

Policy ~~5517.01~~ 442 – Anti-Harassment and Violence

Revised policy and repeal of Policy 5517.01 (Bullying), Policy 5517.02 (Sexual Violence), Policy 5517.03 (Anti-Harassment of Persons with a Disability) effective upon passage

1st reading July 11, 2019

2nd reading

3rd reading

Statutory authority West Virginia Code 18-2C, West Virginia Board of Education Policy 4373

Administrative Guidelines

(none)

General Statement

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

It is the policy of the Board ~~of Education~~ to maintain an education and work environment that is free from all forms of unlawful harassment and violence. ~~To that end, the Board reaffirms that Policy 501~~ This policy applies to any student, staff member or member of the public during any school related activity or during any education sponsored event whether in a building or other property used or operated by the Board of Education or in any other facility being used by the Board.

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

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

~~For purposes of this policy, "third parties" include, but are not limited to, guests and/or visitors on County School property (e.g., visiting speakers, participants on opposing athletic teams, parents), vendors doing business with, or seeking to do business with, the Board, and other individuals who come in contact with members of the County School community at school-related events/activities (whether on or off County School property).~~

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

Other Violations of the Anti-Harassment Policy

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

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

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

Definitions

- A. Sexual harassment—Sexual harassment consists of sexual advances, requests for sexual favors, sexually motivated physical conduct, or other verbal or physical conduct or communication of a sexual nature when:
 - 1. submission to the conduct or communication is made a term or condition either explicitly or implicitly of obtaining or retaining employment, or of obtaining an education; or
 - 2. submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's employment or education; or
 - 3. creating an intimidating, hostile or offensive or educational environment.

Sexual harassment may include, but is not limited to:

- 1. verbal or written harassment of a sexual nature or abuse;
- 2. pressure for sexual activity;
- 3. inappropriate or unwelcome patting, pinching, or physical conduct;
- 4. sexual behavior or words, including demands for sexual favors, accompanied by implied or overt threats and/or promises concerning an individual's employment or educational status;
- 5. unwelcome behavior, verbal or written words or symbols, directed at an individual because of gender;
- 6. the use of authority to emphasize the sexuality of a student in a manner that prevents or impairs that student's full enjoyment of educational benefits, climate or opportunities;
- 7. unwelcome sexual flirtations, advances, or propositions from a member of the same or opposite sex;
- 8. verbal abuse of a sexual nature, without regard to whether the verbal abuse specifically refers to sexual characteristics at whom the verbal abuse is directed;

9. verbal or written comments about an individual's body;
10. sexually degrading word(s) or actions used to intimidate, describe an individual or to refer to some aspect of the individual's behavior, appearance, attitude, or conduct;
11. the display, use or dissemination of sexually suggestive gestures, objects, pictures, and/or jokes by any means, including, but not limited to, printed materials and materials displayed by electronic means, sex based labeling or stereotyping with respect to mental, physical, or other abilities, talents, occupational or life goals, etc.;
12. nonsexual conduct, including words or actions, directed toward a person because of their gender that tends to ridicule, criticize, discriminate, or otherwise makes it more difficult for that person to perform their job and/or achieve an education.

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

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

B. Racial Harassment—Racial harassment consists of physical, verbal, or written conduct relating to an individual's race 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. 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 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.

C. 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 will be treated as religious/ethnic harassment under this policy.

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

—Sexual violence may include, but is not limited to:

1. touching, patting, grabbing or pinching another person's intimate parts, whether that person is of the same sex or the opposite sex;

2. coercing, forcing or attempting to coerce or force the touching of anyone's intimate parts;

3. coercing, forcing or attempting to coerce or force sexual intercourse or a sexual act on another;

4. threatening to force or coerce sexual acts, including the touching of intimate parts or intercourse, on another;

5. threatening or forcing exposure of intimate apparel or body parts by removal of clothing.

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

F. 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.

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

Reports and Complaints of Harassing Conduct

Members of the County School community, which includes all staff, and 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.

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, will not adversely affect the complaining individual's employment unless the complaining individual makes the complaint maliciously or with knowledge that it is false.

If, during an investigation of alleged bullying, aggressive behavior and/or harassment in accordance with Policy 5517.01

—Bullying, the principal believes that the reported misconduct may have created a hostile work environment and may

have constituted unlawful discriminatory harassment based on a Protected Class, the principal shall report the act of bullying, aggressive behavior and/or harassment to one of the Anti-Harassment Compliance Officers who shall investigate the allegation in accordance with this policy. While the Compliance Officer investigates the allegation, the principal shall suspend his/her Policy 5517.01 investigation to await the Compliance Officer's written report. The Compliance Officer shall keep the principal informed of the status of the Policy 3362 investigation and provide him/her with a copy of the resulting written report.

