbullying;
- G. physical violence;
- H. theft;
- I. sexual, religious, or racial harassment;
- J. public humiliation; or
- K. destruction of property.

"Harassment" means any threatening, insulting, or dehumanizing gesture, use of technology, or written, verbal or physical conduct directed against a student or school employee that:

- A. places a student or school employee in reasonable fear of harm to his/her person or damage to his/her property;
- B. has the effect of substantially interfering with a student's educational performance, opportunities, or benefits, or an employee's work performance; or
- C. has the effect of substantially disrupting the orderly operation of a school.

Sexual harassment – Sexual harassment consists of sexual advances, requests for sexual favors, sexually motivated physical conduct, or other verbal or physical conduct or communication of a sexual nature when:

- A. submission to the conduct or communication is made a term or condition either explicitly or implicitly of obtaining or retaining employment, or of obtaining an education; or
- B. submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's employment or education; or
- C. creating an intimidating, hostile or offensive or educational environment.

Sexual harassment may involve the behavior of a person of any gender against a person of the same or another gender.

Sexual Harassment covered by Policy 2266 - Nondiscrimination on the Basis of Sex Education Programs or Activities is not included in this policy. Allegations of such conduct shall be addressed solely by Policy 2266.

Prohibited acts that constitute sexual harassment under this policy may take a variety of forms. Examples of the kinds of conduct that may constitute sexual harassment include, but are not limited to:

Sexual harassment may include, but is not limited to:

- A. verbal or written harassment of a sexual nature or abuse;
 - B. pressure for sexual activity;
 - C. inappropriate or unwelcome patting, pinching, or physical conduct;
 - D. sexual behavior or words, including demands for sexual favors, accompanied by implied or overt threats and/or promises concerning an individual's employment or educational status;
 - E. unwelcome behavior, verbal or written words or symbols, directed at an individual because of gender;
 - F. the use of authority to emphasize the sexuality of a student in a manner that prevents or impairs that student's full enjoyment of educational benefits, climate or opportunities;
 - G. unwelcome sexual flirtations, advances, or propositions from a member of the same or opposite sex;
 - H. verbal abuse of a sexual nature, without regard to whether the verbal abuse specifically refers to sexual characteristics at whom the verbal abuse is directed;
 - I. verbal or written comments about an individual's body;
 - J. sexually degrading word(s) or actions used to intimidate, describe an individual or to refer to some aspect of the individual's behavior, appearance, attitude, or conduct;
 - K. the display, use or dissemination of sexually suggestive gestures, objects, pictures, and/or jokes by any means, including, but not limited to, printed materials and materials displayed by electronic means, sex-based labeling or stereotyping with respect to mental, physical, or other abilities, talents, occupational or life goals, etc.;
 - L. nonsexual conduct, including words or actions, directed toward a person because of their gender that tends to ridicule, criticize, discriminate, or otherwise makes it more difficult for that person to perform their job and/or achieve an education.
- A. Unwelcome sexual propositions, invitations, solicitations, and flirtations.
 - B. Unwanted physical and/or sexual contact.
 - C. Threats or insinuations that a person's employment, wages, academic grade, promotion, classroom work or assignments, academic status, participation in athletics or extra-curricular programs, activities, or events, or other conditions of employment or education may be adversely affected by not submitting to sexual advances.
 - D. Unwelcome verbal expressions of a sexual nature, including graphic sexual commentaries about a person's body, dress, appearance, or sexual activities; the unwelcome use of sexually degrading language, profanity, jokes or innuendoes; unwelcome suggestive or insulting sounds or whistles; obscene telephone calls.
 - E. Sexually suggestive objects, pictures, graffiti, videotapes, posters, audio recordings or literature, placed in the work or educational environment, that may reasonably which may embarrass or offend individuals.
 - F. Unwelcome and inappropriate touching, patting, or pinching; () obscene gestures.
 - G. Asking about, or telling about, sexual fantasies, sexual preferences, or sexual activities.

- H. **Speculations about a person's sexual activities or sexual history, or remarks about one's own sexual activities or sexual history.**
- I. **Giving unwelcome personal gifts such as lingerie that suggest the desire for a romantic relationship.**
- J. **Leering or staring at someone in a sexual way, such as staring at a person's breasts, buttocks, or groin.**
- K. **A pattern of conduct, which can be subtle in nature, that has sexual overtones and is intended to create or has the effect of creating discomfort and/or humiliation to another.**
- L. **Remarks speculating about a person's sexual activities or sexual history, or remarks about one's own sexual activities or sexual history.**
- M. **In the context of employees, consensual sexual relationships where such relationship leads to favoritism of a subordinate employee with whom the superior is sexually involved and where such favoritism adversely affects other employees or otherwise creates a hostile work environment.**
- N. **Inappropriate boundary invasions by a District employee or other adult member of the School District community into a student's personal space and personal life.**
- O. **Verbal, nonverbal or physical aggression, intimidation, or hostility based on sex or sex-stereotyping that does not involve conduct of a sexual nature.**

Not all behavior with sexual connotations constitutes unlawful sexual harassment. Sex-based or gender-based conduct must be sufficiently severe, pervasive, and persistent such that it adversely affects, limits, or denies an individual's employment or education, or such that it creates a hostile or abusive employment or educational environment.

It is the responsibility of all students and employees to promote and to maintain an environment free of all types of sexual harassment. Any sexual harassment, as defined, when perpetrated on any student, volunteer, third party or employee by any student, volunteer, third party or employee will be treated as sexual harassment under this policy.

[DRAFTING NOTE: Sexual conduct/relationships with students by District employees or any other adult member of the District community is prohibited, and any teacher, administrator, coach, or other school authority who engages in sexual conduct with a student may also be guilty of the criminal charge of "sexual abuse or sexual assault as set forth in Article 8B, Chapter 61 of the West Virginia Code. The issue of consent may be irrelevant in regard to such criminal charge. In addition, under certain circumstances, sexual harassment may constitute child and/or sexual abuse under Chapter 49 of the West Virginia Code. In such situations, the Board shall comply with the provisions of law for reporting such abuse.]

Racial Harassment – Racial harassment consists of physical, verbal, or written conduct relating to an individual's race when the conduct:

- A. has the purpose or effect of creating an intimidating, hostile or offensive working or academic environment;
- B. has the purpose or effect of substantially or unreasonably interfering with an individual's work or academic performance;
- C. otherwise adversely affects an individual's employment or academic opportunities;
- D. racial harassment includes racially degrading word(s) or actions used to intimidate, describe an individual or to refer to some aspect of the individual's behavior, appearance, attitude, or conduct;
- E. the display, use, or dissemination of racially motivated gestures, objects, pictures, and/or jokes by any means, including, but not limited to, printed materials displayed by electronic means;

- F. race based labeling or stereotyping with respect to mental, physical, or other abilities, talents, occupational or life goals, etc.;
- G. unwelcome behavior, verbal or written words or symbols, directed at an individual because of race;
- H. conduct, including word(s) or actions, directed toward a person because of their race that tends to distract or otherwise make it more difficult to perform their job and/or achieve an education.

It is the responsibility of all students and employees to promote and to maintain an environment free of all types of racial harassment. Any racial harassment, as defined, when perpetrated on any student, volunteer, third party or employee by any student, volunteer, third party or employee will be treated as racial harassment under this policy.

Religious/Ethnic Harassment – Religious/ethnic harassment consists of physical, verbal or written conduct which is related to an individual's religion or ethnic background when the conduct:

- A. has the purpose or effect of creating an intimidating, hostile or offensive working or academic environment;
- B. has the purpose or effect of substantially or unreasonably interfering with an individual's work or academic performance;
- C. otherwise adversely affects an individual's employment or academic opportunities;
- D. religious/ethnic degrading word(s) or actions used to intimidate, describe an individual or refer to some aspect of the individual's behavior, appearance, attitude or conduct;
- E. the display, use or dissemination of degrading religious/ethnic suggestive gestures, objects, pictures, and/or jokes by any means including, but not limited to, printed materials and materials displayed by electronic means;
- F. religious/ethnic based labeling or stereotyping with respect to mental, physical or other abilities, talents, occupational or life goals, etc.;
- G. conduct, including word(s) or actions, directed toward a person because of their religion or ethnicity that tends to distract or otherwise make it more difficult to perform their job and/or achieve an education.

It is the responsibility of all students and employees to promote and to maintain an environment free of all types of religious/ethnic harassment. Any religious/ethnic harassment, as defined, when perpetrated on any student, volunteer, third party or employee by any student, volunteer, third party or employee will be treated as religious/ethnic harassment under this policy.

Sexual Violence – Sexual violence is a physical act of aggression or force or the threat thereof which involves the touching of another's intimate parts or forcing a person to touch any person's intimate parts. Intimate parts include the primary genital area, groin, inner thigh, buttocks, or breast, as well as the clothing covering these areas.

Sexual violence may include, but is not limited to:

- A. touching, patting, grabbing or pinching another person's intimate parts, whether that person is of the same sex or the opposite sex;
- B. coercing, forcing or attempting to coerce or force the touching of anyone's intimate parts;
- C. coercing, forcing or attempting to coerce or force sexual intercourse or a sexual act on another;
- D. threatening to force or coerce sexual acts, including the touching of intimate parts or intercourse, on another;
- E. threatening or forcing exposure of intimate apparel or body parts by removal of clothing.

Racial Violence - Racial violence is a physical act of aggression or assault upon another because of, or in a manner reasonably related to, race.

Religious/Ethnic Violence - Religious/ethnic violence is a physical act of aggression or assault upon another because of, or in a manner reasonably related to, religion or ethnicity.

Assault - Assault is defined as an act done with intent to cause fear in another of immediate bodily harm or death; or the threat to do bodily harm to another with present ability to carry out the threat.

Disability Harassment

Prohibited disability harassment occurs when unwelcome physical, verbal, or nonverbal conduct is based upon an individual's disability and when the conduct has the purpose or effect of interfering with the individual's work or educational performance; of creating an intimidating, hostile, or offensive working and/or learning environment; or of interfering with one's ability to participate in or benefit from a class or an educational program or activity. Such harassment may occur where conduct is directed at the characteristics of a person's disability, such as negative comments about speech patterns, movement, physical impairments or defects/appearances, or the like. Such harassment may further occur where conduct is directed at or pertains to a person's genetic information.

Anti-Harassment Compliance Officers

The Board designates the following individuals to serve as "Anti-Harassment Compliance Officers" for the District. They are hereinafter referred to as the "COs".

[NOTE: Districts are advised to 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 may also serve as the District's Section 504 and Title IX Coordinators.]

Kristin DeVaul
(Name)

Supervisor of Secondary Education, Testing, and Policies
(District Title)

1516 Mary Lou Retton Drive
(Office Address)

304-367-2100
(Telephone Number)

kdevaul@k12.wv.us

Rockie DeLorenzo
(Name)

Administrative Assistant for Human Services
(District Title)

304-367-2104
(Telephone Number)

1516 Mary Lou Retton Drive
(Office Address)

~~rdeloren@k12.wv.us~~
(E-mail Address)

~~Dr. Christina Hare~~
(Name)

~~Supervisor of Student Services~~
(District Title)

~~_304-367-2100~~
(Telephone Number)

~~1516 Mary Lou Retton Drive~~
(Office Address)

~~_chare@k12.wv.us~~
~~Kristin DeVaul~~
(Name)

~~Supervisor of Secondary Education, Testing, and Policies~~
(District Title)

~~_304 367 2100~~
(Telephone Number)

~~1516 Mary Lou Retton Drive~~
(Office Address)

~~_kdevaul@k12.wv.us~~
[E-mail Address]

(Name)

(District Title)

(Office Address)

(Telephone Number)

[E-mail Address]

~~The names, titles, and contact information of these individuals will be published annually on the District's website () and~~

~~A. () in the parent and staff handbooks.~~

B. ~~()~~ in the District Annual Report to the public.

C. ~~()~~ on each individual school's web site.

D. ~~()~~ in the District's calendar.

E. ~~()~~ _____

The Compliance Officer(s) is are responsible for coordinating the District's efforts to comply with applicable Federal and State laws and regulations, including the District's duty to address in a prompt and equitable manner any inquiries or complaints regarding harassment.

