

41-5060

Book Policy Manual

Section Special Update - Nondiscrimination and Anti-Harassment - May 2021

Title Revised Policy - Title IX Update - May 2021 - NONDISCRIMINATION AND ACCESS TO EQUAL EDUCATIONAL OPPORTUNITY

Code po2260

Status

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## 2260 - NONDISCRIMINATION AND ACCESS TO EQUAL EDUCATIONAL OPPORTUNITY

The Board is committed to providing an equal educational opportunity for all students in the District.

The Board does not discriminate on the basis of race, color, religion, national origin, ancestry, creed, pregnancy, marital status, parental status, sexual orientation, sex (including transgender gender status, change of sex or gender identity), or physical, mental, emotional, or learning disability ("Protected Classes") in any of its student program and activities. This policy is intended to support and promote nondiscriminatory practices in all District and school activities, particularly in the following areas:

- A. use of objective bases for admission to any school, class, program, or activity;
- B. prohibition of harassment towards students and procedures for the investigation of claims (see Policy 5517);
- C. use of disciplinary authority, including suspension and expulsion authority;
- D. administration of gifts, bequests, scholarships and other aids, benefits, or services to students from private agencies, organizations, or persons;
- E. selection of instructional and library media materials in a nondiscriminatory manner and that reflect the cultural diversity and pluralistic nature of American society;
- F. design and implementation of student evaluation practices, materials, and tools, but not at the exclusion of implementing techniques to meet students' individual needs;
- G. design and configuration of facilities;
- H. opportunity for participation in extra-curricular and co-curricular activities, provided that separate programs for male and female students may be available provided comparable activities are made available to all in terms of type, scope, and District support; and
- I. the school lunch program and other school-sponsored food service programs.

The Board is also committed to equal employment opportunity in its employment policies and practices as they relate to students. The Board's policies pertaining to employment practices can be found in Policy 1422, Policy 3122, and Policy 4122 - Nondiscrimination and Equal Employment Opportunity.

If furtherance of the aforesaid goal, the Superintendent shall:

## A. Curriculum Content

1. review current and proposed courses of study and textbooks to detect any bias based upon the Protected Classes ascertaining whether or not supplemental materials, singly or taken as a whole, fairly depict the contribution of both genders, various races, ethnic groups, etc. toward the development of human society;
2. provide that necessary programs are available for students with limited use of the English language;

## B. Staff Training

develop an ongoing program of staff training and in service training for school personnel designed to identify and solve problems of bias based upon the Protected Classes in all aspects of the program;

## C. Student Access

1. review current and proposed programs, activities, facilities, and practices to verify that all students have equal access thereto and are not segregated on the basis of the Protected Classes in any duty, work, play, classroom, or school practice, except as may be permitted under State and Federal laws and regulations;
2. verify that facilities are made available in a nondiscriminatory fashion, in accordance with Board Policy 7510 - Use of District Facilities, for non-curricular student activities that are initiated by parents or other members of the community, including but not limited to any group officially affiliated with the Boy Scouts of America or any other youth group listed in Title 36 of the United States Code as a patriotic society;

## D. District Support

verify that like aspects of the District program receive like support as to staff size and compensation, purchase and maintenance of facilities and equipment, access to such facilities and equipment, and related matters;

## E. Student Evaluation

verify that tests, procedures, or guidance and counseling materials, which are designed to evaluate student progress, rate aptitudes, analyze personality, or in any manner establish or tend to establish a category by which a student may be judged, are not differentiated or stereotyped on the basis of the Protected Classes.

### 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 discrimination/retaliation, regardless of whether the person files a formal complaint or is pursuing an informal resolution to the alleged discrimination/retaliation.

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

**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 a business day(s) (i.e., a day(s) that the Board office is open for normal operating hours, Monday - Friday, excluding State-recognized holidays).

The Superintendent shall appoint and publicize the name of the Compliance Officer(s) who is/are responsible for coordinating the District's efforts to comply with the 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 discrimination or equal access. The Compliance Officer(s) also verify that proper notice of nondiscrimination for Title II of the Americans with Disabilities Act (as amended), Title VI and VII of the Civil Rights Act of 1964, Title IX of the Education Amendment Act of 1972, Section 504 of the Rehabilitation Act of 1973 (as amended), is provided to students, their parents, staff members, and the general public.

The Superintendent shall attempt annually to identify children with disabilities, ages 3 - 21, who reside in the District but do not receive a public education. In addition, s/he shall establish procedures to identify students who are Limited English Proficient, including immigrant children and youth, to assess their ability to participate in District programs and develop and administer a program that meets the English language and academic needs of these students. This program shall include procedures for student placement, services, evaluation, and exit guidelines and shall be designed to provide students with effective instruction that leads to academic achievement and timely acquisition of proficiency in English. As a part of this program, the District will evaluate the progress of students in achieving English language proficiency in the areas of listening, speaking, reading and writing, on an annual basis. (See West Virginia Board of Education policy 2417 - Programs of Study for Limited English Proficient Students and West Virginia Board of Education policy 2419 - Regulations for the Education of Students with Exceptionalities)

**Title IX Complaint Coordinators/District Compliance Officers**

The Board designates the following individuals to serve as the District's "Compliance Officers" (hereinafter referred to as the "COs").

**[NOTE: A District is advised to Neola suggests the Board 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 Compliance Officer/ADA Coordinator and Title IX Coordinator. Additionally, by appointing two (2) COs, there should always be a CO available to investigate a claim of discrimination that pertains to the other CO.]**

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

[NOTE: Please select more than one (1) option.]

A. ( ) in the parent/student and staff handbooks.

B. ( ) in the District's Annual Report to the public.

C. ( ) on the District's web site.

D. ( ) on each individual school's web site website.

E. ( ) in the District's calendar.

F. ( ) \_\_\_\_\_

A CO will be available during regular school/work hours to discuss concerns related to student discrimination in educational opportunities under this policy.

The COs 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 discrimination, retaliation or denial of equal access. The COs shall also verify that proper notice of nondiscrimination for Title II of the Americans with Disabilities Act (as amended), Title VI and VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973 (as amended), and the Age Discrimination Act of 1975 is provided to students, their parents, staff members, and the general public. A copy of each of the Acts and regulations on which this notice is based may be found in the CO's office.

The Superintendent shall annually attempt to identify children with disabilities, ages 3-22, who reside in the District but do not receive public education.

The Board is committed to educating (or providing for the education of) each qualified person with a disability with persons who are not disabled to the maximum extent appropriate. Generally, the District will place a person with a disability in the regular educational environment unless it is demonstrated that the education of the person in the regular environment, even with the use of

supplementary aids and services cannot be achieved satisfactorily. If the Board operates a separate class or facility that is identifiable as being for persons with disabilities, the facility, program, and activities and services must be comparable to the facilities, programs, and activities and services offered to students without a disability.

In addition, the Superintendent shall establish procedures to identify students who are Limited English Proficient (LEP), including immigrant children and youth, to assess their ability to participate in District programs, and develop and administer a program that meets the English language and academic needs of these students. This program shall include procedures for student placement, services, evaluation, and exit guidelines and shall be designed to provide students with effective instruction that leads to academic achievement and timely acquisition of proficiency in English. As a part of this program, the District will evaluate the progress of students in achieving English language proficiency in the areas of listening, speaking, reading and writing, on an annual basis (see AG 2260F). The Superintendent is responsible for verifying that a concentration of students who are Limited English Proficient (LEP) in one (1) or more programs is not the result of discrimination.

### Reports and Complaints of Unlawful Discrimination and Retaliation

Students and Board employees are required, and all other members of the District School community and ~~third parties~~ Third Parties are encouraged to promptly report incidents of unlawful discrimination and/or retaliation to a teacher, administrator, supervisor, or other District official so that the Board may address the conduct. Any teacher, administrator, supervisor, or other District School employee or official who receives such a complaint shall file it with the CO at his/her first opportunity, but no later than within two (2) business days.

Students who believe they have been denied equal access to District educational opportunities in a manner inconsistent with this policy may initiate a complaint and the investigation process that is set forth below. Initiating a complaint will not adversely affect the complaining individual's participation in educational or extra-curricular programs unless the complaining individual makes the complaint maliciously or with the knowledge that it is false.

Members of the District School community, that includes students or ~~third parties~~ Third Parties, who believe they have been unlawfully discriminated/retaliated against are entitled to utilize the complaint process set forth below. Initiating a complaint, whether formally or informally, will not adversely affect the ~~complaining individual's~~ Complainant's employment or participation in educational or extra-curricular programs. While there are no time limits for initiating complaints 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 and Other Forms of Aggressive Behavior, the principal believes that the reported misconduct may constitute unlawful discrimination based on a Protected Class, the principal shall report the act to one of the COs who shall investigate the allegation in accordance with this policy. While the CO investigates the allegation, the principal shall suspend ~~his/her the~~ Policy 5517.01 investigation to await the CO's written report. The CO shall keep the principal informed of the status of the Policy 2260 investigation and provide him/her with a copy of the resulting written report.

The COs will be available during regular school/work hours to discuss concerns related to unlawful discrimination/retaliation. COs shall accept ~~complaints reports~~ of unlawful discrimination/retaliation directly from any member of the District school community or a visitor to the District School, 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 discrimination/retaliation or the nature of the alleged discrimination/retaliation, within the discretion of the CO) ~~Third Party, or receive reports that are initially filed with another Board employee. Upon receipt of a report of alleged discrimination/retaliation, the CO will contact the Complainant and begin either an informal or formal complaint process (depending on the Complainant's request and the nature of the alleged discrimination/retaliation),~~ or the CO will designate a specific individual to conduct such a process. The CO will provide a copy of this policy to ~~any person who files a complaint~~ the Complainant and the Respondent. In the case of a formal complaint, the CO will prepare recommendations for the Superintendent or oversee the preparation of such recommendations by a designee. All members of the District school community must report incidents of discrimination/retaliation 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/conduct.

Any Board employee who directly observes unlawful discrimination/retaliation of a student is obligated, in accordance with this policy, to report such observations to one of the COs within two (2) business days. Additionally, any Board employee who observes an act of unlawful discrimination/retaliation is expected to intervene to stop the misconduct, 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 misconduct. Thereafter, the CO or designee must contact the student Complainant, if age eighteen (18) or older, or the student's Complainant's parents/guardians if the student Complainant is under the age eighteen (18), within two (2) school days to advise s/he/them of the Board's intent to investigate the alleged wrongdoing.

### Investigation and Complaint Procedure

Any student who believes that s/he has been Except for sex discrimination and/or Sexual Harassment that is covered by Policy 2266 Nondiscrimination on the Basis of Sex in Education Programs or Activities, any student who alleges to have been subjected to unlawful discrimination or retaliation may seek resolution of his/her the complaint through the procedures described below. The formal complaint procedures involve an investigation of the individual's claims of discrimination/retaliation and a process for rendering a decision regarding whether the charges are substantiated.

Due to the sensitivity surrounding complaints of unlawful discrimination or retaliation, timelines are flexible for initiating the complaint process; however, individuals should make every effort are encouraged to file a complaint within thirty (30) calendar days after the conduct occurs. Once the formal complaint process is begun, the investigation will be completed in a timely manner (ordinarily, within fifteen (15) business days of the complaint being received).

The procedures set forth below are not intended to interfere with the rights of a student to pursue a complaint of unlawful discrimination or retaliation with the United States Department of Education Office for Civil Rights ("OCR").

#### Informal Complaint Procedure

The goal of the informal complaint procedure is to promptly stop inappropriate behavior and facilitate resolution through an informal means, if possible. The informal complaint procedure is provided as a less formal option for a student who alleges unlawful discrimination 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 participate in the informal procedure may request that the informal process be terminated at any time to move to the formal complaint process.

All complaints involving a District employee or any other adults when taking this initial step or to intervene on behalf of the individual if requested to do so. A Complainant who is uncomfortable or unwilling to directly approach the Respondent about the inappropriate conduct may file an informal or a formal complaint. In addition, with regard to certain types of unlawful discrimination (e.g., sex discrimination), the CO may advise against the use of the informal complaint process.

