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## 1662 - **ANTI-HARASSMENT AND VIOLENCE**

### **General Statement**

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

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

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

The Board shall vigorously enforce its prohibition against discriminatory harassment based on race, color, national origin, sex (including gender status, change of sex, or gender identity), disability, age, blindness, creed or religion, ancestry or genetic information, socioeconomic status, physical appearance, sexual orientation, mental/physical/developmental/sensory disability (collectively, "Protected Classes"), or any other characteristic that are protected by Federal civil rights laws (hereinafter referred to as "unlawful harassment"), and encourages those within the County School community as well as

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

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

### **Other Violations of the Anti-Harassment Policy**

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

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

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

### **Definitions**

**Words** used in this policy shall have those meanings defined herein; words not defined herein shall be construed according to their plain and ordinary meanings.

**Complainant** is the individual who alleges, or is alleged, to have been subjected to unlawful harassment, regardless of whether the person files a formal complaint or is pursuing an informal resolution to the alleged harassment.

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

**County School 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 County property (e.g., visiting speakers, participants on opposing athletic teams, parents), vendors doing business with, or seeking to do business with, the Board, and other individuals who come in contact with members of the County community at school-related events/activities (whether on or off County property).

**Day(s):** Unless expressly stated otherwise, the term "day" or "days" as used in this policy means business day(s) (i.e., a day(s) that the Board office is open for normal operating hours, Monday – Friday, excluding State-recognized holidays).

### **Bullying**

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

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

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

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

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

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

Sexual harassment may include, but is not limited to:

- a. verbal or written harassment of a sexual nature or abuse;
- b. pressure for sexual activity;
- c. inappropriate or unwelcome sexually motivated patting, pinching, obscene gestures, or physical conduct;
- d. asking about, or telling about, sexual fantasies, sexual preferences, or sexual activities;
- e. speculations about a person's sexual activities or sexual history, or remarks about one's own sexual activities or sexual history;
- f. giving unwelcome personal gifts such as lingerie that suggests the desire for a romantic relationship;
- g. leering or staring at someone in a sexual way, such as staring at a person's breasts, buttocks, or groin;
- h. sexual behavior or words, including demands for sexual favors, accompanied by implied or overt threats and/or promises concerning an individual's employment or educational status;
- i. unwelcome behavior, verbal or written words or symbols, directed at an individual because of gender;
- j. the use of authority to emphasize the sexuality of a student in a manner that prevents or impairs that student's full enjoyment of educational benefits, climate or opportunities;
- k. unwelcome sexual flirtations, advances, or propositions from a member of the same or opposite sex;

- l. verbal abuse of a sexual nature, without regard to whether the verbal abuse specifically refers to sexual characteristics at whom the verbal abuse is directed;
  - m. verbal or written comments about an individual's body;
  - n. sexually degrading word(s) or actions used to intimidate, describe an individual or to refer to some aspect of the individual's behavior, appearance, attitude, or conduct;
  - o. the display, use or dissemination of sexually suggestive gestures, objects, pictures, graffiti, videos, posters, and/or jokes by any means, including, but not limited to, printed materials and materials displayed by electronic means, sex-based labeling or stereotyping with respect to mental, physical, or other abilities, talents, occupational or life goals, etc. that may reasonably embarrass or offend individuals;
  - p. nonsexual conduct, including words or actions, directed toward a person because of their gender that tends to ridicule, criticize, discriminate, or otherwise makes it more difficult for that person to perform their job and/or achieve an education;
- It is the responsibility of all students and employees to promote and to maintain an environment free of all types of sexual harassment. Any sexual harassment, as defined, when perpetrated on any student, volunteer, third party or employee by any student, volunteer, third party or employee shall be treated as sexual harassment under this policy.
- q. consensual employee sexual relationships where such relationship leads to favoritism of a subordinate employee with whom the superior is sexually involved and where such favoritism adversely affects other employees or otherwise creates a hostile work environment;
  - r. inappropriate boundary invasions by a County employee or other adult member of the County School community into a student's personal space and personal life;
  - s. verbal, nonverbal or physical aggression, intimidation, or hostility based on sex or sex-stereotyping that does not involve conduct of a sexual nature.

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

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

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

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

- 1. has the purpose or effect of creating an intimidating, hostile or offensive working or academic environment;
- 2. has the purpose or effect of substantially or unreasonably interfering with an individual's work or academic performance;
- 3. otherwise adversely affects an individual's employment or academic opportunities;
- 4. racial harassment includes racially degrading word(s) or actions used to intimidate, describe an individual or to refer to some aspect of the individual's behavior, appearance, attitude, or conduct;
- 5. the display, use, or dissemination of racially motivated gestures, objects, pictures, and/or jokes by any means, including, but not limited to, printed materials displayed by electronic means;
- 6. race-based labeling or stereotyping with respect to mental, physical, or other abilities, talents, occupational or life goals, etc.;

7. unwelcome behavior, verbal or written words or symbols, directed at an individual because of race;
8. conduct, including word(s) or actions, directed toward a person because of their race that tends to distract or otherwise make it more difficult to perform their job and/or achieve an education.