The Compliance Officer(s) will be available during regular school/work hours to discuss concerns related to unlawful harassment, to assist students, other members of the District community, and third parties who seek support or advice when informing another individual about "unwelcome" conduct, or to intercede informally on behalf of the individual in those instances where concerns have not resulted in the filing of a formal complaint and where all parties are in agreement to participate in an informal process.

Compliance Officers shall accept reports of unlawful harassment directly from any member of the School District community or a Third Party or receive reports that are initially filed with an administrator, supervisor, or other District-level official. Upon receipt of a report of alleged harassment, the Compliance Officer(s) will contact the Complainant and begin either an informal or formal complaint process (depending on the request of the Complainant or the nature of the alleged harassment), or the Compliance Officer(s) will designate a specific individual to conduct such a process. The Compliance Officer(s) will provide a copy of this policy to the Complainant and Respondent. In the case of a formal complaint, the Compliance Officer(s) will prepare recommendations for the Superintendent or will oversee the preparation of such recommendations by a designee. All Board employees must report incidents of harassment that are reported to them to the Compliance Officer within two (2) days of learning of the incident.

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

Reports and Complaints of Harassing Conduct

Members of the District community, ~~which includes all staff, and third parties along with Third Parties~~ are encouraged to promptly report incidents of harassing conduct to an administrator, supervisor or other District official so that the Board may address the conduct before it becomes severe, pervasive, or persistent. ~~Any administrator, supervisor, or other District official who receives such a report shall file it with the Compliance Officer within two (2) days of receiving the report of harassment.~~

Members of the District community ~~or third parties and Third Parties~~ who believe they have been unlawfully harassed by another member of the District community or a ~~third party~~ Third Party are entitled to utilize the Board's complaint process that is set forth below. Initiating a complaint, whether formally or informally, will not adversely affect the complaining individual's ~~Complainant's~~ employment unless the complaining individual makes the complaint maliciously or with knowledge that it is false.

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 have created a hostile work environment and may have constituted unlawful discriminatory harassment based on a Protected Class, the principal shall report the act of bullying, aggressive behavior and/or harassment to ~~one of the Anti-Harassment-Compliance Officer[s]~~ who shall investigate the allegation in accordance with this policy. ~~If the alleged harassment involves Sexual Harassment as defined by Policy 2266, the matter will be handled in accordance with the grievance process and procedures outlined in Policy 2266.~~ While the Compliance Officer investigates the allegation, ~~or the matter is being addressed pursuant to Policy 2266,~~ the principal shall suspend ~~his/her the~~ Policy 5517.01 investigation to await the

 (Telephone Number)

 (Office Address)

 (E-mail Address)

 (Name)

 (District Title)

 (Telephone Number)

 (Office Address)

 (E-mail Address)

In Each School Building. The building principal is the person responsible for receiving oral or written reports of racial, sexual or religious/ethnic harassment or violence at the building level. Upon receipt of a report of student conduct, the principal must notify the CO promptly, and shall commence investigation of the complaint. No later than ten (10) school days of receiving the complaint, a written report will be forwarded to the CO and to the Superintendent. **[NOTE: For school buildings/facilities which do not have a building principal, such as the transportation and maintenance departments, the Director of such building or facility will be the person responsible for receiving oral or written reports of racial, sexual or religious/ethnic harassment or violence. All other provisions of the paragraph above apply to such situations, except that the term "Director" shall be substituted for the term "building principal".]**

~~The names, titles, and contact information of these individuals will be published annually. [NOTE: Please select more than one (1) option.]~~

- A. ~~() in the parent and staff handbooks.~~
- B. ~~() in the District Annual Report to the public.~~
- C. ~~() on the District's web site.~~
- D. ~~() on each individual school's web site.~~
- E. ~~() in the District's calendar.~~
- F. ~~() _____.~~

The name of the CO, including a mailing address and telephone number, shall be conspicuously posted in the office of each school building and in other buildings to which employees of the Board are assigned to work.

The CO(s) will be available during regular school/work hours to discuss concerns related to unlawful harassment, to assist students, other members of the District community, and third parties who seek support or advice when informing another individual about "unwelcome" conduct, or to intercede informally on behalf of the individual in those instances where concerns have not resulted in the filing of a formal complaint and where all parties are in agreement to participate in an informal process.

COs shall accept complaints of unlawful harassment directly from any member of the District community or a visitor to the District, or receive complaints that are initially filed with a school building administrator. Upon receipt of a complaint either directly or through a school building administrator, a CO will begin either an informal or formal process (depending on the request of the person alleging the harassment or the nature of the alleged harassment), or the CO will designate a specific individual to conduct

such a process. In the case of a complaint, the CO will prepare recommendations for the Superintendent or will oversee the preparation of such recommendations by a designee. All members of the District community must report incidents of harassment that are reported to them to the CO at his/her first opportunity, but no later than two (2) business days of learning of the incident.

All alleged incidents of harassment or violence observed by faculty, staff or other employees of the Board must report the incident to either the building principal or the District's Anti-Harassment Compliance Officer within twenty-four (24) hours of observing the incident. Additionally, any Board employee who observes an act of unlawful harassment is expected to intervene to stop the harassment, unless circumstances make such an intervention dangerous, in which case the staff member should immediately notify other Board employees and/or local law enforcement officials, as necessary, to stop the harassment.

Thereafter, the CO, or designee must contact the student, if age eighteen (18) or older, or the student's parents if under the age eighteen (18), within two (2) business days to advise s/he/them of the Board's intent to investigate the alleged misconduct, including the obligation of the CO or designee to conduct an investigation following all the procedures outlined for a formal complaint.

The Board's investigation of racial, sexual or religious/ethnic harassment or violence complaints will be conducted with maximum effort to protect the confidentiality of all those involved in the complaint or investigative process and to facilitate prompt resolution of the complaint. School officials may, in their discretion, take immediate steps to protect individual privacy and safety pending resolution.

Investigation, Complaint Procedure and Recommendation

~~An Except for Sexual Harassment that is covered by Policy 2266 - Nondiscrimination on the Basis of Sex in Education Programs or Activities, any individual who believes s/he has they have been subjected to harassment and/or violence (hereinafter referred to as the "Complainant"), may file a complaint through the procedures described below, either orally or in writing, with a principal, the CO, Superintendent, or other District-level employee. The formal complaint process involves an investigation of the Complainant's claims of harassment or retaliation and a process for rendering a decision regarding whether the charges are substantiated. 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 complaint within thirty (30) calendar days after the conduct occurs. If a Complainant informs a principal, Superintendent, or other District-level employee, either orally or in writing, about any complaint of discrimination/retaliation, that employee must report such information to the CO at his/her first opportunity, but no later than two (2) business days.~~

~~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 complaint within thirty (30) days after the conduct occurs. If a Complainant informs a principal, Superintendent, or other District-level employee, either orally or in writing, about any complaint of discrimination/retaliation, that employee must report such information to the CO at his/her first opportunity, but no later than 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 complaints must include the following information to the extent ~~it is available~~ **known**: the identity of the ~~individual believed to have engaged in, or be engaging in, the discriminatory/retaliatory conduct;~~ 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, but not limited to, a change of work assignment or schedule for the Complainant and/or the ~~person who allegedly engaged in the misconduct~~ **Respondent**.

Pursuant to West Virginia ~~State~~ Board of Education policy 4373, upon receiving a complaint, the CO, in consultation with the Superintendent, will take reasonable steps to protect the Complainant, students, teachers, administrators, or other personnel in any manner throughout the pending investigation.

In making such a determination, the CO should consult the Complainant to assess ~~his/her agreement to~~ **whether the individual agrees with** the proposed action. If the Complainant is unwilling to consent to the proposed change, the CO may still take whatever actions ~~s/he deems deemed~~ appropriate in consultation with the Superintendent.

Within two (2) business days of receiving the complaint, the CO **designed** will initiate a formal investigation to determine whether the Complainant has been subjected to unlawful discrimination/retaliation. **The Principal will not conduct an investigation unless directed to do so by the Compliance Officer**

Simultaneously, the CO will inform the ~~individual alleged to have engaged in the discriminatory or retaliatory conduct (hereinafter referred to as the "Respondent")~~, that a **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 3122 - Nondiscrimination and Equal Employment Opportunity. The Respondent must also be informed of the opportunity to submit a written response to the complaint within five (5) business days.

Although certain cases may require additional time, the CO **designed** will complete an investigation into the allegations of discrimination/retaliation as soon as practical, but no later than ten (10) business days of receiving the formal complaint. The investigation, at a minimum, must include:

- A. interviews with the Complainant;
- B. interviews with the Respondent;
- C. interviews with any other witnesses who may reasonably be expected to have any information relevant to the allegations;
- 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.

In determining whether alleged conduct constitutes racial, sexual, or religious/ethnic harassment or violence, consideration shall be given to the surrounding circumstances, the nature of the conduct involved, relationships between the parties involved, and the context in which the alleged incidents occurred.

At the conclusion of the investigation, the CO 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 Complainant has been subjected to unlawful discrimination/retaliation. 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 must either issue a **final written** decision regarding whether the charges have been substantiated or request further investigation. A copy of the Superintendent's final 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 Complainant was subjected to unlawful discrimination/retaliation, s/he 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 and effective, and tailored to the specific situation.

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 his/her ~~the party's~~ receipt of the Superintendent's final decision. ~~The written statement of appeal must be submitted to the Treasurer/CFO.~~

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. (See Policy 9130 – Public Complaints and West Virginia State Board of Education policy 7211 – Appeals Procedure for Citizens.)

The Board reserves the right to investigate and resolve a complaint or report of unlawful discrimination/retaliation regardless of whether the ~~employee-member of the School District community or Third Party~~ alleging the unlawful discrimination/retaliation 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 ~~Complainant parties~~ may be represented, at his/her ~~their~~ own cost, at any of the above-described meetings/hearings.

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 charges with local law enforcement, or the filing of a civil action in court case.~~ Use of this internal complaint ~~procedure process~~ is not a prerequisite to the pursuit of other remedies.

Privacy/Confidentiality

Confidentiality of the filing of complaints, the identity of subjects and witnesses of any complaint, and of any action taken as a result of such complaints is essential to the effectiveness of this policy. Only those individuals necessary for the investigation and resolution of the complaint shall be given information about it.

The District 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 Board's legal obligations to investigate, to take appropriate action, and to 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. ~~All Complainants proceeding through the formal investigation process will be advised that their identities may be disclosed to the Respondent(s). 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 ~~s/he learns and/or provides~~ ~~is learned or provided~~ during the course of the investigation.

All public records created as a part of an investigation of a complaint of discrimination/retaliation will be maintained by the CO in accordance with the School Board's records retention policy.

Sanctions and Monitoring

~~The Board shall vigorously enforce its prohibitions against unlawful harassment/retaliation by taking appropriate action reasonably calculated to stop the harassment and prevent further such harassment. 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. When imposing discipline, the Superintendent shall consider the totality of the circumstances involved in the matter, including the ages and maturity levels of those involved. In~~

those cases where unlawful harassment 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 the relevant collective bargaining agreement(s).

Where the Board becomes aware that a prior remedial action has been taken against a member of the School District community, 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.

Results of the Investigation

The result of the investigation of each complaint filed under these procedures will be reported in writing to the complainant and his/her legal guardian by the Superintendent, or, if the Superintendent is the subject of the complaint, by the President of the Board.

Discipline and Other Actions

In determining the appropriate response and/or punishment, the appropriate school official shall consider the surrounding circumstances, the nature of the behavior, past incidents or past or continuing patterns of behavior, the relationships between the parties involved and the context in which the alleged incident occurred.