As an initial course of action, if a Complainant feels comfortable and safe 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 who alleges unlawful discrimination/retaliation may make an informal complaint, either orally or in writing: 1) to a teacher, other employee, or building administrator in the school the student attends; 2) to the Superintendent or other District-level employee; and/or 3) directly to one of the COs.

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

The School District's informal complaint procedure is designed to provide the Complainant with a range of options aimed at bringing about a prompt resolution of their concerns. Depending upon the nature of the complaint and the Complainant's wishes, informal resolution may involve, but not be limited to, one or more of the following:

- A. Advising the Complainant about how to communicate concerns to the Respondent.
- B. Distributing a copy of Policy 2260 - Non-Discrimination and Access to Equal Educational Opportunity to the individuals in the school building or office where the Respondent works or attends.
- C. If both parties agree, the CO 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 CO or 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 requested that the informal complaint process be terminated to move to the formal complaint process, or if the Complainant, from the outset, elects to file a formal complaint, or the Compliance Officer(s) determines the allegations are not appropriate for resolution through the informal process, the formal complaint process shall be implemented.

~~A student who believes s/he has been subjected to unlawful discrimination/retaliation (hereinafter referred to as the "Complainant")~~  
 The Complainant may file a formal complaint, either orally or in writing, with a teacher, principal, or other District employee official at the student's school, the CO, Superintendent, or another District School employee official who works at another school or at the School District level. Due to the sensitivity surrounding complaints of unlawful discrimination, timelines are flexible for initiating the complaint process; however, individuals should make every effort to file a formal complaint within thirty (30) calendar days after the conduct occurs. If a Complainant informs a teacher, principal, or other District employee official at the student's school, Superintendent, or other District 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 formal 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 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 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. Neither the unwillingness of a Complainant to provide a written statement or to verify the accuracy of a reported charge or the request of a Complainant to forgo further pursuit of a reported charge shall serve as a basis to refrain from the investigation of a reported charge.

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 alleged to have engaged in the misconduct~~ Respondent. In making such a determination, the CO 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 CO may still take whatever actions deemed appropriate in consultation with the Superintendent.

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

If a change in work assignment or schedule is deemed necessary, consideration shall first be given to a change in the work assignment or schedule of the person alleged to have engaged in the misconduct. 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 deem 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. ~~( ) A~~ The principal will not conduct an investigation unless directed to do so by the CO, but will follow the protocols established in West Virginia State Board of Education policy 4373 to require that the investigation will be completed as soon as practicable but no later than ten (10) school days following the reported violation.

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 2260 - Nondiscrimination and Access to Equal Educational Opportunity. The Respondent must also be informed of the opportunity to submit a written response to the complaint within five (5) business days.

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 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.

Pursuant to West Virginia State Board of Education policy 4373 at the conclusion of the investigation, the CO shall provide the principal with a written report that summarizes the evidence gathered during the investigation and 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~~ Respondent has engaged in unlawful discrimination/retaliation of the Complainant. The CO's recommendations must be based upon the totality of the circumstances, including the ages and maturity levels of those involved. In determining if unlawful 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 principal.

Further, at the conclusion of the investigation, the CO shall deliver the report provided to the principal to the Superintendent that summarizes the evidence gathered during the investigation and the recommendations given to the principal that were 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.



Absent extenuating circumstances, within five (5) business days of receiving the report of the CO or 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. The Superintendent may redact information from the decision in the event the release of information raises concerns regarding the integrity of the complaint or investigation process. The Board authorizes the District Administrator to consult with legal counsel to determine the extent to which information in an investigation report must be provided to either the Complainant or 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) days. At the conclusion of the additional investigation, the Superintendent shall issue a final written decision as described above.

If the Superintendent determines the Complainant was subjected to unlawful discrimination/retaliation, or the Respondent engaged in unlawful discrimination/retaliation toward the Complainant, the Superintendent 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) Any person, including the Respondent in a complaint, who is subject to disciplinary action up to and including termination as a result of a complaint may choose to file a Grievance utilizing the District's grievance procedure as outlined in Policy 3430 or Policy 4430.

The Board reserves the right to investigate and resolve a complaint or report of unlawful discrimination/retaliation regardless of whether the student 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-complaint with the Office for Civil Rights, or the filing of a court case charges with local law enforcement, or the filing of a civil action in court. Use of this internal complaint procedure-process is not a prerequisite to the pursuit of other remedies.

#### **Additional School District Action**

If the evidence suggests that any conduct at issue violates any other policies of the Board, is a crime, or requires mandatory reporting under the Children's Code (WV Code 49-2-803) (Policy 8462) or threats of violence, the CO or Superintendent shall take such additional actions as necessary and appropriate under the circumstances, which may include a report to the appropriate social service and/or law enforcement agency charged with the responsibility for handling such investigations.

#### **Privacy/Confidentiality**

The District School will employ all reasonable efforts to protect the rights of the Complainant, the Respondent(s) individual(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 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. Any records that are considered student education records in accordance with the Family Educational Rights and Privacy Act or under student records law will be maintained in a manner consistent with the provisions of the Federal and State law.

### Sanctions and Monitoring

The Board shall vigorously enforce its prohibitions against unlawful discrimination/retaliation by taking appropriate action reasonably calculated to stop and prevent further misconduct. 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 discrimination/retaliation 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 District School community, all subsequent sanctions imposed by the Board and/or Superintendent shall be reasonably calculated to end such conduct, prevent its reoccurrence, and remedy its effects.

### Retaliation

Retaliation against a person who makes a report or files a complaint alleging unlawful discrimination, 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. ~~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 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.

### Education and Training

In support of this policy, the Board promotes preventative educational measures to create greater awareness of unlawful discriminatory practices. The Superintendent ~~or designee~~ shall provide appropriate information to all members of the District school 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 discrimination 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 information, documents, electronically stored information ("ESE"), and electronic media (as defined in Policy 8315) created and received as part of an investigation, including, but not limited to:

- A. all written reports/allegations/complaints/statements;
- B. narratives of all verbal reports, allegations, complaints, and statements collected;
- C. a narrative of all actions taken by District personnel **or individuals contracted or appointed by the Board to fulfill its responsibilities;**
- D. any written documentation of actions taken by District personnel;
- E. narratives of, notes from, or audio, video, or digital recordings of witness statements;
- F. all documentary evidence;
- G. e-mails, texts, or social media posts pertaining to the investigation;
- H. contemporaneous notes in whatever form made (e.g., handwritten, keyed into a computer or tablet, etc.) pertaining to the investigation;
- I. written disciplinary sanctions issued to students or employees and a narrative of verbal disciplinary sanctions issued to students or employees for violations of the policies and procedures prohibiting discrimination or harassment;
- J. dated written determinations to the parties;
- K. dated written descriptions of verbal notifications to the parties;
- L. written documentation of any **interim-supportive** measures offered and/or provided to **complainants, the Complainant and/or the Respondent,** including no-contact orders issued to both parties, the dates issued, and the dates the parties acknowledged receipt; ~~and~~
- M. 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;
- N. **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);**
- O. **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.]**

- P.  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.]**

- Q.  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;
- R.  copies of any notices sent to the alleged perpetrator/responding party of the allegations constituting a potential violation of this policy;
- S.  copies of any notices sent to the Complainant and the Respondent in advance of any interview, meeting, or hearing;
- T.  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 information, 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.

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Book Policy Manual

Section Special Update - Nondiscrimination and Anti-Harassment - May 2021

Title Replacement Policy - Special Update - Nondiscrimination and Anti-Harassment - May 2021 - SECTION 504/ADA PROHIBITION AGAINST DISCRIMINATION BASED ON DISABILITY

Code po2260.01 ksj 4/25/23 add compliance officers

Status

Adopted April 21, 2009

Last Revised November 2, 2015

#### 2260.01 - SECTION 504/ADA PROHIBITION AGAINST DISCRIMINATION BASED ON DISABILITY

Pursuant to Section 504 of the Rehabilitation Act of 1973 ("Section 504"), the Americans with Disabilities Act of 1990, as amended ("ADA"), and the implementing regulations (collectively "Section 504/ADA"), no otherwise qualified individual with a disability shall, ~~solely by reason of his/her disability,~~ be excluded from participation in, ~~be denied the benefits of, or be subjected to discrimination~~ under any program or activity receiving Federal financial assistance, ~~solely by reason of disability.~~ The Board of Education does not discriminate in admission or access to, ~~or participation in, or treatment in, or employment in~~ its programs or activities. As such, the Board's policies and practices will not discriminate against ~~employees and~~ students with disabilities, and the Board ~~shall provide, as necessary, suitable educational will make its~~ facilities, ~~programs, and activities accessible special equipment, and special services to~~ qualified individuals with disabilities. ~~No discrimination~~ Discrimination will ~~not~~ be knowingly permitted against any individual with a disability on the sole basis of that disability in any of the programs, activities, policies, and/or practices ~~in of the District Board.~~

~~Notice of the Board's policy on nondiscrimination in employment practices and the identity of the School District's Compliance Officer(s) (see below) will be published on the District's website, posted throughout the District, and included in the District's recruitment statements or general information publications.~~

#### **Free Appropriate Public Education**

~~The Board is committed to identifying, evaluating, and providing a free appropriate public education ("FAPE") to students with disabilities within its jurisdiction who are determined eligible for special education and related services under the Individuals with Disabilities Education Act ("IDEA") or Section 504, regardless of the nature or severity of their disabilities.~~

~~If a student has a physical or mental impairment that significantly limits one or more major life activities (see Definitions below), the Board shall provide the student a FAPE. An appropriate education may include regular or special education and related aids and services to accommodate the unique needs of students with disabilities. For students with disabilities who are not eligible for specially designed instruction under the IDEA, the related aids and services (including accommodations/modifications/interventions) they need in order to have their needs met as adequately as the needs of students without disabilities are met shall be delineated, along with their placement, in a Section 504 Plan (Form 2260.01A F13). Parents/guardians/custodians ("parents") are invited and encouraged to participate fully in the evaluation process and development of a Section 504 Plan. The quality of education services provided to students with disabilities shall be equal to the quality of services provided to students without disabilities.~~

~~The Board is committed to educating (or providing for the education of) each qualified student with a disability within its jurisdiction with students without disabilities to the maximum extent appropriate. Generally, the District will place a student with a disability in the general education environment unless it is demonstrated that the education of the student in the general education environment, even with the use of supplementary aids and services, cannot be achieved satisfactorily. If the District places a student in a setting other than the general education environment, it shall take into account the proximity of the alternate setting to~~

the student's home. If the Board operates a separate class or facility that is identified as being provided for students with disabilities, the facility, program, and activities and services must be comparable to the facilities, programs, and activities and services offered to students without disabilities.

The District will provide non-academic extracurricular services and activities in such a manner as is necessary to afford qualified students with disabilities an equal opportunity for participation in such services and activities. Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interests groups or clubs sponsored by the District, referrals to agencies that provide assistance to individuals with disabilities, and employment of students. In providing or arranging for the provision of meals and recess periods and nonacademic and extracurricular services and activities, including those listed above, the District will verify that students with disabilities participate with students without disabilities in such services and activities to the maximum extent appropriate.

In accordance with Section 504, parents and students shall be notified of their right to file an internal complaint regarding an alleged violation, misinterpretation, or misapplication of Section 504. In addition, students and their parents shall be notified of their right to file a complaint with the U.S. Department of Education's Office for Civil Rights ("OCR"). Finally, students and parents shall be advised of their right to request a due process hearing before an Impartial Hearing Officer ("IHO") regarding the identification, evaluation, or educational placement of persons with disabilities, and their right to examine relevant education records. (See also AG 2260.01B - Section 504/ADA - Complaint and Due Process Procedures)

### 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 discrimination/retaliation, regardless of whether the person files a formal complaint or is pursuing an informal resolution to the alleged discrimination/retaliation.

**Respondent** is the individual who is alleged to have engaged in unlawful discrimination/retaliation, regardless of whether the Complainant files a formal complaint or is seeking an informal resolution to the alleged discrimination/retaliation.

**District community** means students, District employees (i.e., administrators and professional and support staff), and 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 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).

**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 District office is open for normal operating hours, Monday - Friday, excluding State-recognized holidays).