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

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

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

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

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

Sexual violence may include, but is not limited to:

1. touching, patting, grabbing or pinching another person's intimate parts, whether that person is of the same sex or the opposite sex;
2. coercing, forcing or attempting to coerce or force the touching of anyone's intimate parts;
3. coercing, forcing or attempting to coerce or force sexual intercourse or a sexual act on another;
4. threatening to force or coerce sexual acts, including the touching of intimate parts or intercourse, on another;
5. threatening or forcing exposure of intimate apparel or body parts by removal of clothing.

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

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

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

## **Disability Harassment**

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

### **Anti-Harassment Compliance Officers**

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

Jimmy Frashier  
Assistant Superintendent  
1 School Street  
Ripley, WV 25271  
(304) 372-7300  
jgfrashi@k12.wv.us

The names, titles, and contact information of these individuals shall be published annually on the County's website and in the parent and staff handbooks.

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

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

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

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

### **Reports and Complaints of Harassing Conduct**

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

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

If, during an investigation of alleged bullying, aggressive behavior and/or harassment in accordance with Policy 5517.01 – Bullying, the Principal believes that the reported misconduct may have created a hostile work environment and may have constituted unlawful discriminatory harassment based on a Protected Class, the Principal shall report the act of bullying, aggressive behavior and/or harassment to the Compliance Officer who shall investigate the allegation in accordance with this policy. If the alleged harassment involves Sexual Harassment as defined by Policy 2266, the matter shall be handled in accordance with the grievance process and procedures outlined in Policy 2266. While the Compliance Officer investigates the allegation, the Principal shall suspend his/her Policy 5517.01 investigation to await the Compliance Officer's written report. Likewise, the Title IX Coordinator shall provide the Principal with the determination of responsibility that results from the Policy 2266 grievance process.

Reporting procedures are as follows:

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

### **Investigation, Complaint Procedure and Recommendation**

Except for Sexual Harassment that is covered by Policy 2266 - Nondiscrimination on the Basis of Sex in Education Programs or Activities, any individual who believes they have been subjected to harassment and/or violence (hereinafter referred to as the "Complainant"), may file a complaint, either orally or in writing, with a principal, the CO, Superintendent, or other County-level employee. Due to the sensitivity surrounding complaints of unlawful discrimination and retaliation, timelines are flexible for initiating the complaint process; however, individuals shall make every effort to file a complaint within thirty (30) calendar days after the conduct occurs. If a Complainant informs a principal, Superintendent, or other County-level employee, either orally or in writing, about any complaint of discrimination/retaliation, that employee must report such information to the CO no later than (2) business days.

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



All complaints must include the following information to the extent it is available: the identity of the individual believed to have engaged in, or be engaging in, the discriminatory/retaliatory conduct; a detailed description of the facts upon which the complaint is based; a list of potential witnesses; and the resolution sought by the Complainant.

If the Complainant is unwilling or unable to provide a written statement including the information set forth above, the CO shall ask for such details in an oral interview. Thereafter, the CO will prepare a written summary of the oral interview, and the Complainant shall be asked to verify the accuracy of the reported charge by signing the document.

Upon receiving a complaint, the CO shall consider whether any action should be taken in the investigatory phase to protect the Complainant from further discrimination or retaliation, including, but not limited to, a change of work assignment or schedule for the Complainant and/or the person who allegedly engaged in the misconduct.

Pursuant to West Virginia State Board of Education policy 4373, upon receiving a complaint, the CO, in consultation with the Superintendent, shall 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 shall consult the Complainant to assess his/her agreement to the proposed action. If the Complainant is unwilling to consent to the proposed change, the CO may still take whatever actions s/he deems appropriate in consultation with the Superintendent.

Within two (2) business days of receiving the complaint, the CO shall 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 shall be informed about the nature of the allegations and provided with a copy of any relevant policies and/or administrative guidelines, including Policy 1422 - Nondiscrimination and Equal Employment Opportunity. The Respondent must also be informed of the opportunity to submit a written response to the complaint within five (5) business days.

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

- A. interviews with the Complainant;
- B. interviews with the Respondent;
- C. interviews with any other witnesses who may reasonably be expected to have any information relevant to the allegations;
- D. consideration of any documentation or other information presented by the Complainant, Respondent, or any other witness that is reasonably believed to be relevant to the allegations.

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

At the conclusion of the investigation, the CO shall prepare and deliver a written report to the Superintendent that summarizes the evidence gathered during the investigation and provides recommendations based on the evidence and the definition of unlawful discrimination/retaliation as provided in Board policy and State and Federal law as to whether the Complainant has been subjected to unlawful discrimination/retaliation. The CO's recommendations must be based upon the totality of the circumstances. In determining if discrimination or retaliation occurred, a preponderance of evidence standard shall be used.

Absent extenuating circumstances, within five (5) business days of receiving the report of the CO or the designee, the Superintendent must either issue a final decision regarding whether the charges have been substantiated or request further investigation. A copy of the Superintendent's final decision shall be delivered to both the Complainant and the Respondent.