Upon receipt of a finding that the complaint is substantiated, the appropriate school official shall take action appropriate to the status of the offender (student, staff, or public guest). Such action for students may include all options listed in West Virginia State Board of Education policy 4373 and Policy 5600 – Student Discipline. Actions for staff may include but not be limited to warning, suspension, termination, revocation of licensure, notification of law enforcement, and/or human services. Actions for public guests may include but not be limited to removal from school property and school sponsored functions, notification of law enforcement, and/or human services.

The appropriate school official shall also initiate such other action as is appropriate to ease tensions and affirm the values of respect and understanding in accordance with this policy.

The Superintendent shall immediately file a report with the West Virginia Department of Education of all reports of harassment or violence when an investigation shows that harassment or violence did occur and all actions taken in response to the incident.

Nothing in this policy shall prohibit contacting law enforcement or other personnel, including the Human Rights Commission, regarding the actions of any party subject to a complaint.

Retaliation

Submission of a complaint or report of racial, sexual, or religious/ethnic harassment or violence will not affect the future employment, grades, or work assignments of the person who submits the complaint or report.

Retaliation against a person who makes a report or files a complaint alleging anti harassment and violence, or participates as a witness in an investigation is prohibited. Specifically, the Board will not retaliate against, coerce, intimidate, threaten, or interfere with any individual because the person opposed any act or practice made unlawful by any Federal or State civil rights law, or because that individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under those laws, or because that individual exercised, enjoyed, aided, or encouraged any other person in the exercise or enjoyment of any right granted or protected by those laws. "Retaliation" includes, but is not limited to, any form of retaliation or intimidation, reprisal, coercion, provocation, or harassment.

The Board will discipline, as appropriate, any individual who retaliates against any person who reports allegations of racial, sexual or religious/ethnic harassment or violence, or any person who cooperates, testifies, assists, or participates in any racial, sexual or religious/ethnic harassment or violence investigation, proceeding, or hearing. The Board will also discipline, as appropriate, any person who falsely reports religious/ethnic, racial or sexual harassment.

Retaliation against a person who makes a report or files a complaint alleging unlawful 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 right law, or because that individual 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 the policy, or because that individual 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.

Student-Employee Relationships Prohibited

Amorous relationships between employees of the Board and students are prohibited, and staff members found to have violated this prohibition shall be subject to the penalties and disciplinary action defined herein.

Non-Harassment

The Board recognizes that not every advance, conduct, or interaction of a racial, sexual or religious/ethnic or violent nature constitutes harassment. Whether a particular act, conduct, interaction, or incident is a personal, consensual, welcome interaction or social relationship without discriminatory motivation or effect on employment or education status will be determined based upon consideration of all facts and surrounding circumstances.

The Board recognizes that not all reports of allegations of sexual, racial, and/or religious/ethnic harassment will result in findings that such an incident has occurred. However, the Board encourages all persons who believe that they are a victim of such harassment to come forward and affirms its policy that no adverse action will be taken upon the filing of a complaint under this policy, unless it is shown, through investigation, that the complaint is patently false.

Right to Alternative Complaint Procedures

These procedures do not deny the right of any individual to pursue other avenues of recourse which may include the filing of charges with the West Virginia Human Rights Commission, filing an employee grievance under WV Code 18-29-1, et seq., filing a citizen's appeal under West Virginia State Board of Education policy 7211, filing a Title IX grievance under the appropriate procedures, filing charges with the Federal Equal Employment Opportunity Commission, or initiating civil or criminal action under State and/or Federal law.

Sexual Harassment as Abuse

Under certain circumstances, sexual harassment may constitute child and/or sexual abuse under Chapter 49 of the West Virginia Code. In such situations, the District and its employees shall comply with the provisions of law for reporting such abuse.

Dissemination of the Policy

This policy or a summary shall be conspicuously posted throughout each school or facility of the Board in areas accessible to students and staff members.

This policy shall appear in the Student and Staff Handbooks and, if no handbook is available, a copy shall be distributed to all students, faculty, and staff.

The students and staff of the Board shall be trained on these regulations and on means for effectively promoting the goals of this policy.

The Board policy shall be reviewed at least bi-annually to assure compliance with State and Federal law and with West Virginia State Board of Education policy.

Groups and persons utilizing school properties for curricular and extra-curricular activities shall be provided a copy of this policy prior to the use of any Board facility. Failure to comply with this policy by a non-student group will result in the immediate forfeiture of the group's use of the school properties.

Implementation and Education

The CO shall develop a program designed to raise the awareness of the different types of harassment, how it manifests itself, and its emotional, educational and legal consequences. Multi-cultural education programs must be established to foster an attitude of understanding and acceptance of individuals from a variety of cultural, ethnic, racial and religious backgrounds.

The CO shall present written and verbal information to all faculty, staff and students at least once annually. Dissemination of written and verbal information may be made by a designee(s) of the CO as appropriate, and such presentation must be age-appropriate for students K-4, 5-8, and 9-12.

Allegations Constituting Criminal Conduct: Child Abuse/Sexual Misconduct

State law requires any school teacher or school employee who knows or suspects that a child with a disability under the age of twenty-one (21) or that a child under the age of eighteen (18) has suffered or faces a threat of suffering a physical or mental wound, disability or condition of a nature that reasonably indicates abuse or neglect of a child to immediately report that knowledge or suspicion to the county children's services agency. If, during the course of a harassment investigation, the Compliance Officer or a designee has reason to believe or suspect that the alleged conduct reasonably indicates abuse or neglect of the Complainant, a report of such knowledge must be made in accordance with State law and Board Policy.

State law defines certain contact between a teacher and a student as "sexual battery." If the Compliance Officer or a designee has reason to believe that the Complainant has been the victim of criminal conduct as defined in West Virginia's Criminal Code, such knowledge should be immediately reported to local law enforcement.

Any reports made to a county children's services agency or to local law enforcement shall not terminate the Compliance Officer or a designee's obligation and responsibility to continue to investigate a complaint of harassment. While the Compliance Officer or a designee may work cooperatively with outside agencies to conduct concurrent investigations, in no event shall the harassment investigation be inhibited by the involvement of outside agencies without good cause after consultation with the Superintendent.

Allegations Involving Conduct Unbecoming the Teaching Profession/Suspension

The Superintendent will, for the matters of misconduct on the part of licensed professional staff members convicted of sexual battery, take action as prescribed in Policy 3141, to recommend to the Board the suspension of an employee during the pendency of any criminal action for which that person has been arrested, summoned and/or indicted. Upon the recommendation of the Superintendent, pursuant to Policy 3141, the Board may take necessary steps to suspend or dismiss any person in its employment at any time should the health, safety, and welfare of students has been jeopardized or the learning environment of other students has been impacted.

Education and Training

In support of this Anti-Harassment 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 School District

community related to the implementation of this policy and shall provide training for District students and staff where appropriate. All training, as well as all information provided regarding the Board's policy and harassment in general, will be age and content appropriate.

Retention of Investigatory Records and Materials

The Compliance Officer(s) 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 not be 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 District personnel or individuals contracted or appointed by the Board to fulfill its responsibilities related to the investigation and/or the District's response to the alleged violation of this policy;
- D. written witness statements;
- E. narratives, notes from, or audio, video, or digital recordings of witness interviews/statements;
- F. e-mails, texts, or 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 or 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/or 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/or procedures/guidelines used by the District to conduct the investigation, and any documents used by the District 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 Code of Conduct and/or Employee Handbooks);
- 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 district concludes that the following items are

not adequately encompassed in the preceding paragraphs.]

- N. (-) documentation of any training provided to District 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 District 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, and a copy of the materials reviewed and/or presented during the training.]**
- O. X (-) documentation that any rights or opportunities that the District 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 alleged perpetrator/responding party 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, meeting, or hearing;**
- 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.**

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 law – e.g., 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, but longer if required by the District's records retention schedule.

West Virginia State Board of Education policy 4373

WV Code 18-2-7b, 49-6A-2

29 C.F.R. Part 1635

20 U.S.C. 1681 et seq.

29 U.S.C. 621 et seq.

29 U.S.C. 794

42 U.S.C. 12101 et seq.

42 U.S.C. 2000d et seq.

42 U.S.C. 2000e et seq.

42 U.S.C. 2000ff et seq., The Genetic Information and Nondiscrimination Act

42 U.S.C. 1983

National School Boards Association Inquiry and Analysis - May 2008

© Neola ~~2014~~ 2021

Legal

West Virginia Board of Education policy 4373

WV Code 18-2-7b, 49-6A-2

29 C.F.R. Part 1635

20 U.S.C. 1681 et seq.

29 U.S.C. 621 et seq.

29 U.S.C. 794

42 U.S.C. 12101 et seq.

42 U.S.C. 2000d et seq.

42 U.S.C. 2000e et seq.

42 U.S.C. 2000ff et seq., The Genetic Information and Nondiscrimination Act

42 U.S.C. 1983

National School Boards Association Inquiry and Analysis - May 2008

Book	Policy Manual
Section	Special Update - Nondiscrimination and Anti-Harassment - May 2021
Title	Replacement Policy - Special Update - Title IX Update - May 2021 - ANTI-HARASSMENT AND VIOLENCE
Code	po5517 ksj 4/25/23
Status	
Adopted	August 1, 2007
Last Revised	February 12, 2014

5517 - ANTI-HARASSMENT AND VIOLENCE

General Statement

Racial, sexual, and religious/ethnic harassment is a form of discrimination which violates Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, et seq., Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, et seq., and WV Code 5-11-1, et seq., the West Virginia Human Rights Act.

It is the policy of the Board of Education to maintain an education and work environment that is free from all forms of unlawful harassment and violence.

This policy applies to any student, staff member or member of the public during any school related activity or during any education sponsored event whether in a building or other property used or operated by the Board of Education or in any other facility being used by the Board.

The Board will vigorously enforce its prohibition against discriminatory harassment based on race, color, national origin, sex (including sexual orientation and transgender gender identity), disability, age, religion, ancestry, or genetic information (collectively, "Protected Classes") that are protected by Federal civil rights laws (hereinafter referred to as "unlawful harassment"), and encourages those within the School District community as well as third parties Third Parties, who feel aggrieved to seek assistance to rectify such problems. The Board will investigate all allegations of harassment and in those cases where unlawful harassment is substantiated, the Board will take immediate steps to end the harassment, prevent its recurrence, and remedy its effects. Individuals who are found to have engaged in unlawful harassment will be subject to appropriate disciplinary action.

~~[] The District will offer counseling services to any person found to have been subjected to unlawful harassment, and, where appropriate, the person(s) who committed the unlawful harassment.~~

~~For purposes of this policy, "School District community" means students, administrators, and professional and classified staff, as well as Board members, agents, volunteers, contractors, or other persons subject to the control and supervision of the Board.~~

~~For purposes of this policy, "third parties" include, but are not limited to, guests and/or visitors on School District 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 School District community at school-related events/activities (whether on or off School District property).~~

The Board will act promptly and confidentially to investigate all harassment and violence complaints, formal or informal, verbal or written, and will take appropriate disciplinary action based upon the results of the investigation.

Other Violations of the Anti-Harassment Policy

The Board will also take immediate steps to impose disciplinary action on individuals engaging in any of the following prohibited acts:

- A. Retaliating against a person who has made a report or filed a complaint alleging unlawful harassment, or who has participated as a witness in a harassment investigation.
- B. Filing a malicious or knowingly false report or complaint of unlawful harassment.
- C. Disregarding, failing to investigate adequately, or delaying investigation of allegations of harassment, when responsibility for reporting and/or investigating unlawful harassment charges comprises part of one's supervisory duties.