"An individual with a disability" **Individual with a disability** means a person who has, ~~had~~ **has** a record of, or is regarded as having, a physical or mental impairment that substantially limits one or more major life activities. ~~Major life activities are functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, eating, sleeping, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.~~

### Major Life Activities

Major life activities are functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, eating, sleeping, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, sitting, reaching, interacting with others, and working.

Major life activities also include the operation of a major bodily function, including, but not limited to, functions of the immune system, **special sense organs and skin**, normal cell growth, **and** digestive, **genitourinary**, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, **hemis, lymphatic, musculoskeletal** and reproductive functions. **The operation of a major bodily function includes the operation of an individual organ within a body system.**

~~An impairment that is episodic in nature or in remission is considered a disability if it would substantially limit a major life activity when active.~~

#### **Impairment That Substantially Limits a Major Life Activity**

The determination of whether an impairment substantially limits a major life activity must be made without regard to the ameliorative effects of mitigating measures such as medication, medical supplies, equipment or appliances, low-vision devices (not including ordinary eyeglasses or contact lenses), prosthetics (including limbs and devices), hearing aids and cochlear implants or other implantable hearing devices, mobility devices, oxygen therapy equipment or supplies, assistive technology, reasonable accommodations or auxiliary aids or services, or learned behavioral or adaptive neurological modifications.

~~An impairment that is episodic in nature or in remission is considered a disability if it would substantially limit a major life activity when active.~~

#### **Qualified Individual with a Disability**

With respect to public preschool, elementary and secondary educational services, a qualified ~~person~~ **individual** with a disability means a ~~disabled person~~ **student with a disability**:

- A. who is of an age during which ~~nondisabled~~ persons **without disabilities** are provided educational services;
- B. who is of any age during which it is mandatory under West Virginia law to provide educational services to ~~disabled~~ persons **with disabilities**; or
- C. to whom the State is required to provide a free appropriate public education pursuant to the ~~Individuals with Disabilities Education Improvement Act (IDEIA)~~ **IDEA**.

With respect to vocational education services, a qualified ~~person~~ **individual** with a disability means a ~~disabled person~~ **student with a disability** who meets the academic and technical standards requisite to admission or participation in the vocational program or activity. **The Board will not deny a student with a disability access to its vocational education programs or courses due to architectural and/or equipment barriers or because the student needs related aids or services to receive an appropriate education.**

~~With respect to employment, a qualified individual with a disability means the individual satisfies the requisite skill, experience, education and other job-related requirements of the employment position the individual holds or desires and can perform the essential functions of the job in question, with or without reasonable accommodation.~~

#### **Reasonable Accommodation**

~~With respect to employment, the Board will provide a reasonable accommodation to a qualified individual who has an actual disability or who has a record of a disability, unless the accommodation would impose an undue hardship on the operation of the Board's program and/or activities. A reasonable accommodation is not required for an individual who is merely regarded as having a disability.~~

#### **Facilities**

~~No qualified person with a disability will be denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under any program or activity to which Section 504/ADA applies because the District's facilities are inaccessible to or unusable by persons with disabilities.~~

For facilities constructed or altered after June 3, 1977, the District will comply with applicable accessibility standards. For those existing facilities constructed prior to June 3, 1977, the District is committed to operating its programs and activities so that they are readily accessible to persons with disabilities.

**Title IX Complaint Coordinators/Compliance Officer(s) (hereinafter referred to as the "COs")**

The Board designates the following individual(s) to serve as the "District COs": individuals to serve as the District's Compliance Officers (Also known as Section 504 Compliance Officers/ADA Coordinators) (hereinafter referred to as the "COs").

**[DRAFTING NOTE: School districts may want to consider appointing Neola suggests the Board appoint both a male and a female District Compliance Officer 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 also may serve as the District's Section 504 Compliance Officer/ADA Coordinator and Title IX Coordinator. Additionally, by appointing two (2) District-COs, there should always should be a CO available to investigate a claim of discrimination/retaliation that pertains to the other CO. The Board must list either the Name or Title of the CO, while the Board may list both the Name and Title, Neola suggests that the Board consider listing only the Title in this policy (so it does not need to revise/amend its policy whenever there is a change in the actual person(s) holding the designated position(s)), but list both the Name and Title in the requisite postings (e.g., website) and publications (e.g., handbooks) and in the Administrative Guideline.]**

~~Kristin DeVaul - Supervisor of Secondary Education, Testing, and Policies~~ \_\_\_\_\_

(Name and/or Title)  
\_\_\_\_\_  
\_\_\_\_\_

{District Title}  
\_\_\_\_\_  
\_\_\_\_\_

{Telephone Number}  
1516 Mary Lou Retton Drive \_\_\_\_\_

(Office Address)

304-367-2100  
{Telephone No.}

kdevaul@k12.wv.us \_\_\_\_\_  
(E-mail Address)

\_\_\_\_\_  
{Name and/or Title}

\_\_\_\_\_  
{District Title}

\_\_\_\_\_  
{Telephone Number}

\_\_\_\_\_  
{Office Address}

\_\_\_\_\_  
{Telephone No.}

\_\_\_\_\_  
(E-mail Address)



The ~~name(s), title(s), names, titles,~~ and contact information of this/these ~~individual(s) individuals~~ will be published annually ~~on the District's website and~~: ~~[NOTE: Please select more than one (1) option.]~~

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

B. ~~( ) in the District's 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 COs 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 discrimination/retaliation or denial of equal access. The COs also shall verify that proper notice of nondiscrimination for Title II of the Americans with Disabilities Act (as amended), Title VI and Title VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973 (as amended), and the Age Discrimination in Employment Act of 1975 is provided to staff members and the general public. ( ) Any sections of the District's collectively bargained, negotiated agreements dealing with hiring, promotion, and tenure need to contain a statement of nondiscrimination similar to that in the Board's statement above. In addition, any gender specific terms should be eliminated from such contracts. [END OF OPTION] A copy of each of the Acts and regulations on which this notice is based will be made available upon request from the CO.~~

~~The CO(s) is/are responsible for coordinating the District's efforts to comply with and fulfill its responsibilities under Section 504 and Title II of the ADA. A copy of Section 504 and the ADA, including copies of their implementing regulations, may be obtained from the CO.~~

~~The CO(s) will oversee the investigation of any complaints of discrimination based on disability, which may be filed pursuant to the Board's adopted internal complaint procedure, and will attempt to resolve such complaints.~~

~~The Board will provide for the prompt and equitable resolution of complaints alleging violations of Section 504/ADA. (See complaint procedure below.) The Board will further will establish and implement a system of procedural safeguards in accordance with Section 504, including the right to an impartial due process hearing, for parents of students with disabilities. (See AG 2260.01B.) Finally, students and parents will be advised of their right to request a due process hearing before an Impartial Hearing Officer (IHO) regarding the identification, evaluation, or educational placement of persons with disabilities, including the right to participation by the student's parents or guardian and representation of counsel, and their right to examine relevant education records.~~

### **Reports and Complaints of Unlawful Discrimination and Retaliation**

~~Students and District employees are required, and all other members of the District community and Third Parties are encouraged, to promptly report incidents of unlawful discrimination and/or retaliation to an administrator, supervisor, or other District official so that the Board may address the conduct. Any teacher, administrator, supervisor, or other District employee or official who receives such a complaint shall file it with the CO within two (2) business days. [NOTE: while students are advised to report discrimination/retaliation to administrators, supervisors, or other District officials, the Board recognizes that some students may report discrimination/retaliation to a teacher. When a teacher receives such a report, the teacher must file it with the CO as indicated above.]~~

~~Members of the District community, which includes students or Third Parties, who believe they have been unlawfully discriminated/retaliated against are entitled to utilize the complaint process 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 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.~~

A student and/or parent may initiate the internal complaint procedure when they believe that a violation, misapplication or misinterpretation of Section 504 has occurred. Additionally, the following procedure may be used for any disagreement with respect to actions regarding the identification, evaluation, or educational program or placement of students who are identified as having a disability or believed to have a disability pursuant to Section 504 and are not eligible under the IDEA, except in the case of disciplinary actions where the provisions of the Student Code of Conduct apply. Use of the internal complaint procedure is not a prerequisite to the pursuit of other remedies, including the filing of a complaint with the OCR or requesting an impartial due process hearing.

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 constitute unlawful discrimination based on a Protected Class, the Principal shall report the act to one of the COs, who shall investigate the allegation in accordance with this policy. While the CO investigates the allegation, the Principal shall suspend the Policy 5517.01 investigation to await the CO's written report. The CO shall keep the Principal informed of the status of the Policy 2260 investigation and provide the Principal with a copy of the resulting written report.

The COs will be available during regular school/work hours to discuss concerns related to unlawful discrimination/retaliation. COs shall accept reports of unlawful discrimination/retaliation directly from any member of the District community or a Third Party and reports that initially are made to another District employee. Upon receipt of a report of alleged discrimination/retaliation, the CO will contact the Complainant and begin either an Informal or formal complaint process (depending on the Complainant's request and the nature of the alleged discrimination/retaliation) or designate a specific individual to conduct such a process.

The CO will provide a copy of this policy to the Complainant and the Respondent. In the case of a formal complaint, the CO will prepare recommendations for the Superintendent or oversee the preparation of such recommendations by a designee. All members of the District community must report incidents of discrimination/retaliation that are reported to them to the CO within two (2) business days of learning of the incident/conduct.

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

#### **Investigation and Complaint Procedures (See Form 2260.01B F2)**

Any person who alleges to have been subjected to unlawful discrimination or retaliation on the basis of disability may seek resolution of the complaint through the procedures described below. The formal complaint procedures involve an investigation of the individual's claims of discrimination/retaliation and a process for rendering a decision regarding whether the charges are substantiated.

Due to the sensitivity surrounding complaints of unlawful discrimination or retaliation, timelines are flexible for initiating the complaint process; however, individuals are encouraged to file a complaint within thirty (30) calendar days after the conduct occurs. Once the formal complaint process is begun, the investigation will be completed in a timely manner (ordinarily within fifteen (15) business days of the complaint being received).

The procedures set forth below are not intended to interfere with the rights of any individual to pursue a complaint of unlawful discrimination or retaliation with the United States Department of Education Office for Civil Rights ("OCR"), the West Virginia Civil Rights Commission ("WVCRC") or the Equal Employment Opportunity Commission ("EEOC").

#### **Informal Complaint Procedure**

The goal of the informal complaint procedure is to stop inappropriate behavior promptly and facilitate resolution through an informal means, if possible. The informal complaint procedure is provided as a less formal option for an individual who alleges unlawful

discrimination or retaliation. This informal procedure is not required as a precursor to the filing of a formal complaint. The informal process is available only when the Complainant and the Respondent mutually agree to participate in it.

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

All complaints involving a District employee or any other adult member of the District community and a student will be investigated formally.

As an initial course of action, if a Complainant feels comfortable and safe doing so, the Complainant should tell or otherwise inform the Respondent that the allegedly discriminatory/retaliatory conduct is inappropriate and must stop. The Complainant should address the alleged misconduct as soon after it occurs as possible. The COs are available to support and counsel the Complainant when taking this initial step or to intervene on behalf of the individual if requested to do so. A Complainant who is uncomfortable or unwilling to approach the Respondent directly about the inappropriate conduct may file an informal or a formal complaint.

In addition, with regard to certain types of unlawful discrimination (e.g., sex discrimination), the CO may advise against the use of the informal complaint process.

A Complainant who alleges unlawful discrimination/retaliation may make an informal complaint either orally or in writing to: 1) to a building administrator; 2) one of the COs; or 3) the Superintendent or other District-level employee.

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

The District's informal complaint procedure is designed to provide the Complainant with a range of options aimed at bringing about a prompt resolution of the Complainant's concerns. Depending upon the nature of the complaint and the wishes of the Complainant, informal resolution may involve but is not limited to one or more of the following:

- A. Advising the Complainant about how to communicate concerns to the Respondent.
- B. Distributing a copy of Policy 2260.01 - Section 504/ADA Prohibition Against Discrimination Based on Disability to the individuals in the school building or office where the Respondent works/attends school.
- C. If both parties agree, the CO 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 CO or 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, one of the parties requested that the informal complaint process be terminated to move to the formal complaint process, the Complainant elects to file a formal complaint from the outset, or the CO determines the allegations are not appropriate for resolution through the informal process, the formal complaint process shall be implemented.