If the Superintendent requests additional investigation, the Superintendent must specify the additional information that is to be gathered, and such additional investigation must be completed within five (5) business days. At the conclusion of the additional investigation, the Superintendent must issue a final written decision as described above.

If the Superintendent determines the Complainant was subjected to unlawful discrimination/retaliation, s/he must identify what corrective action shall be taken to stop, remedy, and prevent the recurrence of the discrimination/retaliation. The corrective action shall 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 the party's receipt of the Superintendent's decision. The written statement of appeal must be submitted to the Treasurer/CFO.

In an attempt to resolve the complaint, the Board shall meet with the 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 shall be final. (See Policy 9130 – Public Complaints and West Virginia State Board of Education policy 7211 – Appeals Procedure for Citizens)

The Board reserves the right to investigate and resolve a complaint or report of unlawful discrimination/retaliation regardless of whether the employee alleging the unlawful discrimination/retaliation pursues the complaint. The Board also reserves the right to have the formal complaint investigation conducted by an external person in accordance with this policy or in such other manner as deemed appropriate by the Board or its designee.

The Complainant may be represented, at his/her own cost, at any of the above-described meetings/hearings.

The right of a person to a prompt and equitable resolution of the complaint shall not be impaired by the person's pursuit of other remedies such as the filing of a complaint with the Office for Civil Rights or the filing of a court case. Use of this internal complaint procedure is not a prerequisite to the pursuit of other remedies.

### **Privacy/Confidentiality**

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

The County shall 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. Additionally, the Respondent must be provided the Complainant's identity.

During the course of a formal investigation, the CO or designee shall 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 any information that 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 shall be maintained by the CO in accordance with the School Board's records retention policy.

### **Results of the Investigation**

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

### **Discipline and Other Actions**

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

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

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

### **Retaliation**

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

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

Retaliation against a person making a report of discrimination, filing a formal complaint, or participating in an investigation or meeting is a serious violation of this policy that can result in the imposition of disciplinary sanction/consequences and/or other appropriate remedies.

Formal complaints alleging retaliation may be filed according to the internal complaint process set forth above.

The exercise of rights protected under the First Amendment of the United States Constitution does not constitute retaliation prohibited under this policy.

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

### **Student-Employee Relationships Prohibited**

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

### **Non-Harassment**

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

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

### **Right to Alternative Complaint Procedures**

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

### **Sexual Harassment as Abuse**

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

State law requires any school teacher or school employee who knows or suspects that a child with a disability under the age of twenty-one (21) or that a child under the age of eighteen (18) has suffered or faces a threat of suffering a physical or mental wound, disability or condition of a nature that reasonably indicates abuse or neglect of a child to immediately report

that knowledge or suspicion to the county children's services agency. If, during the course of a harassment investigation, the Compliance Officer or a designee has reason to believe or suspect that the alleged conduct reasonably indicates abuse or neglect of the Complainant, a report of such knowledge must be made in accordance with State law and Board Policy.

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

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

### **Allegations Involving Conduct Unbecoming the Teaching Profession/Suspension**

~~The Superintendent shall report to the West Virginia Department of Education, on forms provided for that purpose, matters of misconduct on the part of licensed professional staff members convicted of sexual battery, suspend such employee from all duties that concern or involve the care, custody, or control of a child during the pendency of any criminal action for which that person has been arrested, summoned and/or indicted in that regard.~~ The Superintendent will, in accordance with West Virginia Code 18A-2-8 and Policy 3141, take appropriate action to suspend or terminate the employment of any employee charged with or convicted of offenses for which such action is appropriate in accordance with applicable law. Upon the recommendation of the Superintendent, the Board may take necessary steps to suspend or dismiss any person in its employment at any time the health, safety and welfare of students has been jeopardized or the learning environment of other students has been impacted.

### **Dissemination of the Policy**

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

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

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

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

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

### **Education and Training**

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

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

### **Retention of Investigatory Records and Materials**

The Compliance Officer(s) is responsible for overseeing retention of all records that must be maintained pursuant to this policy. All individuals charged with conducting investigations under this policy shall retain all documents, electronically stored information ("ESI"), and electronic media (as defined in Policy 8315) created and/or received as part of an investigation, which may include but not be limited to:

- A. all written reports/allegations/complaints/grievances/statements/responses pertaining to an alleged violation of this policy;

- B. any narratives that memorialize oral reports/allegations/complaints/grievances/statements/responses pertaining to an alleged violation of this policy;
- C. any documentation that memorializes the actions taken by County personnel or individuals contracted or appointed by the Board to fulfill its responsibilities related to the investigation and/or the County'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 County to conduct the investigation, and any documents used by the County at the time of the alleged violation to communicate the Board's expectations to students and staff with respect to the subject of this policy (e.g., Student Code of Conduct and/or Employee Handbooks);
- M. copies of any documentation that memorializes any formal or informal resolutions to the alleged discrimination or harassment.

The documents, electronically stored information, 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 County's records retention schedule.

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T.C. 6/9/22

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