Furthermore, the Board is committed to providing an educational setting that is safe, secure, and free from harassment and bullying for all of its students and school employees. Policy 5517.01 Bullying addresses those instances of bullying and harassment which do not rise to the level of legally protected harassment under Federal law, but are, nonetheless, behaviors that may occur on school grounds, at school-sponsored events, on school buses, at school bus stops and through school computer networks and through other electronic communication or transmission that will not be tolerated and must be appropriately identified, reported, investigated, and, when substantiated, be the subject of appropriate disciplinary action. An electronic act, communication, transmission or threat includes but is not limited to one which is administered via telephone, wireless phone, computer, pager or any electronic or wireless device whatsoever, and includes but is not limited to transmission of any image or voice, email or text message using any such device.

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 harassment, regardless of whether the person files a formal complaint or is pursuing an informal resolution to the alleged harassment.

Respondent is the individual who has been alleged to have engaged in unlawful harassment, regardless of whether the Reporting Party files a formal complaint or is seeking an informal resolution to the alleged harassment.

School District community means students and Board employees (i.e., administrators, and professional and classified staff), as well as 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 School District 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 School District community at school-related events/activities (whether on or off District 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 Board office is open for normal operating hours, Monday – Friday, excluding State-recognized holidays).

Bullying

Bullying rises to the level of unlawful harassment when one (1) or more persons systematically and chronically inflict physical hurt or psychological distress on one (1) or more students or employees and that bullying is based upon one (1) or more Protected Classes, that is, characteristics that are protected by Federal civil rights laws. It is defined as any unwanted and repeated written, verbal, or physical behavior, including any threatening, insulting, or dehumanizing gesture, by an adult or student, that is severe or pervasive enough to create an intimidating, hostile, or offensive educational or work environment; cause discomfort or humiliation; or unreasonably interfere with the individual's school or work performance or participation; and may involve:

- A. **teasing;**
- B. **threats;**
- C. **intimidation;**
- D. **stalking;**
- E. **cyberstalking;**
- F. **cyberbullying;**
- G. **physical violence;**
- H. **theft;**
- I. **sexual, religious, or racial harassment;**
- J. **public humiliation; or**
- K. **destruction of property;**

Harassment

Harassment means any threatening, insulting, or dehumanizing gesture, use of technology, or written, verbal or physical conduct directed against a student or school employee that:

- A. **places a student or school employee in reasonable fear of harm to his/her person or damage to his/her property;**
- B. **has the effect of substantially interfering with a student's educational performance, opportunities, or benefits, or an employee's work performance; or**
- C. **has the effect of substantially disrupting the orderly operation of a school.**

Sexual harassment – Sexual harassment consists of sexual advances, requests for sexual favors, sexually motivated physical conduct, or other verbal or physical conduct or communication of a sexual nature when:

- A. submission to the conduct or communication is made a term or condition either explicitly or implicitly of obtaining or retaining employment, or of obtaining an education;
- B. submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's employment or education;
- C. creating an intimidating, hostile or offensive or educational environment.

Sexual harassment may include, but is not limited to:

1. verbal or written harassment of a sexual nature or abuse;
2. pressure for sexual activity;
3. inappropriate or unwelcome sexually motivated patting, pinching, or physical conduct **(x) obscene gestures;**
4. sexual behavior or words, including demands for sexual favors, accompanied by implied or overt threats and/or promises concerning an individual's employment or educational status;

5. unwelcome behavior, verbal or written words or symbols, directed at an individual because of gender;
6. the use of authority to emphasize the sexuality of a student in a manner that prevents or impairs that student's full enjoyment of educational benefits, climate or opportunities;
7. unwelcome sexual flirtations, advances, or propositions from a member of the same or opposite sex;
8. verbal abuse of a sexual nature, without regard to whether the verbal abuse specifically refers to sexual characteristics at whom the verbal abuse is directed;
9. verbal or written comments about an individual's body;
10. sexually degrading word(s) or actions used to intimidate, describe an individual or to refer to some aspect of the individual's behavior, appearance, attitude, or conduct;
11. the display, use or dissemination of sexually suggestive gestures, graffiti, objects, videos, pictures, posters, and/or jokes by any means, including, but not limited to, printed materials and materials displayed by electronic means, sex based labeling or stereotyping with respect to mental, physical, or other abilities, talents, occupational or life goals, etc.;
12. asking about, or telling about, sexual fantasies, sexual preferences, or sexual activities;
13. speculations about a person's sexual activities or sexual history, or remarks about one's own sexual activities or sexual history;
14. giving unwelcome person gifts such as lingerie that suggests the desire for a romantic relationship;
15. leering or staring at someone in a sexual way, such as staring at a person's breasts, buttocks, or groin;
16. nonsexual conduct, including words or actions, directed toward a person because of their gender that tends to ridicule, criticize, discriminate, or otherwise makes it more difficult for that person to perform their job and/or achieve an education.

It is the responsibility of all students and employees to promote and to maintain an environment free of all types of sexual harassment. Any sexual harassment, as defined, when perpetrated on any student, volunteer, ~~third party~~ Third Party or employee by any student, volunteer, ~~third party~~ Third Party or employee will be treated as sexual harassment under this policy.

Sexual harassment may involve the behavior of a person of any gender against a person of the same or another gender

Sexual Harassment covered by Policy 2266 - Nondiscrimination on the Basis of Sex Education Programs or Activities is not included in this policy. Allegations of such conduct shall be addressed solely by Policy 2266.

[DRAFTING NOTE: Sexual conduct/relationships with students by District employees or any other adult member of the District community is prohibited, and any teacher, administrator, coach, or other school authority who engages in sexual conduct with a student may also be guilty of the criminal charge of "sexual abuse or sexual assault as set forth in Article 8B, Chapter 61 of the West Virginia Code. The issue of consent may be irrelevant in regard to such criminal charge. In addition, under certain circumstances, sexual harassment may constitute child and/or sexual abuse under Chapter 49 of the West Virginia Code. In such situations, the Board shall comply with the provisions of law for reporting such abuse.]

Racial Harassment – Racial harassment consists of physical, verbal, or written conduct relating to an individual's race when the conduct:

- A. has the purpose or effect of creating an intimidating, hostile or offensive working or academic environment;
- B. has the purpose or effect of substantially or unreasonably interfering with an individual's work or academic performance;
- C. otherwise adversely affects an individual's employment or academic opportunities;
- D. racial harassment includes racially degrading word(s) or actions used to intimidate, describe an individual or to refer to some aspect of the individual's behavior, appearance, attitude, or conduct;
- E. the display, use, or dissemination of racially motivated gestures, objects, pictures, and/or jokes by any means, including, but not limited to, printed materials displayed by electronic means;
- F. race based labeling or stereotyping with respect to mental, physical, or other abilities, talents, occupational or life goals, etc.;
- G. unwelcome behavior, verbal or written words or symbols, directed at an individual because of race;
- H. conduct, including word(s) or actions, directed toward a person because of their race that tends to distract or otherwise make it more difficult to perform their job and/or achieve an education.

It is the responsibility of all students and employees to promote and to maintain an environment free of all types of racial harassment. Any racial harassment, as defined, when perpetrated on any student, volunteer, ~~third party~~ Third Party or employee by any student, volunteer, ~~third party~~ Third Party or employee will be treated as racial harassment under this policy.

Religious/Ethnic Harassment – Religious/ethnic harassment consists of physical, verbal or written conduct which is related to an individual's religion or ethnic background when the conduct:

- A. has the purpose or effect of creating an intimidating, hostile or offensive working or academic environment;
- B. has the purpose or effect of substantially or unreasonably interfering with an individual's work or academic performance;
- C. otherwise adversely affects an individual's employment or academic opportunities;
- D. religious/ethnic degrading word(s) or actions used to intimidate, describe an individual or refer to some aspect of the individual's behavior, appearance, attitude or conduct;
- E. the display, use or dissemination of degrading religious/ethnic
- F. suggestive gestures, objects, pictures, and/or jokes by any means including, but not limited to, printed materials and materials displayed by electronic means;
- G. religious/ethnic based labeling or stereotyping with respect to mental, physical or other abilities, talents, occupational or life goals, etc.;
- H. conduct, including word(s) or actions, directed toward a person because of their religion or ethnicity that tends to distract or otherwise make it more difficult to perform their job and/or achieve an education.

It is the responsibility of all students and employees to promote and to maintain an environment free of all types of religious/ethnic harassment. Any religious/ethnic harassment, as defined, when perpetrated on any student, volunteer, ~~third party~~ Third Party or employee by any student, volunteer, ~~third party~~ Third Party or employee will be treated as religious/ethnic harassment under this policy.

Sexual Violence – Sexual violence is a physical act of aggression or force or the threat thereof which involves the touching of another's intimate parts or forcing a person to touch any person's intimate parts. Intimate parts include the primary genital area, groin, inner thigh, buttocks, or breast, as well as the clothing covering these areas.

Sexual violence may include, but is not limited to:

- A. touching, patting, grabbing or pinching another person's intimate parts, whether that person is of the same sex or the opposite sex;
- B. coercing, forcing or attempting to coerce or force the touching of anyone's intimate parts;
- C. coercing, forcing or attempting to coerce or force sexual intercourse or a sexual act on another;
- D. threatening to force or coerce sexual acts, including the touching of intimate parts or intercourse, on another;
- E. threatening or forcing exposure of intimate apparel or body parts by removal of clothing.
- F. **Racial Violence** - Racial violence is a physical act of aggression or assault upon another because of, or in a manner reasonably related to, race.
- G. **Religious/Ethnic Violence** - Religious/ethnic violence is a physical act of aggression or assault upon another because of, or in a manner reasonably related to, religion or ethnicity.
- H. **Assault** - Assault is defined as an act done with intent to cause fear in another of immediate bodily harm or death; or the threat to do bodily harm to another with present ability to carry out the threat.

Reports and Complaints of Harassing Conduct

Members of the School District community, which includes all staff, and ~~third parties~~ **Third Parties** are encouraged to promptly report incidents of harassing conduct to an administrator, supervisor, or other School District official so that the Board may address the conduct before it becomes severe, pervasive, or persistent. **Any teacher, administrator, supervisor, or other District employee or official who receives such a report shall file it with the Compliance Officer within two (2) days of receiving the report of harassment.**

Members of the School District community ~~or third parties~~ **and Third Parties** who believe they have been unlawfully harassed by another member of the School District community or a ~~third party~~ **Third Party** are entitled to utilize the Board's complaint process that is 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 of harassment 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.**

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 have created a hostile work environment and may have constituted unlawful discriminatory harassment based on a Protected Class, the principal shall report the act of bullying, aggressive behavior and/or harassment to ~~one of the Anti Harassment~~ **the** Compliance Officers who shall investigate the allegations in accordance with this policy. **If the alleged harassment involves Sexual Harassment as defined by Policy 2266, the matter will be handled in accordance with the grievance process and procedures outlined in Policy 2266.** While the compliance Officer investigates the allegation, **or the matter is being addressed pursuant to Policy 2266,** the principal shall suspend ~~his/her~~ **the** Policy 5517.01 investigation to await the Compliance Officer's written report **or the determination of responsibility pursuant to Policy 2266.** The Compliance Officer shall keep the principal informed of the status of the Policy 5517 investigation and provide ~~him/her~~ **the principal** with a copy of the resulting written report. **Likewise, the Title IX Coordinator will provide the principal with the determination of responsibility that results from the Policy 2266 grievance process.**

Disability Harassment

Prohibited disability harassment occurs when unwelcome physical, verbal, or nonverbal conduct is based upon an individual's disability and when the conduct has the purpose or effect of interfering with the individual's work or educational performance; of creating an intimidating, hostile, or offensive working and/or learning environment; or of interfering with one's ability to participate in or benefit from a class or an educational program or activity. Such harassment may occur where conduct is directed at the characteristics of a person's disability condition, such as negative comments about speech patterns, movement, physical impairments or defects/appearances, or the like.

Anti-Harassment Compliance Officers

The Board designates the following individuals to serve as "Anti-Harassment Compliance Officers" for the District (hereinafter referred to as the "COs").