A Complainant may file a formal complaint either orally or in writing with a Principal, the CO, the Superintendent, or other District-level official.

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 formal complaint within thirty (30) calendar days after the conduct occurs while the facts are known and potential witnesses are available. If a Complainant informs a Principal, the Superintendent, or other District-level official either orally or in writing about any complaint of discrimination/retaliation, that employee must report such information to the CO within two (2) business days.

### **Training**

The GO(s) will also oversee the training of employees in the District so that all employees understand their rights and responsibilities under Section 504 and the ADA, and are informed of the Board's policies, administrative guidelines and practices with respect to fully implementing and complying with the requirements of Section 504/ADA.

The Board will provide in-service training and consultation to staff responsible for the education of persons with disabilities, as necessary and appropriate.

### **Facilities**

No qualified person with a disability will, because the District's facilities are inaccessible to or unusable by persons with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which Section 504/ADA applies.

For facilities constructed or altered after June 3, 1977, the District will comply with applicable accessibility standards. For those existing facilities constructed prior to June 3, 1977, the District is committed to operating its programs and activities so that they are readily accessible to persons with disabilities. This includes, but is not limited to, providing accommodations to parents with disabilities who desire access to their child's educational program or meetings pertinent thereto. Programs and activities will be designed and scheduled so that the location and nature of the facility or area will not deny a student with a disability the opportunity to participate on the same basis as students without disabilities.

### **Education**

The Board is committed to identifying, evaluating, and providing a free appropriate public education (FAPE) to students within its jurisdiction who have a physical or mental impairment that substantially limits one or more major life activities, regardless of the nature or severity of their disabilities.

If a student has a physical or mental impairment that significantly limits one or more major life activities, the Board will provide the student with a free appropriate public education ("FAPE"). An appropriate education may include regular or special education and related aids and services to accommodate the unique needs of students with disabilities. For disabled students who are not eligible for specially designed instruction under the IDEA, the special education and related aids and services (including accommodations/modifications/interventions) they need in order to have their needs met as adequately as the needs of nondisabled students are met, shall be delineated, along with their placement, in a Section 504 Plan (Form 2260.01A-F13).

Parents/guardians/custodians ("parents") are invited and encouraged to participate fully in the evaluation process and development of a Section 504 Plan.

Further, if a student has a Section 504 plan, each teacher involved with the education of the student shall be provided specific instruction from the school regarding the plan's contents and requirements. With a written Section 504 Plan, it is the expectation that each teacher will receive a copy of the plan and every update made to the plan, and each teacher is required to sign an acknowledgment that they received the plan and any subsequent updates.

The Board is committed to educating (or providing for the education of) each qualified person with a disability who resides within the District with persons who are not disabled to the maximum extent appropriate. Generally, the District will place a person with a disability in the regular educational environment unless it is demonstrated that the education of the person in the regular environment even with the use of supplementary aids and services cannot be achieved satisfactorily. If the District places a person in a setting other than the regular educational environment, it shall take into account the proximity of the alternate setting to the person's home.

The Board will provide non-academic extracurricular services and activities in such a manner as is necessary to afford qualified persons with disabilities an equal opportunity for participation in such services and activities. Nonacademic and extracurricular services and activities may include counseling services, physical recreational athletics, transportation, health services, recreational activities, special interests groups or clubs sponsored by the District, referrals to agencies that provide assistance to persons with disabilities, and employment of students. In providing or arranging for the provision of meals and recess periods, and nonacademic and extracurricular services and activities, including those listed above, the District will verify that persons with disabilities participate with persons without disabilities in such services and activities to the maximum extent appropriate.

### **Investigation and Complaint Procedures**

The CO shall investigate any complaints brought under this policy. Throughout the course of the process, as described herein, the CO 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 it is available known: a description of the alleged violation, the identify of the individual(s) believed to have engaged in, or to be actively engaging in, conduct in violation of this policy, if any; the identity of the Respondent; a detailed description of the facts upon which the complaint is based (i.e., when, where, and what occurred); and 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 report reported charge by signing the document.

Upon receiving a formal complaint, the CO will consider whether any action should be taken during in the investigatory phase to protect the Complainant from further loss of educational opportunity, discrimination or retaliation, including but not limited to a change of class work assignment or schedule for the Complainant and/or the Respondent, tentative enrollment in a program or other appropriate action. In making such a determination, the CO should consult the principal Complainant to assess whether the individual agrees with the proposed action. If the Complainant is unwilling to consent to the proposed change, the CO still may take whatever actions are deemed appropriate in consultation with the Superintendent prior to any action being taken. The Complainant should be notified of any proposed action prior to such action being taken.

As soon as appropriate in the investigation process, the CO will inform any individual named by the Complainant in connection with an alleged violation of this policy, that a complaint has been received. The person(s) must also be provided an opportunity to respond to the complaint.

Within five (5) business days of receiving the complaint, the CO will initiate an investigation.

Within two (2) business days of receiving the formal complaint, the CO or designee 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 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 2260.01 - Section 504/ADA Prohibition Against Discrimination Based on Disability. The Respondent also must be informed of the opportunity to submit a written response to the formal complaint within five (5) business days.

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

- A. interviews/interview(s) with the Complainant;
- B. interviews/interview(s) with any persons named in the complaint the Respondent;
- C. interviews with any other witnesses who may reasonably may be expected to have any information relevant to the allegations; and, as determined by the CO;
- D. consideration of any documentation or other evidence/information presented by the complainant, respondent, Complainant, Respondent, or any other witness which that is reasonably believed to be relevant to the allegations, as determined by the CO to the allegations.

At the conclusion of the investigation, the CO or the designee shall prepare and deliver a written report to the Superintendent which that summarizes the evidence gathered during the investigation and provides recommendations based on the evidence and the definitions in this Policy, as well as in definition of unlawful discrimination/retaliation as provided in Board policy and State and Federal law as to whether the Complainant has been denied access to educational opportunities on the basis of one of the protected classifications, based on a preponderance of evidence standard. Respondent has engaged in unlawful harassment/retaliation of the Complainant. The CO's recommendations must be based upon the totality of the circumstances, including the ages and maturity levels of those involved. In determining if discrimination or retaliation occurred, a preponderance of evidence standard will be used.

~~( )~~ The CO may consult with the ~~Board Attorney~~ **Board's legal counsel** before finalizing the report to the Superintendent.

Absent extenuating circumstances, within ~~ten (10)~~ **five (5)** business days of receiving the report of the CO ~~or the designee~~, the Superintendent ~~must either~~ **must** issue a ~~final written~~ **final written** decision regarding ~~the complaint whether the charges have been~~ **substantiated** or request further investigation. A copy of the Superintendent's final ~~written~~ **written** decision will be delivered to ~~the Complainant both the Complainant and the Respondent~~. ~~After consultation with legal counsel, a redacted final decision may be provided to the Respondent, upon request. The Superintendent may redact information from the decision in the event the release of information raises concerns regarding the integrity of the complaint or investigation process. The Board authorizes the Superintendent to consult with legal counsel to determine the extent to which information in an investigation report must be provided to either the complainant or 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 ~~ten (10)~~ **five (5)** business days. At the conclusion of the additional investigation, the Superintendent must issue a final written decision as described above. ~~The decision of the Superintendent ( ) shall be final ( ) will be reviewed by the Board upon request.~~

**If the Superintendent determines the Respondent engaged in unlawful discrimination/retaliation against the Complainant, the Superintendent 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, effective, and tailored to the specific situation.**

**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 ( ) Board President ( ) Board Attorney ( ) \_\_\_\_\_ 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.~~

**[END OF OPTIONS]**

~~If the Complainant feels that the decision does not adequately address the complaint s/he may appeal the decision to the State Superintendent.~~

The Board reserves the right to investigate and resolve a complaint, or report of, **unlawful discrimination/retaliation**, regardless of whether the ~~member of the School-District community or third party chooses to pursue~~ **Complainant 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 interviews/meetings.**

**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 OCR or WVCRRC, 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.**

#### **Additional School District Action**

If the evidence suggests that any conduct at issue violates any other policies of the Board or State law, is a crime, or requires mandatory reporting under West Virginia law, the CO or Superintendent shall take additional such actions as necessary and appropriate under the circumstances, which may include a report to the appropriate social service and/or law enforcement agency charged with responsibility for handling such investigations.

## **Privacy/Confidentiality**

The District will make every possible effort to protect the privacy of any individuals involved in the investigation process. All complainants proceeding through the investigation process should be advised that as a result of the investigation, allegations against individuals may become known to those individuals, including the complainant's identity.

The Corporation 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 Corporation's legal obligations to investigate, take appropriate action, and comply 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. Additionally, the Respondent must be provided the Complainant's identity.

During the course of an a formal investigation, the CO or designee will instruct all members of the School District community and third parties who are 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 is learned or that s/he provides provided during the course of the investigation.

All public records created as a part of an investigation will be maintained by the CO in accordance with the Board's records retention policy. Any records which are considered student records in accordance with the State or Federal law.

## **Sanctions and Disciplinary Action**

The Board shall vigorously enforce its prohibitions against unlawful discrimination by taking appropriate action reasonably calculated to stop and prevent further misconduct.

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 any relevant collective bargaining agreement or student code of conduct.

When imposing discipline, the Superintendent shall consider the totality of the circumstances involved in the matter, including the age and maturity level of any student involved. In those cases where unlawful discrimination/retaliation 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 any relevant collective bargaining agreement or student code of conduct.

Where the Board becomes aware that a prior disciplinary action has been taken against the Respondent, 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.

## **Impartial Due Process Hearing**

A student and/or parent may request an impartial due process hearing regarding the identification, evaluation, or placement of a student with a disability. The student and/or parent may but are not required to first exhaust the above complaint procedure before requesting an impartial due process hearing. The parent of a student with a disability and a student over 18 years old (if not under guardianship) or an emancipated student has the right to: (1) examine records or documents that the school relied on in making its decision about the student; (2) request an impartial due process hearing that provides the parent and/or student with an opportunity to participate and permits representation by an attorney; and (3) have an opportunity for review of the decision made at the hearing.

A request for an impartial due process hearing should be made as soon as possible following a dispute in order to ensure that witnesses are available but no more than two years following the date of the matter in dispute. A request for an impartial due process hearing must be put in writing, identify the specific circumstances or areas of dispute that have given rise to the request for a hearing, and offer possible solutions to the dispute. The request for due process hearing must be filed with a District CO within the time limits specified above. The CO is available to assist individuals in filing a request for an impartial due process hearing.

When a request for an impartial due process hearing is received, the aggrieved party will have the opportunity to receive a hearing conducted by an IHO (i.e., by a person not employed by the District, not involved in the education or care of the child, and not having a personal or professional interest that would conflict with the IHO's objectivity in the hearing). The District will maintain a list of trained IHOs that may include IDEA/Article 7 hearing officers, attorneys, and Directors of Special Education outside the District. The District CO will appoint an IHO from that list, and the District will bear the costs of the hearing. The appointment of an IHO will be made within fifteen (15) school days after the request for an impartial due process hearing is received.

A party to an impartial due process hearing has the right to:

- A. be accompanied and advised by legal counsel and individuals with special knowledge or training with respect to the problems of students with disabilities at the party's own cost;
- B. present evidence and confront, cross-examine and compel the attendance of witnesses;
- C. a written or electronic verbatim record of the hearing; and
- D. written findings of fact and conclusions of law setting forth the reasons for the decision.

The IHO shall conduct the impartial due process hearing within a reasonable period of time (i.e., not to exceed ninety (90) calendar days from the request for a hearing, unless this time-frame is mutually waived by the parties or is determined by the IHO to be impossible to comply with due to extenuating circumstances). The IHO will give the parent and/or student written notice of the date, time and place of the hearing. Notice will be given no less than twenty-one (21) calendar days prior to the date of the hearing, unless otherwise agreed to by the parent and/or student. The notice shall include:

- A. a statement of the time, place and nature of the hearing;
- B. a statement of the legal authority and jurisdiction under which the hearing is being held;
- C. a reference to the particular section(s) of the statutes and rules involved;
- D. a statement of the availability of relevant records for examination;
- E. a short and plain statement of the matters asserted; and
- F. a statement of the right to be represented by counsel.