DRAFTING NOTE: District Schools are advised to Neola suggests the Board appoint both a male and a female Compliance Officer 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 may also serve as the District School's Section 504 and Title IX Coordinators. The same individual(s) assigned to serve as Compliance Officer(s) may also be assigned to serve as the District's Section 504 Compliance Officer(s) /ADA Coordinator(s) and/or Title IX Coordinator(s). Additionally, by appointing two (2) Compliance Officers, there should also be a Compliance Officer available to investigate a claim of harassment that pertains to the other Compliance Officer.

Rockie DeLorenzo _____
(Name)

Administrative Assistant for Human Services _____
(District Title)

_304-367-2104 _____
(Telephone Number)

_1516 Mary Lou Retton Drive _____
(Office Address)

rdeloren@k12.wv.us _____
(E-mail Address)

Dr. Christina Hare _____
(Name)

Supervisor of Student Services _____
(District Title)

_304-367-2100 _____
(Telephone Number)

1516 Mary Lou Retton Drive _____
(Office Address)

_chare@k12.wv.us _____
Kristin DeVaul _____
(Name)

Supervisor of Secondary Education, Testing, and Policies _____

(District Title)

304-367-2100

(Telephone Number)

1516 Mary Lou Retton Drive

(Office Address)

kdevaul@k12.wv.us

The names, titles, and contact information of these individuals will be published annually **on the School District's website () and:**

- A. ~~() in the parent and staff handbooks.~~
- B. ~~() in the School District Annual Report to the public.~~
- C. ~~() on the School District's web site.~~
- D. ~~() on each individual school's web site website.~~
- E. ~~() in the School District's calendar.~~
- F. ~~() _____.~~

The Compliance Officer(s) (x) is (x) are responsible for coordinating the District's efforts to comply with applicable Federal and State laws and regulations, including the District's duty to address in a prompt and equitable manner any inquiries or complaints regarding harassment.

The COs will be available during regular school/work hours to discuss concerns related to unlawful harassment, to assist students, other members of the School District community, and ~~third parties~~ **Third Parties** who seek support or advice when informing another individual about "unwelcome" conduct, or to intercede informally on behalf of the individual in those instances where concerns have not resulted in the filing of a formal complaint and where all parties are in agreement to participate in an informal process.

COs shall accept ~~complaints~~ **reports** of unlawful harassment directly from any member of the School District community or a visitor to the District, or receive complaints that are initially filed with a school building administrator. Upon receipt of a complaint, either directly or through a school building administrator, a CO will begin either an informal or formal process (depending on the request of the person alleging the harassment or the nature of the alleged harassment), or the CO will designate a specific individual to conduct such a process. In the case of a formal complaint, the CO will prepare recommendations for the Superintendent or will oversee the preparation of such recommendations by a designee. All members of the School District community must report incidents of harassment that are reported to them to the CO within two (2) business days of learning of the incident.

Any Board employee who directly observes unlawful harassment of a student is obligated, in accordance with this policy, to report such observations to one (1) of the COs within two (2) business days. Additionally, any Board employee who observes an act of unlawful harassment is expected to intervene to stop the harassment, unless circumstances make such an intervention dangerous, in which case the staff member should immediately notify other Board employees and/or local law enforcement officials, as necessary, to stop the harassment. Thereafter, the CO, or designee must contact the student, if age eighteen (18) or older, or the student's parents if under the age of eighteen (18), within two (2) business days to advise him/her/them of the Board's intent to investigate the alleged misconduct, including the obligation of the CO or designee to conduct an investigation following all the procedures outlined for a formal complaint.

Reporting Procedures

- A. In Each School Building.** The building principal is the person responsible for receiving oral or written reports of racial, sexual or religious/ethnic harassment or violence at the building level. Upon receipt of a report of student conduct, the principal must notify the School District's Anti-Harassment Compliance Officer promptly, and shall commence investigation of the complaint. No later than ten (10) school days of receiving the complaint, a written report will be forwarded to the School District's Anti-Harassment Compliance Officer and to the Superintendent.

If the report alleges employee misconduct, the building principal must promptly notify the School District's Anti-Harassment Compliance Officer who will initiate, or direct, an investigation of the complaint. This investigation may be conducted by school officials or ~~third parties~~ **Third Parties** designated by the Superintendent. Within ten (10) school days of receiving the complaint, the investigating party shall provide a written status report to the Superintendent.

Anytime the report is given to the building principal verbally, the principal shall reduce it to written form before the close of the next working day. If the complaint involves the building principal, the complaint shall be made directly to the School District's Anti-Harassment Compliance Officer.

For school buildings/facilities which do not have a building principal, such as the transportation and maintenance departments, the Director of such building or facility will be the person responsible for receiving oral or written reports of racial, sexual or religious/ethnic harassment or violence. All other provisions of the paragraph above apply to such situations, except that the term "Director" shall be substituted for the term "building principal".

- B. District-Wide.** The Board hereby designates its Title IX Coordinator as the School District's Anti-Harassment Compliance Officer to receive reports or complaints of racial, sexual or religious/ethnic harassment or violence from any individual, employee or victim of racial, sexual or religious/ethnic harassment or violence and also from the building principals as outlined above. If the complaint involves the School District's Anti-Harassment Compliance Officer, the complaint or report shall be filed directly with the Superintendent, who shall then be responsible for the investigation and recommendation described in the Investigation and Recommendation section of this policy. The name of the School District's Anti-Harassment Compliance Officer, including a mailing address and telephone number, shall be conspicuously posted in the office of each school building and in other buildings to which employees of the Board are assigned to work.
- C.** Submission of a complaint or report of racial, sexual or religious/ethnic harassment or violence will not affect the future employment, grades, or work assignments of the person who submits the complaint or report.
- D.** Use of formal reporting forms is not mandatory.
- E.** All alleged incidents of harassment or violence observed by faculty, staff or other employees of the Board must report the incident to either the building principal or the School District's Anti-Harassment Compliance Officer within twenty-four (24) hours of observing the incident.

The Board's investigation of racial, sexual or religious/ethnic harassment or violence complaints will be conducted with maximum effort to protect the confidentiality of all those involved in the complaint or investigative process and to facilitate prompt resolution of the complaint. School officials may, in their discretion, take immediate steps to protect individual privacy and safety pending resolution.

Investigation and Recommendation

The individual(s) designated by this policy to investigate, shall, upon receipt of a report or complaint alleging racial, sexual, or religious/ethnic harassment or violence, immediately undertake to authorize an investigation. The investigation may be conducted by school officials or by a ~~third party~~ **Third Party** designated by the school officials if necessary. The investigating party shall provide a written report of the result of the investigation and a recommendation of discipline within ten (10) school days to the Superintendent and to the School District's Anti-Harassment Compliance Officer. If the Superintendent is the subject of the complaint, the report shall be submitted to the School District's Anti-Harassment Compliance Officer and to the President of the Board. The report shall include a determination of whether the allegations have been substantiated as factual and whether they appear to be violations of this policy.

In determining whether alleged conduct constitutes racial, sexual or religious/ethnic harassment or violence, consideration shall be given to the surrounding circumstances, the nature of the conduct involved, relationships between the parties involved, and the context in which the alleged incidents occurred.

The investigation must, at a minimum, 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 circumstance(s) giving rise to the complaint. The investigation may also consist of any other methods, documents, and review of circumstances deemed pertinent by the investigator(s).

Confidentiality

Confidentiality of the filing of complaints, the identity of subjects and witnesses of any complaint, and of any action taken as a result of such complaints is essential to the effectiveness of this policy. Only those individuals necessary for the investigation and resolution of the complaint shall be given information about it. Therefore, the right of confidentiality of complainants, subjects, witnesses, and investigators will be vigorously protected and violations of such confidentiality may, itself, be grounds for disciplinary action.

Results of the Investigation

The result of the investigation of each complaint filed under these procedures will be reported in writing to the complainant and his/her legal guardian by the Superintendent, or, if the Superintendent is the subject of the complaint, by the President of the Board.

Discipline and Other Actions

In determining the appropriate response and/or punishment, the appropriate school official shall consider the surrounding circumstances, the nature of the behavior, past incidents or past or continuing patterns of behavior, the relationships between the parties involved and the context in which the alleged incident occurred.

- A. Upon receipt of a finding that the complaint is substantiated, the appropriate school official shall take action appropriate to the status of the offender (student, staff, or public guest). Such action for students may include all options listed in West Virginia State Board of Education policy 4373 and local Policy 5600. Actions for staff may include but not be limited to, warning, suspension, termination, revocation of licensure, notification of law enforcement and/or human services. Actions for public guests may include but not be limited to removal from school property and school-sponsored functions, notification of law enforcement and/or human services.
- B. The appropriate school official shall also initiate such other action as is appropriate to ease tensions and affirm the values of respect and understanding in accordance with this policy.
- C. The Superintendent shall immediately file a report with the West Virginia Department of Education of all reports of harassment or violence when an investigation shows that harassment or violence did occur and all actions taken in response to the incident.

Nothing in this policy shall prohibit contacting law enforcement or other personnel, including the Human Rights Commission, regarding the actions of any party subject to a complaint.

Retaliation

Retaliation against a person who makes a report or files a complaint alleging unlawful 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, or because

that individual 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 because that individual 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 from 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 sanction/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.

The Board will discipline, as appropriate, any individual who retaliates against any person who reports allegations of racial, sexual or religious/ethnic harassment or violence, or any person who cooperates, testifies, assists, or participates in any racial, sexual or religious/ethnic harassment or violence investigation, proceeding, or hearing. "Retaliation" includes, but is not limited to, any form of retaliation or intimidation, reprisal, coercion, provocation, or harassment. The Board will also discipline, as appropriate, any person who falsely reports religious/ethnic, racial or sexual harassment.

Student-Employee Relationships Prohibited

Amorous relationships between employees of the Board and students are prohibited, and staff members found to have violated this prohibition shall be subject to the penalties and disciplinary action defined herein.

Non-Harassment

The Board recognizes that not every advance, conduct, or interaction of a racial, sexual or religious/ethnic or violent nature constitutes harassment. Whether a particular act, conduct, interaction, or incident is a personal, consensual, welcome interaction or social relationship without discriminatory motivation or effect on employment or education status will be determined based upon consideration of all facts and surrounding circumstances.

The Board recognizes that not all reports of allegations of sexual, racial, and/or religious/ethnic harassment will result in findings that such an incident has occurred. However, the Board encourages all persons who believe that they are a victim of such harassment to come forward and affirms its policy that no adverse action will be taken upon the filing of a complaint under this policy, unless it is shown, through investigation, that the complaint is patently false.

Right to Alternative Complaint Procedures

These procedures do not deny the right of any individual to pursue other avenues of recourse which may include the filing charges with the West Virginia Human Rights Commission, filing an employee grievance under WV Code 18-29-1, et seq., filing a citizen's appeal under West Virginia State Board of Education policy 7211, filing a Title IX grievance under the appropriate procedures, filing charges with the Federal Equal Employment Opportunity Commission, or initiating civil or criminal action under State and/or Federal law.

Sexual Harassment as Abuse

Under certain circumstances, sexual harassment may constitute child and/or sexual abuse under Chapter 49 of the West Virginia Code. In such situations, the School District and its employees shall comply with the provisions of law for reporting such abuse.

Dissemination of the Policy

This policy or a summary shall be conspicuously posted throughout each school or facility of the Board in areas accessible to students and staff members.

This policy shall appear in the Student and Staff Handbooks and, if no handbook is available, a copy shall be distributed to all students, faculty, and staff.

The students and staff of the Board shall be trained on these regulations and on means for effectively promoting the goals of this policy.

The Board policy shall be reviewed at least bi-annually to assure compliance with State and Federal law and with West Virginia State Board of Education policy.

Groups and persons utilizing school properties for curricular and extra-curricular activities shall be provided a copy of this policy prior to the use of any Board facility. Failure to comply with this policy by a non-student group will result in the immediate forfeiture of the group's use of the school properties.

Education and Training

The School District's Anti-Harassment Compliance Officer shall develop a program designed to raise the awareness of the different types of harassment, how it manifests itself, and its emotional, educational and legal consequences. Multi-cultural education programs must be established to foster an attitude of understanding and acceptance of individuals from a variety of cultural, ethnic, racial and religious backgrounds.

The School District's Anti-Harassment Compliance Officer shall present written and verbal information to all faculty, staff and students at least once annually. Dissemination of written and verbal information may be made by a designee(s) of the School District's Anti- Harassment Compliance Officer as appropriate, and such presentation must be age-appropriate for students K-4, 5-8, and 9-12.

© Neola ~~2014~~ 2021

Legal	West Virginia State Board of Education policy 4373
	WV Code 18-2-7b and 49-6A-2
	20 U.S.C. 1681 et seq.
	29 U.S.C. 621 et seq.
	29 U.S.C. 794
	29 C.F.R. Part 1635
	42 U.S.C. 12101 et seq.
	42 U.S.C. 2000d et seq.
	42 U.S.C. 2000e et seq.
	42 U.S.C. 2000ff et seq., The Genetic Information and Nondiscrimination Act
	42 U.S.C. 1983
	National School Boards Association Inquiry and Analysis - May 2008

Book	Policy Manual
Section	Special Update - Nondiscrimination and Anti-Harassment - May 2021
Title	Replacement Policy - Special Update - Title IX Update - May 2021 - ANTI-HARASSMENT AND VIOLENCE
Code	po4362 ksj 4/25/23 add officers
Status	
Adopted	August 1, 2007
Last Revised	June 18, 2012

4362 - ANTI-HARASSMENT AND VIOLENCE

General Statement

Racial, sexual, and religious/ethnic harassment is a form of discrimination which violates Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, et seq., Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, et seq., and WV Code 5-11-1, et seq., the West Virginia Human Rights Act.

It is the policy of the Board of Education to maintain an education and work environment that is free from all forms of unlawful harassment and violence.

This policy applies to any student, staff member or member of the public during any school related activity or during any education sponsored event whether in a building or other property used or operated by the Board of Education or in any other facility being used by the Board.

The Board will vigorously enforce its prohibition against discriminatory harassment based on race, color, national origin, sex (including transgender gender status, change of sex, or gender identity), disability, age, blindness, creed or religion, ancestry, socioeconomic status, physical appearance, sexual orientation, mental/physical/developmental/sensory disability, or genetic information (collectively, "Protected Classes") that are protected by Federal civil rights laws (hereinafter referred to as "unlawful harassment"), and encourages those within the District community as well as ~~third parties~~ **Third Parties**, who feel aggrieved to seek assistance to rectify such problems.

The Board will investigate all allegations of harassment and in those cases where unlawful harassment is substantiated, the Board will take immediate steps to end the harassment, prevent its reoccurrence, and remedy its effects. Individuals who are found to have engaged in unlawful harassment will be subject to appropriate disciplinary action. (See West Virginia State Board of Education policy 4373)

~~[] The District will offer counseling services to any person found to have been subjected to unlawful harassment, and, where appropriate, the person(s) who committed the unlawful harassment.~~

For purposes of this policy, "District community" means students, administrators, and professional and classified staff, as well as Board members, agents, volunteers, contractors, or other persons subject to the control and supervision of the Board.

~~For purposes of this policy, "third parties" include, but are not limited to, guests and/or visitors on District 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 District community at school related events/activities (whether on or off District property).~~

~~The Board will act promptly and confidentially to investigate all harassment and violence complaints, formal or informal, verbal or written, and will take appropriate disciplinary action based upon the results of the investigation.~~

Other Violations of the Anti-Harassment Policy

The Board will also take immediate steps to impose disciplinary action on individuals engaging in any of the following prohibited acts:

- A. Retaliating against a person who has made a report or filed a complaint alleging unlawful harassment, or who has participated as a witness in a harassment investigation.
- B. Filing a malicious or knowingly false report or complaint of unlawful harassment.
- C. Disregarding, failing to investigate adequately, or delaying investigation of allegations of harassment, when responsibility for reporting and/or investigating unlawful harassment charges comprises part of one's supervisory duties.

Furthermore, the Board is committed to providing an educational setting that is safe, secure, and free from harassment and bullying for all of its students and school employees. Policy 5517.01 - Bullying addresses those instances of bullying and harassment which do not rise to the level of legally protected harassment under Federal law, but are, nonetheless, behaviors that may occur on school grounds, at school-sponsored events, on school buses, at school bus stops, and through school computer networks and through other electronic communication or transmission that will not be tolerated and must be appropriately identified, reported, investigated, and, when substantiated, be the subject of appropriate disciplinary action. An electronic act, communication, transmission or threat includes but is not limited to one which is administered via telephone, wireless phone, computer, pager or any electronic or wireless device whatsoever, and includes but is not limited to transmission of any image or voice, email or text message using any such device.

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 harassment, regardless of whether the person files a formal complaint or is pursuing an informal resolution to the alleged harassment.

Respondent is the individual who has been alleged to have engaged in unlawful harassment, regardless of whether the Reporting Party files a formal complaint or is seeking an informal resolution to the alleged harassment.

School District community means students and Board employees (i.e., administrators, and professional and classified staff), as well as 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 School District 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 School District community at school-related events/activities (whether on or off District 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 Board office is open for normal operating hours, Monday - Friday, excluding State-recognized holidays).

Bullying

Bullying rises to the level of unlawful harassment when one or more persons systematically and chronically inflict physical hurt or psychological distress on one (1) or more students or employees and that bullying is based upon one (1) or more Protected Classes, that is, characteristics that are protected by Federal civil rights laws. It is defined as any unwanted and repeated written, verbal, or

physical behavior, including any threatening, insulting, or dehumanizing gesture, by an adult or student, that is severe or pervasive enough to create an intimidating, hostile, or offensive educational or work environment; cause discomfort or humiliation; or unreasonably interfere with the individual's school or work performance or participation; and may involve:

- A. teasing;
- B. threats;
- C. intimidation;
- D. stalking;
- E. cyberstalking;
- F. cyberbullying;
- G. physical violence;
- H. theft;
- I. sexual, religious, or racial harassment;
- J. public humiliation; or
- K. destruction of property.

"Harassment" means any threatening, insulting, or dehumanizing gesture, use of technology, or written, verbal or physical conduct directed against a student or school employee that:

- A. places a student or school employee in reasonable fear of harm to his/her person or damage to his/her property;
- B. has the effect of substantially interfering with a student's educational performance, opportunities, or benefits, or an employee's work performance; or
- C. has the effect of substantially disrupting the orderly operation of a school.

Definitions

Sexual harassment – Sexual harassment consists of sexual advances, requests for sexual favors, sexually motivated physical conduct, or other verbal or physical conduct or communication of a sexual nature when:

- A. submission to the conduct or communication is made a term or condition either explicitly or implicitly of obtaining or retaining employment, or of obtaining an education; or
- B. submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's employment or education; or
- C. creating an intimidating, hostile or offensive or educational environment.

Sexual harassment may include, but is not limited to:

Sexual harassment may involve the behavior of a person of any gender against a person of the same or another gender

Sexual Harassment covered by Policy 2266 - Nondiscrimination on the Basis of Sex Education Programs or Activities is not included in this policy. Allegations of such conduct shall be addressed solely by Policy 2266.

Prohibited acts that constitute sexual harassment under this policy may take a variety of forms. Examples of the kinds of conduct that may constitute sexual harassment include, but are not limited to:

- A. verbal or written harassment of a sexual nature or abuse;
- B. pressure for sexual activity;
- C. inappropriate or unwelcome patting, pinching, or physical conduct;
- D. sexual behavior or words, including demands for sexual favors, accompanied by implied or overt threats and/or promises concerning an individual's employment or educational status;
- E. behavior, verbal or written words or symbols, directed at an individual because of gender;
- F. the use of authority to emphasize the sexuality of a student in a manner that prevents or impairs that student's full enjoyment of educational benefits, climate or opportunities;
- G. unwelcome sexual flirtations, advances, or propositions from a member of the same or opposite sex;
- H. verbal abuse of a sexual nature, without regard to whether the verbal abuse specifically refers to sexual characteristics at whom the verbal abuse is directed;
- I. verbal, nonverbal or physical aggression, intimidation, or hostility based on sex or stereotyping that does not involve conduct of a sexual nature;
- J. verbal or written comments about an individual's body;
- K. sexually degrading word(s) or actions used to intimidate, describe an individual or to refer to some aspect of the individual's behavior, appearance, attitude, or conduct;
- L. the display, use or dissemination of sexually suggestive gestures, objects, pictures, graffiti, videos, posters and/or jokes by any means, including, but not limited to, printed materials and materials displayed by electronic means, sex based labeling or stereotyping with respect to mental, physical, or other abilities, talents, occupational or life goals, etc.;
- M. asking about, or telling about, sexual fantasies, sexual preferences, or sexual activities;
- N. speculations about a person's sexual activities or sexual history, or remarks about one's own sexual activities or sexual history;
- O. giving unwelcome personal gifts such as lingerie that suggest the desire for a romantic relationship;
- P. leering or staring at someone in a sexual way, such as staring at a person's buttocks, or groin;
- Q. consensual sexual relationships between employees where such relationship leads to favoritism of a subordinate employee with whom the superior is sexually involved and where such favoritism adversely affects other employees or otherwise creates a hostile work environment;
- R. inappropriate boundary invasions by a District employee or other adult member of the School District community into a student's personal space and personal life;

- S. nonsexual conduct, including words or actions, directed toward a person because of their gender that tends to ridicule, criticize, discriminate, or otherwise makes it more difficult for that person to perform their job and/or achieve an education.

It is the responsibility of all students and employees to promote and to maintain an environment free of all types of sexual harassment. Any sexual harassment, as defined, when perpetrated on any student, volunteer, ~~third party~~ Third Party or employee by any student, volunteer, ~~third party~~ Third Party or employee will be treated as sexual harassment under this policy.

Not all behavior with sexual connotations constitutes unlawful sexual harassment. Sex-based or gender-based conduct must be sufficiently severe, pervasive, and persistent such that it adversely affects, limits, or denies an individual's employment or education, or such that it creates a hostile or abusive employment or educational environment.

[DRAFTING NOTE: Sexual conduct/relationships with students by District employees or any other adult member of the District community is prohibited, and any teacher, administrator, coach, or other school authority who engages in sexual conduct with a student may also be guilty of the criminal charge of "sexual abuse or sexual assault as set forth in Article 8B, Chapter 61 of the West Virginia Code. The issue of consent may be irrelevant in regard to such criminal charge. In addition, under certain circumstances, sexual harassment may constitute child and/or sexual abuse under Chapter 49 of the West Virginia Code. In such situations, the Board shall comply with the provisions of law for reporting such abuse.]

Racial Harassment – Racial harassment consists of physical, verbal, or written conduct relating to an individual's race when the conduct:

- A. has the purpose or effect of creating an intimidating, hostile or offensive working or academic environment;
- B. has the purpose or effect of substantially or unreasonably interfering with an individual's work or academic performance;
- C. otherwise adversely affects an individual's employment or academic opportunities;
- D. racial harassment includes racially degrading word(s) or actions used to intimidate, describe an individual or to refer to some aspect of the individual's behavior, appearance, attitude, or conduct;
- E. the display, use, or dissemination of racially motivated gestures, objects, pictures, and/or jokes by any means, including, but not limited to, printed materials displayed by electronic means;
- F. race based labeling or stereotyping with respect to mental, physical, or other abilities, talents, occupational or life goals, etc.;
- G. unwelcome behavior, verbal or written words or symbols, directed at an individual because of race;
- H. conduct, including word(s) or actions, directed toward a person because of their race that tends to distract or otherwise make it more difficult to perform their job and/or achieve an education.

It is the responsibility of all students and employees to promote and to maintain an environment free of all types of racial harassment. Any racial harassment, as defined, when perpetrated on any student, volunteer, ~~third party~~ Third Party or employee by any student, volunteer, ~~third party~~ Third Party or employee will be treated as racial harassment under this policy.