The IHO shall conduct the hearing in a manner that will afford all parties a full and fair opportunity to present evidence and otherwise to be heard. The parent and/or student may be represented by another person of the parent or student's choice, including an attorney. The IHO shall make a full and complete record of the proceedings.

The IHO shall render a decision in writing to the parties within thirty (30) calendar days following the conclusion of the hearing. The decision will be based solely on the testimony and demonstrative evidence presented at the hearing and include a summary of the evidence (i.e., findings of fact) and the reason for the decision (conclusions of law). The IHO's decision shall include a statement that either party may appeal the decision.

Appeal of the IHO's decision may be made to a Federal court of competent jurisdiction.

#### OCR Complaint

At any time, if a student or parent believes that ~~s/he the student~~ has been subjected to discrimination based upon ~~his/her~~ disability in violation of Section 504 or the ADA, the ~~individual student or parent~~ may file a complaint with the U.S. Department of Education's Office for Civil Rights ("OCR") ~~OCR~~. The OCR can be reached at:



**U.S. Department Health and Human Services**

Office for Civil Rights

Philadelphia

150 S. Independence Mall West,

Suite 372, Public Ledger Building

Philadelphia, PA 19016-9111

Main Line: (800) 368-1019

FAX: (215) 861-4431

TDD: (800) 537-7697

**U.S. Department of Education**

The Wanamaker Building

Philadelphia Office

100 Penn Square East, Suite 519

Philadelphia, PA 19107-3323

Main Line: (215) 656-8541

Fax: (215) 656-8605

TDD: (800) 537-7697

Email: ocr.Philadelphia@ed.gov

Except in extraordinary circumstances, the OCR does not review the result of individual placement and other educational decisions, so long as the District complies with the "process" requirements of Subpart D of Section 504.

**Retaliation**

Retaliation against a person who makes a report or files a complaint alleging unlawful discrimination/retaliation, or participates as a witness in an investigation, is prohibited. Specifically, Neither the Board will not retaliate against, coerce, nor any other person may intimidate, threaten, coerce or interfere with any individual because the person opposed any act or practice made unlawful by Section 504 or the ADA, or because that individual made a charge, any Federal or State civil rights law, made a report/formal complaint, testified, assisted or participated in any manner in an investigation, proceeding, or hearing under those laws; 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 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.

**Education and Training**

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

**Retention of Investigatory Records and Materials**

The CO 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 are not 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 the District's response to the alleged violation of this policy;
- D. written witness statements;
- E. narratives, notes from, and audio, video, or digital recordings of witness interviews/statements;
- F. e-mails, texts, and 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 and 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 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 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 Codes 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 conduct 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, the name and title (or credentials) of the presenter, and a copy of the materials reviewed or presented during the**

**training.1**

- 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. ~~X (-) copies of any notices sent to the Respondent 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 or meeting;~~
- 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.~~

~~Additionally, the CO shall retain copies of any written request for an impartial due process hearing, the IHO's notices to the parties, the evidence entered in the hearing, any transcript of the hearing, and the IHO's decision.~~

~~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, such as 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 and longer if required by the District's records retention schedule.~~

**Notice**

~~Notice of the Board's policy on nondiscrimination in education practices and the identity of the District's Compliance Officer(s) will be posted throughout the District, and published in the District's recruitment statements or general information publications.~~

~~34 C.F.R. Part 104~~

~~20 U.S.C. 1405, Employment of Individuals with Disabilities~~

~~29 U.S.C. 794, Section 504 Rehabilitation Act of 1973, as amended~~

~~42 U.S.C. 12101 et seq., Americans with Disabilities Act of 1990, as amended~~

~~20 U.S.C. 1405, Employment of Individuals with Disabilities~~

~~29 C.F.R. Part 1630~~

~~34 C.F.R. Part 104~~

~~W.V. Code 18-20-1~~

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Legal                    20 U.S.C. 1405, Employment of Individuals with Disabilities  
                               42 U.S.C. 12101 et seq., Americans with Disabilities Act of 1990, as amended  
                               29 C.F.R. Part 1630  
                               34 C.F.R. Part 104  
                               W.V. Code 18-20-1



Book	Policy Manual
Section	Special Update - Nondiscrimination and Anti-Harassment - May 2021
Title	Replacement Policy - Special Update - Title IX Update - May 2021 - SECTION 504/ADA - PROHIBITION AGAINST DISABILITY DISCRIMINATION IN EMPLOYMENT
Code	po3123 ksj add officers
Status	
Adopted	February 12, 2014
Last Revised	November 2, 2020

### 3123 - SECTION 504/ADA - PROHIBITION AGAINST DISABILITY DISCRIMINATION IN EMPLOYMENT

The Board of Education prohibits discrimination against any employee or applicant based upon his/her disability. As such, the Board will not engage in employment practices or adopt policies that discriminate on the basis of disability, or otherwise discriminate against qualified individuals with disabilities in regard to job application procedures, the hiring, advancement or discharge of employees, employee compensation, job training, or other terms, conditions and privileges of employment. The Board further will not limit, segregate or classify applicants or employees in any way that adversely affects their opportunities or status because of disability. Additionally, the Board will not participate in any contractual or other relationships that have the effect of subjecting qualified individuals with disabilities who are applicants or employees to discrimination on the basis of disability.

"An individual with a disability" means a person who has, had a record of, or is regarded as having, a physical or mental impairment that substantially limits one or more major life activities. Major life activities are functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, eating, sleeping, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, sitting, reaching, interacting with others, and working.

Major life activities also include the operation of a major bodily function, including, but not limited to, functions of the immune system, special sense organs and skin, normal cell growth, and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, hemic, lymphatic, musculoskeletal and reproductive functions. The operation of a major bodily function includes the operation of an individual organ within a body system.

An impairment that is episodic in nature or in remission is considered a disability if it would substantially limit a major life activity when active.

The determination of whether an impairment substantially limits a major life activity must be made without regard to the ameliorative effects of mitigating measures such as medication, medical supplies, equipment or appliances, low-vision devices (defined as devices that magnify, enhance, or otherwise augment a visual image, but not including ordinary eyeglasses or contact lenses), prosthetics (including limbs and devices), hearing aid(s) and cochlear implant(s) or other implantable hearing devices, mobility devices, oxygen therapy equipment or supplies, use of assistive technology, reasonable accommodations or "auxiliary aids or services," learned behavioral or adaptive neurological modifications, psychotherapy, behavioral therapy, or physical therapy.

A qualified person with a disability means the individual satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires and, with or without reasonable accommodation, can perform the essential functions of the job in question.

The Board will provide a reasonable accommodation to a qualified individual who has an actual disability or who has a record of a disability, unless the accommodation would impose an undue hardship on the operation of the District's program and/or activities. A reasonable accommodation is not required for an individual who is merely regarded as having a disability.

**District Compliance Officer(s)**

The Board designates the following individual(s) to serve as the District's 504 Compliance Officer(s)/ADA Coordinator(s) (hereinafter referred to as the "CO(s)").

**DRAFTING NOTE: A District may want to consider appointing Neola suggests the Board 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. Additionally, by appointing two (2) COs, there should always be a CO available to investigate a claim that pertains to the other CO.]**

Kristin DeVaul

(Name)

Supervisor of Secondary Education, Testing, Policies

(District Title)

304-367-2100

(Telephone Number)

1516 Mary Lou Retton Drive

(Office Address)

kdevaul@k12.wv.us

(E-mail Address)

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  
  
(Name)

(District Title)

(Telephone Number)

(Office Address)

(E-mail Address)

The name(s), title(s), and contact information of this/these individual(s) will be published annually on the District's website (-) and: **{NOTE: Please select more than one (1) option.}**

- A. (-) in the staff handbooks.
- B. X (-) in the District Annual Report to the public.
- C. X (-) on the District's web site.
- D. X (-) on each individual school's web site website.
- E. X (-) in the District's calendar.
- F. X (-) \_\_\_\_\_.

The CO(s) (x) is (x) are responsible for coordinating the District's efforts to comply with and fulfill its responsibilities under Section 504 and Title II of the Americans with Disabilities Act, as amended ("ADA"). A copy of Section 504 and the ADA, including copies of their implementing regulations, may be obtained from the CO.

The CO(s) will oversee the investigation of any complaints of discrimination based on disability, which may be filed pursuant to the Board's adopted internal complaint procedure, and will attempt to resolve such complaints. The Board will provide for the prompt and equitable resolution of complaints alleging violations of Section 504/ADA. (See complaint procedure below.)

## Training

The CO(s) will also oversee the training of employees in the District so that all employees understand their rights and responsibilities under Section 504 and the ADA, and are informed of the Board's policies, administrative guidelines and practices with respect to fully implementing and complying with the requirements of Section 504/ADA.

The Board will provide in-service training and consultation to staff responsible for the education of persons with disabilities, as necessary and appropriate.

## Facilities

No qualified person with a disability will, because the District's facilities are inaccessible to or unusable by persons with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which Section 504/ADA applies.

For facilities constructed or altered after June 3, 1977, the District will comply with applicable accessibility standards. For those existing facilities constructed prior to June 3, 1977, the District is committed to operating its programs and activities so that they are readily accessible to persons with disabilities.

## Notice

Notice of the Board's policy on nondiscrimination in employment practices and the identity of the CO(s) will be published on the District's website and posted throughout the District, and published included in the District's recruitment statements or general information publications.

## Complaint Procedures

If a person believes that s/he has been discriminated against on the basis of his/her disability, the person may utilize the following complaint procedure as a means of reaching, at the lowest possible administrative level, a prompt and equitable resolution of the matter.

In accordance with Section 504 of the Rehabilitation Act of 1973 and its implementing regulations ("Section 504"), employees will be notified of their right to file an internal complaint regarding an alleged violation, misinterpretation or misapplication of Section 504. In addition, employees will be notified of their right to file a complaint with the U.S. Department of Education's Office for Civil Rights.

Internal complaints must be put in writing and must identify the specific circumstances or areas of dispute that have given rise to the complaint, and offer possible solutions to the dispute. The complaint must be filed with a CO within the time limits specified below. The CO is available to assist individuals in filing a complaint.

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).

## Internal Complaint Procedure

The following internal complaint procedure is available to employees for the prompt and equitable resolution of complaints alleging discrimination based upon disability. This complaint procedure is not available to unsuccessful applicants. Use of the internal complaint procedure is not a prerequisite to the pursuit of other remedies, including the filing of a complaint with the U.S. Department of Education's Office for Civil Rights.

- A. An employee with a complaint based on alleged discrimination on the basis of disability may first discuss the problem with the CO.



- B. If the informal discussion does not resolve the matter, or if the employee skips Step A, the individual may file a formal written complaint with the CO. The written complaint must contain the name and address of the individual or representative filing the complaint, be signed by the complainant or someone authorized to sign for the complainant, describe the alleged discriminatory action in sufficient detail to inform the CO of the nature and date of the alleged violation, and propose a resolution. The complaint must be filed within thirty (30) calendar days of the circumstances or event that gives rise to the complaint, unless the time for filing is extended by the CO for good cause.
- C. The CO will conduct an independent investigation of the matter (which may or may not include a hearing). This complaint procedure contemplates informal, but thorough investigations, affording all interested persons and their representatives, if any, an opportunity to present witnesses and other evidence relevant to the complaint. The CO will provide the complainant with a written disposition of the complaint within ten (10) ~~workdays~~ ~~days~~. If no decision is rendered within ten (10) ~~workdays~~ ~~days~~, or the decision is unsatisfactory in the opinion of the complainant, the employee may file, in writing, an appeal with the Superintendent. The CO shall maintain the District's files and records relating to the complaint.
- D. The Superintendent will, within ten (10) ~~workdays~~ ~~days~~ of receiving the written appeal, conduct a hearing with all parties involved in an attempt to resolve the complaint.
- The Superintendent will render his/her decision within ten (10) ~~workdays~~ ~~days~~ of the hearing.
- E. The employee may be represented, at his/her own cost, at any of the above-described meetings/hearings.
- F. 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.