Religious/Ethnic Harassment – Religious/ethnic harassment consists of physical, verbal or written conduct which is related to an individual's religion or ethnic background when the conduct:

- A. has the purpose or effect of creating an intimidating, hostile or offensive working or academic environment;
- B. has the purpose or effect of substantially or unreasonably interfering with an individual's work or academic performance;

- C. otherwise adversely affects an individual's employment or academic opportunities;
- D. religious/ethnic degrading word(s) or actions used to intimidate, describe an individual or refer to some aspect of the individual's behavior, appearance, attitude or conduct;
- E. the display, use or dissemination of degrading religious/ethnic suggestive gestures, objects, pictures, and/or jokes by any means including, but not limited to, printed materials and materials displayed by electronic means;
- F. religious/ethnic based labeling or stereotyping with respect to mental, physical or other abilities, talents, occupational or life goals, etc.;
- G. conduct, including word(s) or actions, directed toward a person because of their religion or ethnicity that tends to distract or otherwise make it more difficult to perform their job and/or achieve an education.

It is the responsibility of all students and employees to promote and to maintain an environment free of all types of religious/ethnic harassment. Any religious/ethnic harassment, as defined, when perpetrated on any student, volunteer, ~~third party~~ Third Party or employee by any student, volunteer, ~~third party~~ Third Party or employee will be treated as religious/ethnic harassment under this policy.

National Origin/Ancestry Harassment

Prohibited national origin/ancestry harassment occurs when unwelcome physical, verbal, or nonverbal conduct is based upon an individual's national origin or ancestry and when the conduct has the purpose or effect of interfering with the individual's work or educational performance; of creating an intimidating, hostile, or offensive working and/or learning environment; or of interfering with one's ability to participate in or benefit from a class or an educational program or activity. Such harassment may occur where conduct is directed at the characteristics of a person's national origin or ancestry, such as negative comments regarding customs, manner of speaking, language, surnames, or ethnic slurs.

Disability Harassment

Prohibited disability harassment occurs when unwelcome physical, verbal, or nonverbal conduct is based upon an individual's disability and when the conduct has the purpose or effect of interfering with the individual's work or educational performance; of creating an intimidating, hostile, or offensive working and/or learning environment; or of interfering with one's ability to participate in or benefit from a class or an educational program or activity. Such harassment may occur where conduct is directed at the characteristics of a person's disability, such as negative comments about speech patterns, movement, physical impairments or defects/appearances, or the like. Such harassment may further occur where conduct is directed at or pertains to a person's genetic information.

Anti-Harassment Compliance Officers

The Board designates the following individuals to serve as "Anti-Harassment Compliance Officers" for the District (hereinafter referred to as the "COs").

[NOTE: Districts are advised to 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 may also serve as the District's Section 504 and Title IX Coordinators.]

Rockie DeLorenzo _____
(Name)

Administrative Assistant for Human Services _____
(District Title)

_304-367-2104 _____
(Telephone Number)

__1516 Mary Lou Retton Drive_____
(Office Address)

rdeloren@k12.wv.us_____
(E-mail Address)

Dr. Christina Hare_____
(Name)

Supervisor of Student Services_____
(District Title)

__304-367-2100_____
(Telephone Number)

1516 Mary Lou Retton Drive_____
(Office Address)

__chare@k12.wv.us_____
Kristin DeVaul_____
(Name)

Supervisor of Secondary Education, Testing, and Policies_____
(District Title)

__304-367-2100_____
(Telephone Number)

1516 Mary Lou Retton Drive_____
(Office Address)

__kdevaul@k12.wv.us_____
E-mail Address

The names, titles, and contact information of these individuals will be published annually on the School District's web site and:

- A. in the parent and staff handbooks.
- B. in the School District Annual Report to the public.
- C. on each individual school's web site.
- D. in the School District's calendar.
- E. _____

The Compliance Officer(s) is are responsible for coordinating the District's efforts to comply with applicable Federal and State laws and regulations, including the District's duty to address in a prompt and equitable manner any inquiries or complaints regarding harassment.

- A. touching, patting, grabbing or pinching another person's intimate parts, whether that person is of the same sex or the opposite sex;
- B. coercing, forcing or attempting to coerce or force the touching of anyone's intimate parts;
- C. coercing, forcing or attempting to coerce or force sexual intercourse or a sexual act on another;
- D. threatening to force or coerce sexual acts, including the touching of intimate parts or intercourse, on another;
- E. threatening or forcing exposure of intimate apparel or body parts by removal of clothing.
- F. **Racial Violence** - Racial violence is a physical act of aggression or assault upon another because of, or in a manner reasonably related to, race.
- G. **Religious/Ethnic Violence** - Religious/ethnic violence is a physical act of aggression or assault upon another because of, or in a manner reasonably related to, religion or ethnicity.
- H. **Assault** - Assault is defined as an act done with intent to cause fear in another of immediate bodily harm or death; or the threat to do bodily harm to another with present ability to carry out the threat.

Reports and Complaints of Harassing Conduct

Members of the District community, which includes all staff, and ~~third parties~~ **Third Parties** are encouraged to promptly report incidents of harassing conduct to an administrator, supervisor or other District official so that the Board may address the conduct before it becomes severe, pervasive, or persistent.

Members of the District community or ~~third parties~~ **Third Parties** who believe they have been unlawfully harassed by another member of the District community or a ~~third party~~ **Third Party** are entitled to utilize the Board's complaint process that is set forth below. Initiating a complaint, whether formally or informally, will not adversely affect the complaining individual's employment unless the complaining individual makes the complaint maliciously or with knowledge that it is false.

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 have created a hostile work environment and may have constituted unlawful discriminatory harassment based on a Protected Class, the Principal shall report the act of bullying, aggressive behavior and/or harassment to one of the Anti-Harassment Compliance Officers who shall investigate the allegation in accordance with this policy. While the Compliance Officer investigates the allegation, the principal shall suspend his/her Policy 5517.01 investigation to await the Compliance Officer's written report. The Compliance Officer shall keep the principal informed of the status of the Policy 4362 investigation and provide him/her with a copy of the resulting written report.

Reporting procedures are as follows:

- A. Any employee who believes s/he has been the victim of harassment prohibited under this policy is encouraged to report the alleged harassment to the appropriate school official as identified in D below.
- B. Teachers, administrators, and other school officials who have or receive notice that an employee has or may have been the victim of harassment prohibited under this policy shall immediately report the alleged harassment to the appropriate school official as defined in D below.
- C. Any other person with knowledge or belief that an employee has or may have been the victim of harassment prohibited by this policy shall be encouraged to immediately report the alleged acts to an appropriate school official as identified in D below.
- D. Appropriate school officials are as follows:

- 1. Any complaint under this policy shall be reported to the District's Compliance Officer unless the complaint is regarding the Compliance Officer. In such cases, the complaints shall be reported to the Superintendent, who shall assume the role of the District Compliance Officer for such complaints.
- 2. Any complaint under this policy regarding the Superintendent or Board Member that is received by the District Compliance Officer shall be referred to the Board's legal counsel, who shall assume the role of the District Compliance Officer for such complaints.
- 3. Any complaint under this policy regarding the principal, who serves as the Building Compliance Officer, shall be reported to the District's Compliance Officer, and the District Compliance Officer shall conduct the investigation.

E. The reporting party or complainant shall be encouraged to use a report form available from the principal of each building or available from the District office, but oral reports shall be considered complaints as well. Use of formal reporting forms shall not be mandated. However, all oral complaints shall be reduced to writing. Further, nothing in this policy shall prevent any person from reporting harassment directly to the Superintendent.

F. To provide individuals with options for reporting harassment to an individual of the gender with which they feel most comfortable, the District shall designate both a male and a female District Compliance Officer.

G. The investigation should be conducted by the CO or by the Superintendent within ten (10) school days of receiving the complaint, the investigating party shall provide a written status report to the Superintendent.

H. The investigation may be conducted by school officials or by a ~~third party~~ **Third Party** designated by the school officials if necessary.

Anti-Harassment Compliance Officers

~~The Board designates the following individuals to serve as "Anti-Harassment Compliance Officers" for the District (hereinafter referred to as the "COs").~~

~~{NOTE: Districts are advised to 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 may also serve as the District's Section 504 and Title IX Coordinators.}~~

~~_____
{Name}~~

~~_____
{District Title}~~

~~_____
{Telephone Number}~~

~~_____
{Office Address}~~

~~_____
{E-mail Address}~~

~~_____
{Name}~~

~~_____
{District Title}~~

~~_____
{Telephone Number}~~

~~_____
{Office Address}~~

~~_____
{E-mail Address}~~

Investigation, Complaint Procedure and Recommendation

~~An Except for Sexual Harassment that is covered by Policy 2266 - Nondiscrimination on the Basis of Sex in Education Programs of Activities, any~~ individual who believes ~~s/he has they have~~ been subjected to harassment and/or violence (hereinafter referred to as the "Complainant"), may file a complaint, either orally or in writing, with a principal, the CO, Superintendent, or other District-level employee. 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 complaint within thirty (30) ~~calendar~~ days after the conduct occurs. If a Complainant informs a principal, Superintendent, or other District-level employee, either orally or in writing, about any complaint of discrimination/retaliation, that employee must report such information to the CO at his/her first opportunity, but no later than (2) business days.

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

All complaints must include the following information to the extent it is available: the identity of the individual believed to have engaged in, or be engaging in, the discriminatory/retaliatory conduct; a detailed description of the facts upon which the complaint is based; 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 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, but not limited to, a change of work assignment or schedule for the Complainant and/or the person who allegedly engaged in the misconduct.

Pursuant to West Virginia State Board of Education policy 4373, upon receiving a complaint, the CO, in consultation with the Superintendent, will take reasonable steps to protect the Complainant, students, teachers, administrators, or other personnel in any manner throughout the pending investigation.

In making such a determination, the CO should consult the Complainant to assess his/her agreement to the proposed action. If the Complainant is unwilling to consent to the proposed change, the CO may still take whatever actions s/he deems appropriate in consultation with the Superintendent.

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

Simultaneously, the CO will inform the individual alleged to have engaged in the discriminatory or retaliatory conduct (hereinafter referred to as the "Respondent"), that a 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 4122 - Nondiscrimination and Equal Employment Opportunity. The Respondent must also be informed of the opportunity to submit a written response to the complaint within five (5) business days.

Although certain cases may require additional time, the CO will complete an investigation into the allegations of discrimination/retaliation as soon as practical, but no later than ten (10) business days of receiving the formal complaint. The investigation, at a minimum, must include:

- A. interviews with the Complainant;
- B. interviews with the Respondent;
- C. interviews with any other witnesses who may reasonably be expected to have any information relevant to the allegations;

- 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.

In determining whether alleged conduct constitutes racial, sexual, or religious/ethnic harassment or violence, consideration shall be given to the surrounding circumstances, the nature of the conduct involved, relationships between the parties involved, and the context in which the alleged incidents occurred.

At the conclusion of the investigation, the CO 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 Complainant has been subjected to unlawful discrimination/retaliation. 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 must either issue a final decision regarding whether the charges have been substantiated or request further investigation. A copy of the Superintendent's final 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 Complainant was subjected to unlawful discrimination/retaliation, s/he 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 and effective, and tailored to the specific situation.

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 his/her receipt of the Superintendent's final decision.

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. (See Policy 9130 – Public Complaints and West Virginia State Board of Education policy 7211 – Appeals Procedure for Citizens.)

The Board reserves the right to investigate and resolve a complaint or report of unlawful discrimination/retaliation regardless of whether the employee alleging the unlawful discrimination/retaliation 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 Complainant may be represented, at his/her own cost, at any of the above-described meetings/hearings.

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.