If it is determined that the complainant was subjected to unlawful discrimination, the CO 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.

#### **OCR Complaint**

At any time, if an employee believes that s/he has been subjected to discrimination based upon his/her disability in violation of Section 504 or the ADA, the individual may file a complaint with the U.S. Department of Education's Office for Civil Rights ("OCR"). The OCR can be reached at:

~~U.S. Department of Education Office for Civil Rights Philadelphia~~  
~~150 S. Independence Mall West,~~  
~~Suite 372, Public Ledger Building~~  
~~Philadelphia, PA 19016-9111~~  
~~Main Line: (800) 368-1019~~  
~~Fax: (215) 861-4431~~  
~~TDD: (800) 537-7697~~

**U.S. Department of Education**  
**The Wanamaker Building**  
**Philadelphia Office**  
**100 Penn Square East, Suite 519**  
**Philadelphia, PA 19107-3323**  
**Main Line: (215) 656-8541**  
**Fax: (215) 656-8605**  
**TDD: (800) 537-7697**  
**email: ocr.Philadelphia@ed.gov**

## Retaliation

Retaliation against a person who makes a report or files a complaint alleging unlawful discrimination, or participates as a witness in an investigation, is prohibited. Specifically, the Board will not take adverse employment action against, coerce, intimidate, threaten, or interfere with any individual because the person opposed any act or practice made unlawful by Section 504 or the ADA, 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 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 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.

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Legal                    29 C.F.R. Part 1630  
                              29 U.S.C. 794, Section 504 Rehabilitation Act of 1973, as amended  
                              34 C.F.R. Part 104  
                              42 U.S.C. 12101 et seq., Americans with Disabilities Act of 1990, as amended

Book	Policy Manual
Section	Special Update - Nondiscrimination and Anti-Harassment - May 2021
Title	Replacement Policy - Special Update - Title IX Update - May 2021 - SECTION 504/ADA PROHIBITION AGAINST DISABILITY DISCRIMINATION IN EMPLOYMENT
Code	po4123 ksj 4/25/23 add officers
Status	
Adopted	February 12, 2014
Last Revised	November 2, 2020

#### **4123 - SECTION 504/ADA PROHIBITION AGAINST DISABILITY DISCRIMINATION IN EMPLOYMENT**

The Board of Education prohibits discrimination against any employee or applicant based upon his/her disability. As such, the Board will not engage in employment practices or adopt policies that discriminate on the basis of disability, or otherwise discriminate against qualified individuals with disabilities in regard to job application procedures, the hiring, advancement or discharge of employees, employee compensation, job training, or other terms, conditions and privileges of employment. The Board further will not limit, segregate or classify applicants or employees in any way that adversely affects their opportunities or status because of disability. Additionally, the Board will not participate in any contractual or other relationships that have the effect of subjecting qualified individuals with disabilities who are applicants or employees to discrimination on the basis of disability.

"An individual with a disability" means a person who has, had a record of, or is regarded as having, a physical or mental impairment that substantially limits one or more major life activities. Major life activities are functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, eating, sleeping, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, sitting, reaching, interacting with others, and working.

Major life activities also include the operation of a major bodily function, including, but not limited to, functions of the immune system, special sense organs and skin, normal cell growth, and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, hemic, lymphatic, musculoskeletal and reproductive functions. The operation of a major bodily function includes the operation of an individual organ within a body system.

An impairment that is episodic in nature or in remission is considered a disability if it would substantially limit a major life activity when active.

The determination of whether an impairment substantially limits a major life activity must be made without regard to the ameliorative effects of mitigating measures such as medication, medical supplies, equipment or appliances, low-vision devices (defined as devices that magnify, enhance, or otherwise augment a visual image, but not including ordinary eyeglasses or contact lenses), prosthetics (including limbs and devices), hearing aid(s) and cochlear implant(s) or other implantable hearing devices, mobility devices, oxygen therapy equipment or supplies, use of assistive technology, reasonable accommodations or "auxiliary aids or services," learned behavioral or adaptive neurological modifications, psychotherapy, behavioral therapy, or physical therapy.

A qualified person with a disability means the individual satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires and, with or without reasonable accommodation, can perform the essential functions of the job in question.

The Board will provide a reasonable accommodation to a qualified individual who has an actual disability or who has a record of a disability, unless the accommodation would impose an undue hardship on the operation of the District's program and/or activities. A reasonable accommodation is not required for an individual who is merely regarded as having a disability.

**District Compliance Officer(s)**

The Board designates the following individual(s) to serve as the District's 504 Compliance Officer(s)/ADA Coordinator(s) (hereinafter referred to as the "CO(s)").

**[DRAFTING NOTE: A District may want to consider appointing Neola suggests the Board appoints 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. Additionally, by appointing two (2) COs, there should always be a CO available to investigate a claim that pertains to the other CO.]**

Rockle DeLorenzo \_\_\_\_\_  
(Name)

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(District Title)

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(Telephone Number)

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rdeloren@k12.wv.us \_\_\_\_\_  
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Dr. Christina Hare \_\_\_\_\_  
(Name)

Supervisor of Student Services \_\_\_\_\_  
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\_chare@k12.wv.us \_\_\_\_\_  
Kristin DeVaul \_\_\_\_\_  
(Name)

Supervisor of Secondary Education, Testing, and Policies \_\_\_\_\_  
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The name(s), title(s), and contact information of this/these individual(s) will be published annually **on the District's website**  and:

**[NOTE: Please select more than one (1) option.]**

- A.  in the 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 website.
- E.  in the District's calendar.
- F.  \_\_\_\_\_

The CO(s)  is  are **[end of option]** responsible for coordinating the District's efforts to comply with and fulfill its responsibilities under Section 504 and Title II of the Americans with Disabilities Act, as amended ("ADA:"). A copy of Section 504 and the ADA, including copies of their implementing regulations, may be obtained from the CO(s).

The CO(s) will oversee the investigation of any complaints of discrimination based on disability, which may be filed pursuant to the Board's adopted internal complaint procedure, and will attempt to resolve such complaints. The Board will provide for the prompt and equitable resolution of complaints alleging violations of Section 504/ADA. (See complaint procedure below.)

#### Training

The CO(s)  will also oversee the training of employees in the District so that all employees understand their rights and responsibilities under Section 504 and the ADA, and are informed of the Board's policies, administrative guidelines and practices with respect to fully implementing and complying with the requirements of Section 504/ADA.

The Board will provide in-service training and consultation to staff responsible for the education of persons with disabilities, as necessary and appropriate.

#### Facilities

No qualified person with a disability will, because the District's facilities are inaccessible to or unusable by persons with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which Section 504/ADA applies.

For facilities constructed or altered after June 3, 1977, the District will comply with applicable accessibility standards. For those existing facilities constructed prior to June 3, 1977, the District is committed to operating its programs and activities so that they are readily accessible to persons with disabilities.

#### Notice

Notice of the Board's policy on nondiscrimination in employment practices and the identity of the COs will be **published on the District's website and** posted throughout the District, and ~~published~~ **included** in the District's recruitment statements or general information publications.

#### Complaint Procedures

If a person believes that s/he has been discriminated against on the basis of his/her disability, the person may utilize the following complaint procedure as a means of reaching, at the lowest possible administrative level, a prompt and equitable resolution of the matter.

In accordance with Section 504 of the Rehabilitation Act of 1973 and its implementing regulations ("Section 504"), employees will be notified of their right to file an internal complaint regarding an alleged violation, misinterpretation or misapplication of Section 504. In addition, employees will be notified of their right to file a complaint with the U.S. Department of Education's Office for Civil Rights.

Internal complaints must be put in writing and must identify the specific circumstances or areas of dispute that have given rise to the complaint, and offer possible solutions to the dispute. The complaint must be filed with a CO within the time limits specified below. The CO is available to assist individuals in filing a complaint.

**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).**

### Internal Complaint Procedure

The following internal complaint procedure is available to employees for the prompt and equitable resolution of complaints alleging discrimination based upon disability. This complaint procedure is not available to unsuccessful applicants. Use of the internal complaint procedure is not a prerequisite to the pursuit of other remedies, including the filing of a complaint with the U.S. Department of Education's Office for Civil Rights.

- A. An employee with a complaint based on alleged discrimination on the basis of disability may first discuss the problem with the CO.
- B. If the informal discussion does not resolve the matter, or if the employee skips Step A, the individual may file a formal written complaint with the CO. The written complaint must contain the name and address of the individual or representative filing the complaint, be signed by the complainant or someone authorized to sign for the complainant, describe the alleged discriminatory action in sufficient detail to inform the CO of the nature and date of the alleged violation, and propose a resolution. The complaint must be filed within thirty (30) calendar days of the circumstances or event giving rise to the complaint, unless the time for filing is extended by the CO for good cause.
- C. The CO will conduct an independent investigation of the matter (which may or may not include a hearing). This complaint procedure contemplates informal, but thorough investigations, affording all interested persons and their representatives, if any, an opportunity to present witnesses and other evidence relevant to the complaint. The CO will provide the complainant with a written disposition of the complaint within ten (10) ~~workdays~~ **days**. If no decision is rendered within ten (10) ~~workdays~~ **days**, or the decision is unsatisfactory in the opinion of the complainant, the employee may file, in writing, an appeal with the Superintendent. The CO shall maintain the District's files and records relating to the complaint.
- D. The Superintendent will, within ten (10) ~~workdays~~ **days** of receiving the written appeal, conduct a hearing with all parties involved in an attempt to resolve the complaint.  
  
The Superintendent will render his/her decision within ten (10) ~~workdays~~ **days** of the hearing.
- E. The employee may be represented, at his/her own cost, at any of the above-described meetings/hearings.
- F. 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.

If it is determined that the complainant was subjected to unlawful discrimination, the CO 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.

### OCR Complaint

At any time, if an employee believes that s/he has been subjected to discrimination based upon his/her disability in violation of Section 504 or the ADA, the individual may file a complaint with the U.S. Department of Education's Office for Civil Rights ("OCR"). The OCR can be reached at:

U.S. Department of Education Office for Civil Rights Philadelphia  
 150 S. Independence Mall West,  
 Suite 372, Public Ledger Building  
 Philadelphia, PA 19016-9111  
 Main Line: (800) 368-1019  
 Fax: (215) 861-4431  
 TDD: (800) 537-7697

U.S. Department of Education  
 The Wanamaker Building  
 Philadelphia Office  
 100 Penn Square East, Suite 515  
 Philadelphia, PA 19107-3323  
 Main Line: (215) 656-8541  
 Fax: (215) 656-8609  
 TDD: (800) 537-7697  
 email: ocr.Philadelphia@ed.gov

## Retaliation

Retaliation against a person who makes a report or files a complaint alleging unlawful discrimination, or participates as a witness in an investigation, is prohibited. Specifically, the Board will not take adverse employment action against, coerce, intimidate, threaten, or interfere with any individual because the person opposed any act or practice made unlawful by Section 504 or the ADA, 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 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 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.

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Legal 29 C.F.R. Part 1630  
 29 U.S.C. 794, Section 504 Rehabilitation Act of 1973, as amended

34 C.F.R. Part 104

42 U.S.C. 12101 et seq., Americans with Disabilities Act of 1990, as amended



41-5071

Book	Policy Manual
Section	Special Update - Nondiscrimination and Anti-Harassment - May 2021
Title	Replacement Policy - Special Update - Title IX - May 2021 - NONDISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY
Code	po3122 ksj 4/25/23 Add officers
Status	
Adopted	August 1, 2007
Last Revised	July 7, 2014

### 3122 - NONDISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY

The Board of Education does not discriminate in the employment of professional staff on the basis of the Protected Classes of race, religion, color, national origin, ethnicity, ancestry, sex (including transgender-gender status, change of sex or gender identity), pregnancy, age, blindness, disability, veteran status, military status, genetic information, socioeconomic status, physical appearance, sexual orientation, mental/physical/developmental/sensory disability or any other characteristic protected by law in its employment practices. (See West Virginia State Board of Education policy 4373)

#### **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 discrimination/retaliation, regardless of whether the person files a formal complaint or is pursuing an informal resolution to the alleged discrimination/retaliation.

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

**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 a business day(s) (i.e., a day(s) that the Board office is open for normal operating hours, Monday - Friday, excluding State-recognized holidays).

For purposes of this policy, "military status" refers to a person's status in the uniformed services, which includes the performance of duty, on a voluntary basis, or involuntary basis, in a uniformed service including active duty, active duty for training, initial active duty for training, inactive duty for training, and full-time National Guard duty. It also includes the period of time for which a person is absent from employment for the purpose of an examination to determine the fitness of the person to perform any such duty as listed above.

#### **District Compliance Officers**

The Board designates the following individuals to serve as the District's "Compliance Officers" (hereinafter referred to as the "COs").

**DRAFTING NOTE: District's are advised to Neola suggests the Board appoint both a male and a female CO in order to provide complainants 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 Compliance Officer/ADA Coordinator and Title IX Coordinator. Additionally, by appointing two (2) COs, there should always be a CO available to investigate a claim of discrimination/retaliation that pertains to the other CO.]**

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(E-mail Address)

(Name)

(District Title)

(Telephone Number)

(Office Address)

(E-mail Address)

The names, titles, and contact information of these individuals will be published annually on the School District's website (-) and:  
**{Please select more than one (-) option}**

- A. (-) in the staff handbooks.
- B. X (-) in the District's Annual Report to the public.
- C. X (-) on the District's web site.
- D. X (-) on each individual school's web site website.
- E. X (-) in the District's calendar.
- F. X (-) \_\_\_\_\_

The COs 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 discrimination, retaliation, or denial of equal access. The COs shall also verify that proper notice of nondiscrimination for Title II of the Americans with Disabilities Act (as amended), Title VI and Title VII of the Civil Rights Act of 1964, ~~Title IX of the Education Amendment Act of 1972~~, Section 504 of the Rehabilitation Act of 1973, (as amended), Genetic Information Nondiscrimination Act (GINA) and the Age Discrimination in Employment Act of 1975 (ADEA) is provided to staff members and the general public. A copy of each of the Acts and regulations on which this notice is based may be found in the CO's office available upon request from the CO.

## Reports and Complaints of Unlawful Discrimination and Retaliation

Employees are ~~encouraged~~ **required to** promptly report incidents of unlawful discrimination and/or retaliation to an administrator, supervisor, or other District-level official so that the Board may address the conduct. Any administrator, supervisor, or other District-level ~~employee or official~~ who receives such a **complaint report** shall file it with the CO ~~at his/her first opportunity, but no later than~~ **within** two (2) school days.

Employees who believe they have been unlawfully discriminated/retaliated against are entitled to utilize the complaint process set forth below. Initiating a complaint, whether formally or informally, will not adversely affect the ~~complaining individual's~~ **Complainant's** employment. While there are no time limits for initiating complaints 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.

The COs will be available during regular school/work hours to discuss concerns related to unlawful discrimination/retaliation. COs shall accept ~~complaints reports~~ of unlawful discrimination/retaliation directly from any member of the District school community or a ~~visitor to the District schools, 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 discrimination/retaliation or the nature of the alleged discrimination/retaliation). Third Party, or receive reports that are initially filed with another Board employee. Upon receipt of a report of alleged** ~~discrimination/retaliation, the CO will contact the Complainant and begin either an informal or formal complaint process (depending on the Complainant's request and the nature of the alleged discrimination/retaliation)~~, or the CO will designate a specific individual to conduct such a process. The CO will provide a copy of this policy to ~~any person who files a complaint~~ **the Complainant and the Respondent**. In the case of a formal complaint, the CO will prepare recommendations for the Superintendent or oversee the preparation of such recommendations by a designee. All members of the District community must report incidents of discrimination/retaliation 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/conduct.

Any Board employee who directly observes unlawful discrimination/retaliation is obligated, in accordance with this policy, to report such observations to one of the COs within two (2) business days. Additionally, any Board employee who observes an act of unlawful discrimination/retaliation is expected to intervene to stop the misconduct, 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 misconduct. Thereafter, the CO or designee must contact the ~~employee~~ **Complainant** within two (2) business days to advise ~~him/her~~ of the Board's intent to investigate the wrongdoing.

### Investigation and Complaint Procedure (See Form 3122 F2)

~~Any employee who believes that s/he has been~~ **Except for sex discrimination and/or Sexual Harassment that is covered by Policy 2266 - Nondiscrimination on the Basis of Sex in Education Programs or Activities, any employee who alleges to have been** subjected to unlawful discrimination or retaliation may seek resolution of ~~his/her~~ **the** complaint through the procedures described below. The complaint procedures involve an investigation of the individual's claims **of discrimination/retaliation** and a process for rendering a decision regarding whether the charges are substantiated.

Due to the sensitivity surrounding complaints of unlawful discrimination or retaliation, timelines are flexible for initiating the complaint process; however, individuals ~~should make every effort~~ **are encouraged** to file a complaint within thirty (30) calendar days after the conduct occurs. Once the formal complaint process is begun, the investigation will be completed in a timely manner (ordinarily, within fifteen (15) business days of the complaint being received).

The procedures set forth below are not intended to interfere with the rights of any individual to pursue a complaint of unlawful discrimination or retaliation with the United States Department of Education Office for Civil Rights or Equal Employment Opportunity Commission ("EEOC").

### Informal Complaint Procedure

The goal of the informal complaint procedure is to promptly stop quickly inappropriate behavior and facilitate resolution through an informal means, if possible. The informal complaint procedure is provided as a less formal option for an employee who believes s/he has been unlawfully discriminated or retaliated against alleges unlawful discrimination 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 parties (the alleged target of the discrimination/retaliation and individual(s) alleged to have engaged in the discrimination) Complainant and the Respondent mutually agree to participate in it.

Employees who believe that they have been unlawfully discriminated/retaliated against The Complainant may proceed immediately to the formal complaint process and individuals who seek resolution through participate in the informal procedure may request that the informal process be terminated at any time to move to the formal complaint process.

All complaints involving a District employee or any other adult member of the District school community against and a student will be formally investigated.

As an initial course of action, if an individual feels that s/he is being unlawfully discriminated/retaliated against and s/he is able and feels safe a Complainant feels comfortable and safe doing so, the individual should tell or otherwise inform the person who engaged in Respondent that the allegedly discriminatory/retaliatory conduct that it is inappropriate and must stop. The complaining individual Complainant should address the alleged misconduct as soon after it occurs as possible. The COs are available to support and counsel individuals The Complainant when taking this initial step or to intervene on behalf of the individual if requested to do so. An individual A Complainant who is uncomfortable or unwilling to inform the person who allegedly engaged in the unlawful conduct of his/her concerns is not prohibited from otherwise filing directly approach the Respondent about the inappropriate conduct may file an informal or a formal complaint. In addition, with regard to certain types of unlawful discrimination (e.g., sex discrimination), such as sexual discrimination, the CO may advise against the use of the informal complaint process.

An individual who believes s/he has been unlawfully discriminated/retaliated A Complainant who alleges unlawful discrimination/retaliation against may make an informal complaint, either orally or in writing: (1) to a building administrator; (2) directly to one of the COs; and/or (3) to the Superintendent or other District-level employee.

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

The District's informal complaint procedure is designed to provide employees who believe they are being unlawfully discriminated/retaliated against the Complainant with a range of options aimed at bringing about a prompt resolution of their concerns. Depending upon the nature of the complaint and the wishes of the individual claiming unlawful discrimination/retaliation, Complainant, informal resolution may involve, but not be limited to, one or more of the following:

- A. Advising the individual Complainant about how to communicate his/her concerns to the person who allegedly engaged in the discriminatory/retaliatory behavior Respondent.
- B. Distributing a copy of Policy 3122 – Nondiscrimination and Equal Employment Opportunity as a reminder to the individuals in the school building or office where the individual whose behavior is being questioned Respondent works.
- C. If both parties agree, the CO may arrange and facilitate a meeting between the individual claiming discrimination/retaliation and the individual accused of engaging in the misconduct to work out a mutual resolution 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 CO or designee will exercise his/her authority is directed to attempt to resolve all informal complaints within fifteen (15) business days of receiving the informal complaint. Parties who are If the Complainant is dissatisfied with the results of the informal complaint process, the Complainant may proceed to file a formal complaint. And and, as stated above, parties either party may request that the informal process be terminated at any time to move to the formal complaint process.

All materials generated as part of the informal complaint process will be retained by the COs in accordance with the Board's records retention policy. (See Policy 8310)

### Formal Complaint Procedure

If a complaint is not resolved through the informal complaint process, if one of the parties requested that the informal complaint process be terminated to move to the formal complaint process, or if the ~~individual elects to file a formal complaint initially,~~ **Complainant, from the outset, elects to file a formal complaint, or the Compliance Officers) determines the allegations are not appropriate for resolution through the informal process,** the formal complaint process shall be implemented.

~~An individual who believes s/he has been subjected to unlawful discrimination/retaliation (hereinafter referred to as the "Complainant").~~ **A Complainant** may file a formal complaint, either orally or in writing, with a principal, the CO, Superintendent, or other District-level employee **official**. 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 **formal** complaint within thirty (30) calendar days after the conduct occurs. **If a Complainant informs a principal, Superintendent, or other District-level employee official,** 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 formal complaints must include the following information to the extent ~~it is available known:~~ **known:** the identity of the ~~individual believed to have engaged in, or be engaging in, the discriminatory/retaliatory conduct~~ **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 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 formal 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~~ **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~~ **deems deemed** appropriate in consultation with the Superintendent.

Within two (2) business days of receiving the complaint, the CO or designee 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~~ **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 or a designee will attempt to complete an investigation into the allegations of discrimination/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 CO 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 discrimination/retaliation as provided in Board policy and State and Federal law as to whether the ~~Complainant has been subjected to unlawful discrimination/retaliation.~~ ~~Respondent has engaged in unlawful discrimination/retaliation of the Complainant.~~ 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 Respondent engaged in unlawful discrimination/retaliation toward the Complainant,~~ the Superintendent 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 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 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 a court case.~~ Use of this internal complaint ~~procedure process~~ is not a prerequisite to the pursuit of other

remedies.

### Privacy/Confidentiality

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 Board's records retention policy.

### Sanctions and Monitoring

The Board shall vigorously enforce its prohibitions against unlawful discrimination by taking appropriate action reasonably calculated to stop and prevent further misconduct. 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. 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. In those cases where unlawful discrimination/retaliation 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 an employee, 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.

### Retaliation

~~Retaliation against a person who makes a report or files a complaint alleging unlawful discrimination/retaliation, 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 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 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.**

### **Education and Training**

In support of this 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 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 discrimination 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 Codes 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 Respondent 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.

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- Legal
- Fourteenth Amendment, U.S. Constitution
  - 42 U.S.C., 2000e et seq., Civil Rights Act of 1964
  - 42 U.S.C. 2000ff et seq., The Genetic Information Nondiscrimination Act
  - 42 U.S.C. 12101, Americans with Disabilities Act of 1990, as amended
  - 42 U.S.C. 6101 et seq., Age Discrimination Act of 1975
  - 29 U.S.C. 701 et seq., Rehabilitation Act of 1973, as amended
  - 20 U.S.C. 1681 et seq., Title IX of Education Amendment Act
  - 20 U.S.C. Section 1701 et seq., Equal Educational Opportunities Act of 1974
  - 20 U.S.C. Section 7905, Boy Scouts of America Equal Access Act
  - 29 C.F.R. Part 1635
  - WV Code 5-11B
  - West Virginia State Board of Education policy 4373

41-5072

Book Policy Manual

Section Special Update - Nondiscrimination and Anti-Harassment - May 2021

Title Replacement Policy - Special Update - Title IX Update - May 2021 - NONDISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY

Code po4122 ksj 4/25/23 add officers

Status

Adopted August 1, 2007

Last Revised July 7, 2014

#### 4122 - NONDISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY

The Board of Education does not discriminate in the employment of service personnel staff on the basis of the Protected Classes of race, religion, color, national origin, ethnicity, ancestry, sex (including transgender gender status, change of sex or gender identity), pregnancy, age, blindness, disability, veteran status, military status, genetic information, socioeconomic status, physical appearance, sexual orientation, mental/physical/developmental/sensory disability, or any other characteristic protected by law (collectively, "Protected Classes") in its employment practices. (See West Virginia State Board of Education policy 4373)

#### **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 discrimination/retaliation, regardless of whether the person files a formal complaint or is pursuing an informal resolution to the alleged discrimination/retaliation.