Informal Complaint Procedure

The goal of the informal complaint procedure is promptly to stop inappropriate behavior and to facilitate resolution through an informal means, if possible. The informal complaint procedure is provided as a less formal option for a student, other member of the School District community, or Third Party who alleges unlawful harassment or retaliation. This informal procedure is not required as a precursor to the filing of a formal complaint. The informal process is only available in those circumstances where the Complainant and the Respondent mutually agree to participate in it.

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

All complainants involving a District employee, any other adult member of the School District community, or a Third Party and a student will be formally investigated.

As an initial course of action, if a Complainant feels comfortable and safe in doing so, the individual should tell or otherwise inform the Respondent that the alleged harassing conduct is unwelcome and must stop. The Complainant should address the allegedly harassing conduct as soon after it occurs as possible. The Compliance Officers are available to support and counsel individuals when taking this initial step or to intervene on behalf of the Complainant if requested to do so. A Complainant who is uncomfortable or unwilling to directly approach the Respondent about the alleged inappropriate conduct may file an informal or a formal complaint. In addition, with regard to certain types of unlawful harassment, such as sexual harassment, the Compliance Officer may advise against the use of the informal complaint process.

A Complainant may make an informal complaint, either orally or in writing: 1) to a teacher, other employee, or building administrator; 2) directly to one of the Compliance Officers; and/or 3) to the Superintendent or other District-level employee.

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

The Board's informal complaint procedure is designed to provide employees, other members of the School District community, or third parties who believe they are being unlawfully harassed with a range of options designed to bring about a resolution of their concerns. Depending upon the nature of the complaint and the wishes of the Complainant, informal resolution may involve, but not be limited to, one or more of the following:

- A. Advising the Complainant about how to communicate the unwelcome nature of the behavior to the Respondent.
- B. Distributing a copy of this policy as a reminder to the individuals in the school building or office where the Respondent works or attends.
- C. If both parties agree, the Compliance Officer 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 Compliance Officer/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, if one of the parties has requested that the informal complaint process be terminated to move to the formal complaint process, or the Complainant, from the outset, elects to file a formal complaint, or the CO determines the allegations are not appropriate for resolution through the informal process, the formal complaint process shall be implemented.

The Complainant may file a formal complaint, either orally or in writing, with a teacher, Principal, the Compliance Officer, Superintendent, or other District official. Due to the sensitivity surrounding complaints of unlawful harassment and retaliation, timeliness are flexible for initiating the complaint process; however, individuals should make every effort to file a formal complaint within thirty (30) days after the conduct occurs while the facts are known and potential witnesses are available. If a Complainant informs a teacher, Principal, Superintendent, or other District official, either orally or in writing, about any complaint of harassment or retaliation, that employee must report such information to the Compliance Officer within two (2) business days.

Throughout the course of the process, the Compliance Officer 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 Compliance Officer shall ask for such details in an oral interview. Thereafter, the Compliance Officer 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 Compliance Officer will consider whether any action should be taken in the investigatory phase to protect the Complainant from further harassment or retaliation, including, but not limited to, a change of work assignment or schedule for the Complainant and/or the Respondent. In making such a determination, the Compliance Officer 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 Compliance Officer may still take whatever actions deemed appropriate in consultation with the Superintendent.

Within two (2) business days of receiving the complaint, the Compliance Officer/designee will initiate a formal investigation to determine whether the Complainant has been subjected to offensive conduct/harassment/retaliation. The Principal will not conduct an investigation unless directed to do so by the Compliance Officer.

Simultaneously, the Compliance Officer 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 the Board's Anti-Harassment policy. The Respondent must also be informed of the opportunity to submit a written response to the complaint within five (5) business days.

Although certain cases may require additional time, the Compliance Officer/designee will attempt to complete an investigation into the allegations of harassment/retaliation within fifteen (15) business days of receiving the formal complaint. The investigation will include:

- A. Interviews with the Complainant;
- B. Interviews with the Respondent;
- C. Interviews with any other witnesses who may reasonably be expected to have any information relevant to the allegations;
- 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 Compliance Officer 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 harassment as provided in Board policy and State and Federal law as to whether the Complainant has been subjected to unlawful harassment. The Compliance Officer's recommendations must be based upon the totality of the circumstances, including the ages and maturity levels of those involved. In determining if discriminatory harassment or retaliation occurred, a preponderance of evidence standard will be used. The Compliance Officer 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 Compliance Officer/designee, the Superintendent must either issue a written decision regarding whether the complaint of harassment has been substantiated or request further investigation. A copy of the Superintendent's final 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 written decision as described above.~~

~~[x] 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.~~

~~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 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 harassment/retaliation regardless of whether the member of the School District community or Third Party alleging the unlawful harassment/retaliation 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 meetings/hearings.~~

~~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, 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

Confidentiality of the filing of complaints, the identity of subjects and witnesses of any complaint, and of any action taken as a result of such complaints is essential to the effectiveness of this policy. Only those individuals necessary for the investigation and resolution of the complaint shall be given information about it.

The District 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 Board's legal obligations to investigate, to take appropriate action, and to 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. ~~All Complainants proceeding through the formal investigation process will be advised that their identities may be disclosed to the Respondent(s). 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~~ **Third Parties** any information that ~~s/he learns and/or provides is learned or provided~~ during the course of the investigation.

All public records created as a part of an investigation of a complaint of discrimination/retaliation will be maintained by the CO in accordance with the Board's records retention policy.

Sanctions and Monitoring

The Board shall vigorously enforce its prohibitions against unlawful harassment/retaliation by taking appropriate action reasonably calculated to stop the harassment and prevent further such harassment. 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 the relevant collective bargaining agreement(s). When imposing discipline, the Superintendent shall consider the totality of the circumstances involved in the matter, including the ages and maturity levels of those involved. In those cases where unlawful harassment 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 the relevant collective bargaining agreement(s).

Where the Board becomes aware that a prior remedial action has been taken against a member of the School District community, 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.

Results of the Investigation

The result of the investigation of each complaint filed under these procedures will be reported in writing to the complainant and his/her legal guardian by the Superintendent, or, if the Superintendent is the subject of the complaint, by the President of the Board.

Discipline and Other Actions

In determining the appropriate response and/or punishment, the appropriate school official shall consider the surrounding circumstances, the nature of the behavior, past incidents or past or continuing patterns of behavior, the relationships between the parties involved and the context in which the alleged incident occurred.

- A. Upon receipt of a recommendation that the complaint is valid, the appropriate school official shall take action appropriate to the status of the offender (student, staff, or public guest). Such action for students may include all options listed in West Virginia State Board of Education policy 4373 and Policy 5600 – Student Discipline. Actions for staff may include but not be limited to, warning, suspension, termination, revocation of licensure, notification of law enforcement and/or human services. Actions for public guests may include but not be limited to removal from school property and school sponsored functions, notification of law enforcement and/or human services.
- B. The appropriate school official shall also initiate such other action as is appropriate to ease tensions and affirm the values of respect and understanding in accordance with this policy.
- C. The Superintendent shall immediately file a report with the West Virginia Department of Education of all reports of harassment or violence when an investigation shows that harassment or violence did occur and all actions taken in response to the incident.

Nothing in this policy shall prohibit contacting law enforcement or other personnel, including the Human Rights Commission, regarding the actions of any party subject to a complaint.

Retaliation

Submission of a complaint or report of racial, sexual, or religious/ethnic harassment or violence will not affect the future employment, grades, or work assignments of the person who submits the complaint or report.

Retaliation against a person who makes a report or files a complaint alleging anti-harassment and violence, or participates as a witness in an investigation is prohibited. Specifically, the Board will not retaliate against, coerce, intimidate, threaten, or interfere with any individual because the person opposed any act or practice made unlawful by any Federal or State civil rights law, or because that individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under those laws, or because that individual exercised, enjoyed, aided, or encouraged any other person in the exercise or enjoyment of any right granted or protected by those laws. "Retaliation" includes, but is not limited to, any form of retaliation or intimidation, reprisal, coercion, provocation, or harassment.

~~The Board will discipline, as appropriate, any individual who retaliates against any person who reports allegations of racial, sexual or religious/ethnic harassment or violence, or any person who cooperates, testifies, assists, or participates in any racial, sexual or religious/ethnic harassment or violence investigation, proceeding, or hearing. The Board will also discipline, as appropriate, any person who falsely reports religious/ethnic, racial or sexual harassment.~~

Student-Employee Relationships Prohibited

Amorous relationships between employees of the Board and students are prohibited, and staff members found to have violated this prohibition shall be subject to the penalties and disciplinary action defined herein.

Non-Harassment

The Board recognizes that not every advance, conduct, or interaction of a racial, sexual or religious/ethnic or violent nature constitutes harassment. Whether a particular act, conduct, interaction, or incident is a personal, consensual, welcome interaction or social relationship without discriminatory motivation or effect on employment or education status will be determined based upon consideration of all facts and surrounding circumstances.

The Board recognizes that not all reports of allegations of sexual, racial, and/or religious/ethnic harassment will result in findings that such an incident has occurred. However, the Board encourages all persons who believe that they are a victim of such harassment to come forward and affirms its policy that no adverse action will be taken upon the filing of a complaint under this policy, unless it is shown, through investigation, that the complaint is patently false.

Right to Alternative Complaint Procedures

These procedures do not deny the right of any individual to pursue other avenues of recourse which may include the filing charges with the West Virginia Human Rights Commission, filing an employee grievance under WV Code 18-29-1, et seq., filing a citizen's appeal under West Virginia State Board of Education policy 7211, filing a Title IX grievance under the appropriate procedures, filing charges with the Federal Equal Employment Opportunity Commission, or initiating civil or criminal action under State and/or Federal law.

Sexual Harassment as Abuse

Under certain circumstances, sexual harassment may constitute child and/or sexual abuse under Chapter 49 of the West Virginia Code. In such situations, the District and its employees shall comply with the provisions of law for reporting such abuse.

Dissemination of the Policy

This policy or a summary shall be conspicuously posted throughout each school or facility of the Board in areas accessible to students and staff members.

This policy shall appear in the Student and Staff Handbooks and, if no handbook is available, a copy shall be distributed to all students, faculty, and staff.

The students and staff of the Board shall be trained on these regulations and on means for effectively promoting the goals of this policy.

The Board policy shall be reviewed at least bi-annually to assure compliance with State and Federal law and with West Virginia State Board of Education policy.

Groups and persons utilizing school properties for curricular and extra-curricular activities shall be provided a copy of this policy prior to the use of any Board facility. Failure to comply with this policy by a non-student group will result in the immediate forfeiture of the group's use of the school properties.

Implementation and Education

The CO shall develop a program designed to raise the awareness of the different types of harassment, how it manifests itself, and its emotional, educational and legal consequences. Multi-cultural education programs must be established to foster an attitude of understanding and acceptance of individuals from a variety of cultural, ethnic, racial and religious backgrounds.

The CO shall present written and verbal information to all faculty, staff and students at least once annually. Dissemination of written and verbal information may be made by a designee(s) of the CO as appropriate, and such presentation must be age-appropriate for students K-4, 5-8, and 9-12.

Education and Training

In support of this Anti-Harassment 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 School District community related to the implementation of this policy and shall provide training for District students and staff where appropriate. All training, as well as all information provided regarding the Board's policy and harassment in general, will be age and content appropriate.

Retention of Investigatory Records and Materials

The Compliance Officer(s) 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 not be 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 District personnel or individuals contracted or appointed by the Board to fulfill its responsibilities related to the investigation and/or the District's response to the alleged violation of this policy;
- D. written witness statements;
- E. narratives, notes from, or audio, video, or digital recordings of witness interviews/statements;
- F. e-mails, texts, or 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 or 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/or the Respondent, including no contact orders issued to both parties, the dates the no contact orders were issued, and the dates the parties acknowledged

42 U.S.C. 12101 et seq.

42 U.S.C. 2000d et seq.

42 U.S.C. 2000e et seq.

42 U.S.C. 2000ff et seq., The Genetic Information and Nondiscrimination Act

42 U.S.C. 1983

National School Boards Association Inquiry and Analysis - May 2008