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

**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 a business day(s) (i.e., a day(s) that the Board office is open for normal operating hours, Monday - Friday, excluding State-recognized holidays).

For purposes of this policy, "military status" refers to a person's status in the uniformed services, which includes the performance of duty, on a voluntary basis, or involuntary basis, in a uniformed service including active duty, active duty for training, initial active duty for training, inactive duty for training, and full-time National Guard duty. It also includes the period of time for which a person is absent from employment for the purpose of an examination to determine the fitness of the person to perform any such duty as listed above.

#### **District Compliance Officers**

The Board designates the following individuals to serve as the District's "Compliance Officers" (hereinafter referred to as the "COs").

**DRAFTING NOTE: District's are advised to Neola suggests the Board appoint both a male and a female CO in order to provide complainants 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 Compliance Officer/ADA Coordinator and Title IX Coordinator. Additionally, by appointing two (2) COs, there should always be a CO available to investigate a claim of discrimination/retaliation that pertains to the other CO.]**

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 \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
(Name)

\_\_\_\_\_  
\_\_\_\_\_  
(District Title)

\_\_\_\_\_  
\_\_\_\_\_  
(Telephone Number)

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(Office Address)

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\_\_\_\_\_  
(E-mail Address)

\_\_\_\_\_  
\_\_\_\_\_  
(Name)

\_\_\_\_\_  
\_\_\_\_\_  
(District Title)

\_\_\_\_\_  
\_\_\_\_\_  
(Telephone Number)

\_\_\_\_\_  
\_\_\_\_\_  
(Office Address)

\_\_\_\_\_  
\_\_\_\_\_  
(E-mail Address)

The names, titles, and contact information of these individuals will be published annually on the School District's website ( ) and  
**[NOTE: Please select more than one (1) option.]**

- A. ( ) in the staff handbooks.
- B. X ( ) in the District's Annual Report to the public.
- C. X ( ) on the District's web site.
- D. X ( ) on each individual school's web site website.
- E. X ( ) in the District's calendar.
- F. X ( ) \_\_\_\_\_

The COs 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 discrimination, retaliation, or denial of equal access. The COs shall also verify that proper notice of nondiscrimination for Title II of the Americans with Disabilities Act (as amended), Title VI, and Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendment Act of 1972, Section 504 of the Rehabilitation Act of 1973, (as amended), Genetic Information Nondiscrimination Act (GINA) and the Age Discrimination in Employment Act of 1975 (ADEA) is provided to staff members and the general public. A copy of each of the Acts and regulations on which this notice is based may be found in the CO's office.

**Reports and Complaints of Unlawful Discrimination and Retaliation**

Employees are ~~encouraged to promptly~~ **required to** report incidents of unlawful discrimination and/or retaliation to an administrator, supervisor, or other District-level official so that the Board may address the conduct. Any administrator, supervisor, or other District-level ~~employee or official~~ who receives such a **complaint report** shall file it with the CO ~~at his/her first convenience, but no later than~~ **within two (2) school days**.

Employees who believe they have been unlawfully discriminated/retaliated against are entitled to utilize the complaint process set forth below. Initiating a complaint, whether formally or informally, will not adversely affect the ~~complaining individual's~~ **Complainant's** employment. While there are no time limits for initiating complaints 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.

The COs will be available during regular school/work hours to discuss concerns related to unlawful discrimination/retaliation. COs shall accept ~~complaints reports~~ of unlawful discrimination/retaliation directly from any member of the District school community or a ~~visitor to the District schools, 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 discrimination/retaliation or the nature of the alleged discrimination/retaliation). Third Party, or receive reports that are initially filed with another Board employee. Upon receipt of a report of alleged~~ **Discrimination/retaliation, the CO will contact the Complainant and begin either an informal or formal complaint process (depending on the Complainant's request and the nature of the alleged discrimination/retaliation)**, or the CO will designate a specific individual to conduct such a process. The CO will provide a copy of this policy ~~to any person who files a complaint~~ **the Complainant and the Respondent**. In the case of a formal complaint, the CO will prepare recommendations for the Superintendent or oversee the preparation of such recommendations by a designee. All members of the District community must report incidents of discrimination/retaliation 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/conduct.~~

Any Board employee who directly observes unlawful discrimination/retaliation is obligated, in accordance with this policy, to report such observations to one of the COs within two (2) business days. Additionally, any Board employee who observes an act of unlawful discrimination/retaliation is expected to intervene to stop the misconduct, 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 misconduct. Thereafter, the CO or designee must contact the ~~employee~~ **Complainant** within two (2) business days to advise ~~him/her~~ of the Board's intent to investigate the alleged wrongdoing.

### **Investigation and Complaint Procedure (See Form 4122 F2)**

~~Any employee who believes that s/he has been~~ **Except for sex discrimination and/or Sexual Harassment that is covered by Policy 2266 - Nondiscrimination on the Basis of Sex in Education Programs or Activities, any employee who alleges to have been** subjected to unlawful discrimination or retaliation may seek resolution of ~~his/her~~ **the** complaint through the procedures described below. The complaint procedures involve an investigation of the individual's claims **of discrimination/retaliation** and a process for rendering a decision regarding whether the charges are substantiated.

Due to the sensitivity surrounding complaints of unlawful discrimination or retaliation, timelines are flexible for initiating the complaint process; however, individuals ~~should make every effort~~ **are encouraged** to file a complaint within thirty (30) calendar days after the conduct occurs. Once the formal complaint process is begun, the investigation will be completed in a timely manner (ordinarily, within fifteen (15) business days of the complaint being received).

The procedures set forth below are not intended to interfere with the rights of any individual to pursue a complaint of unlawful discrimination or retaliation with the United States Department of Education Office for Civil Rights or Equal Employment Opportunity Commission ("EEOC").

### **Informal Complaint Procedure**

The goal of the informal complaint procedure is to promptly stop quickly-inappropriate behavior and facilitate resolution through an informal means, if possible. The informal complaint procedure is provided as a less formal option for an employee who believes s/he has been unlawfully discriminated or retaliated against alleges unlawful discrimination 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 parties (the alleged target of the discrimination/retaliation and individual(s) alleged to have engaged in the discrimination) Complainant and the Respondent mutually agree to participate in it.

Employees who believe that they have been unlawfully discriminated/retaliated against The Complainant may proceed immediately to the formal complaint process and individuals who seek resolution through participate the informal procedure may request that the informal process be terminated at any time to move to the formal complaint process.

All complaints involving a District employee or any other adult member of the School District school community against and a student will be formally investigated.

As an initial course of action, if an individual feels that s/he is being unlawfully discriminated/retaliated against and s/he is able and feels safe a Complainant feels comfortable and safe doing so, the individual should tell or otherwise inform the person who engaged in Respondent that the allegedly discriminatory/retaliatory conduct that it is inappropriate and must stop. The complaining individual Complainant should address the alleged misconduct as soon after it occurs as possible. The COs are available to support and counsel individuals the Complainant when taking this initial step or to intervene on behalf of the individual if requested to do so. An individual A Complainant who is uncomfortable or unwilling to inform the person who allegedly engaged in the unlawful conduct of his/her concerns is not prohibited from otherwise filing directly approach the Respondent about the inappropriate conduct may file an informal or a formal complaint. In addition, with regard to certain types of unlawful discrimination (e.g., sex discrimination), such as sexual discrimination, the CO may advise against the use of the informal complaint process.

An individual who believes s/he has been unlawfully discriminated/retaliated against A Complainant who alleges unlawful Discrimination/retaliation may make an informal complaint, either orally or in writing: (1) to a building administrator; (2) directly to one of the COs; and/or (3) to the Superintendent or other District-level employee.

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

The District's informal complaint procedure is designed to provide employees who believe they are being unlawfully discriminated/retaliated against the Complainant with a range of options aimed at bringing about a prompt resolution of their concerns. Depending upon the nature of the complaint and the wishes of the individual claiming unlawful discrimination/retaliation, Complainant, informal resolution may involve, but not be limited to, one or more of the following:

- A. Advising the individual Complainant about how to communicate his/her concerns to the person who allegedly engaged in the discriminatory/retaliatory behavior Respondent.
- B. Distributing a copy of Policy 4122 – Nondiscrimination and Equal Employment Opportunity as a reminder to the individuals in the school building or office where the individual whose behavior is being questioned Respondent works.
- C. If both parties agree, the CO may arrange and facilitate a meeting between the individual claiming discrimination/retaliation and the individual accused of engaging in the misconduct to work out a mutual resolution 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 CO or designee will exercise his/her authority is directed to attempt to resolve all informal complaints within fifteen (15) business days of receiving the informal complaint. Parties who are If the Complainant is dissatisfied with the results of the informal complaint process, the Complainant may proceed to file a formal complaint. And, and as stated above, parties either party may request that the informal process be terminated at any time to move to the formal complaint process.

All materials generated as part of the informal complaint process will be retained by the COs in accordance with the Board's records retention policy. (See Policy 8310)

### Formal Complaint Procedure

If a complaint is not resolved through the informal complaint process, if one of the parties requested that the informal complaint process be terminated to move to the formal complaint process, or if the individual elects to file a formal complaint initially, Complainant, from the outset, elects to file a formal complaint, or the Compliance Officer(s) determines the allegations are not appropriate for resolution through the informal process, the formal complaint process shall be implemented.

An individual who believes s/he has been subjected to unlawful discrimination/retaliation (hereinafter referred to as the "Complainant"), A Complainant may file a formal complaint, either orally or in writing, with a principal, the CO, Superintendent, or other District-level employee official. 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 formal complaint within thirty (30) calendar days after the conduct occurs. If a Complainant informs a principal, Superintendent, or other District-level employee official, 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 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 formal 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 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 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 formal 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 or designee 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 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 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 or a designee will attempt to complete an investigation into the allegations of discrimination/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 CO 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 discrimination/retaliation as provided in Board policy and State and Federal law as to whether the ~~Complainant has been subjected to unlawful discrimination/retaliation~~ Respondent has engaged in unlawful discrimination/retaliation of the Complainant. 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, or the Respondent engaged in unlawful discrimination/retaliation toward the Complainant~~, the Superintendent 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 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 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, ~~the filing of charges with local law enforcement~~ or the filing of a ~~civil action in court case~~. Use of this internal complaint procedure is not a prerequisite to the pursuit of other remedies.

## Privacy/Confidentiality

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 discrimination by taking appropriate action reasonably calculated to stop and prevent further misconduct. 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. 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. In those cases where unlawful discrimination/retaliation 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 an employee, 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.

## Retaliation

~~Retaliation against a person who makes a report or files a complaint alleging unlawful discrimination/retaliation, 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 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 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.

### Education and Training

In support of this 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 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 discrimination 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 Codes 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 Respondent 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.**

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Legal	Fourteenth Amendment, U.S. Constitution
	42 U.S.C., 2000e et seq., Civil Rights Act of 1964
	42 U.S.C. 2000ff et seq., The Genetic Information Nondiscrimination Act
	42 U.S.C., 12101, Americans with Disabilities Act of 1990, as amended
	42 U.S.C., 12112, Americans with Disabilities Act of 1990, as amended
	42 U.S.C. 6101 et seq., Age Discrimination Act of 1975
	29 U.S.C. 701 et seq., Rehabilitation Act of 1973, as amended
	20 U.S.C. 1681 et seq., Title IX of Education Amendment Act
	20 U.S.C. Section 1701 et seq., Equal Educational Opportunities Act of 1974
	20 U.S.C. Section 7905, Boy Scouts of America Equal Access Act
	29 C.F.R. Part 1635
	WV Code 5-11B
	WV Code 5-11-1 et seq., 18-29-2