Reporting procedures are as follows:

- A. Any employee who believes s/he has been the victim of harassment prohibited under this policy is encouraged to report the alleged harassment to the appropriate school official as identified in D below.
- B. Teachers, administrators, and other school officials who have or receive notice that an employee has or may have been the victim of harassment prohibited under this policy shall immediately report the alleged harassment to the appropriate school official as defined in D below.
- C. Any other person with knowledge or belief that an employee has or may have been the victim of harassment prohibited by this policy shall be encouraged to immediately report the alleged acts to an appropriate school official as identified in D below.
- D. Appropriate school officials are as follows:
 - 1. Any complaint under this policy shall be reported to the County's Compliance Officer unless the complaint is regarding the Compliance Officer. In such cases, the complaints shall be reported to the Superintendent, who shall assume the role of the County School Compliance Officer for such complaints.
 - 2. Any complaint under this policy regarding the Superintendent or Board Member that is received by the County School Compliance Officer shall be referred to the School Board's legal counsel, who shall assume the role of the County School Compliance Officer for such complaints.
 - 3. Any complaint under this policy regarding the principal, who serves as the Building Compliance Officer, shall be reported to the County's Compliance Officer, and the County Compliance Officer shall conduct the investigation.
- E. The reporting party or complainant shall be encouraged to use a report form available from the principal of each building or available from the County School 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 School shall designate both a male and a female County School Compliance Officer.
- G. The investigation should be conducted by the CO or by the Superintendent within ten (10) school days of receiving the complaint, the investigating party shall provide a written status report to the Superintendent.
- H. The investigation may be conducted by school officials or by a third party designated by the school officials if necessary.

Anti-Harassment Compliance Officers

The Board designates the following individuals the Superintendent and Director of Student Support Services to serve as "Anti-Harassment Compliance Officers" for the County School. They are hereinafter referred to as the "COs."

Dr. William Chapman _____ Mrs. Melissa O'Brien

(Name) _____ (Name)

Personnel Director _____ Special Education Director

(County Title) _____ (County Title)
(304) 927-6406 _____ (304) 927-6411
(Telephone Number) _____ (Telephone Number)
813 Capitol St. _____ 813 Capitol St.
Spencer, WV 25276 _____ Spencer, WV 25276
(Office Address) _____ (Office Address)
wchapman@k12.wv.us _____ mobrien@k12.wv.us
(E-mail Address) _____ (E-mail Address)

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

The names, titles, and contact information of these individuals will be published annually in the parent and staff handbooks and/or on the County School's web site.

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

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

COs shall accept complaints of unlawful harassment directly from any member of the County School community or a visitor to the County 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 harassment or the nature of the alleged harassment), or the CO will designate a specific individual to conduct such a process. In the case of a complaint, the CO will prepare recommendations for the Superintendent or will oversee the preparation of such recommendations by a designee. All members of the County School community must report incidents of harassment that are reported to them to the CO at his/her first opportunity, but no later than two (2) business days of learning of the incident.

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

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

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

Investigation, Complaint Procedure and Recommendation

An individual who believes s/he has been subjected to harassment and/or violence (hereinafter referred to as the "Complainant"), may file a complaint, either orally or in writing, with a principal, the CO, Superintendent, or other County-level employee. Due to the sensitivity surrounding complaints of unlawful discrimination and retaliation, timelines are flexible for initiating the complaint process; however, individuals should make every effort to file a complaint within thirty (30) calendar days after the conduct occurs. If a Complainant informs a principal, Superintendent, or other County-level 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 informed of the status of the investigation and the decision-making process.

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

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

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

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

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

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

Simultaneously, the CO will inform the individual alleged to have engaged in the discriminatory or retaliatory conduct (hereinafter referred to as the "Respondent"), that a complaint has been received. The Respondent will be informed about the nature of the allegations and provided with a copy of any relevant policies and/or administrative guidelines, including Policy 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 will complete an investigation into the allegations of discrimination/retaliation as soon as practical, but no later than ten (10) business days of receiving the formal complaint. The investigation, at a minimum, must include:

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

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

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

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

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

If the Superintendent determines the Complainant was subjected to unlawful discrimination/retaliation, s/he must identify what corrective action will be taken to stop, remedy, and prevent the recurrence of the discrimination/retaliation. The corrective action should be reasonable, timely, age-appropriate and effective, and tailored to the specific situation.

A Complainant or Respondent who is dissatisfied with the final decision of the Superintendent may appeal through a signed written statement to the Board within five (5) business days of his/her receipt of the Superintendent's final decision.

In an attempt to resolve the complaint, the Board shall meet with the concerned parties and their representatives within twenty (20) business days of the receipt of such an appeal. A copy of the Board's disposition of the appeal shall be sent to each concerned party within ten (10) business days of this meeting. The decision of the Board will be final. (See Policy 9130—Public Complaints and West Virginia State Board of Education policy 7211—Appeals Procedure for Citizens.)

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

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

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

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 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).

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 during the course of the investigation.

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

Results of the Investigation

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

Discipline and Other Actions

In determining the appropriate response and/or punishment, the appropriate school official shall consider the surrounding circumstances, the nature of the behavior, past incidents or past or continuing patterns of behavior, the

relationships between the parties involved and the context in which the alleged incident occurred.

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

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

Retaliation

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

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

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

Student-Employee Relationships Prohibited

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

Non-Harassment

The Board recognizes that not every advance, conduct, or interaction of a racial, sexual or religious/ethnic or violent nature constitutes harassment. Whether a particular act, conduct, interaction, or incident is a personal, consensual,

welcome interaction or social relationship without discriminatory motivation or effect on employment or education status will be determined based upon consideration of all facts and surrounding circumstances.

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

Right to Alternative Complaint Procedures

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

Sexual Harassment as Abuse

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

Dissemination of the Policy

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

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

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

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

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

Implementation and Education

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

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

~~West Virginia State Board of Education policy 4373~~

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

~~29 C.F.R. Part 1635~~

~~20 U.S.C. 1681 et seq.~~

~~29 U.S.C. 621 et seq.~~

~~29 U.S.C. 794~~

~~42 U.S.C. 12101 et seq.~~

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

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

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

~~42 U.S.C. 1983~~

~~National School Boards Association Inquiry and Analysis—May 2008~~

Bullying

The Board of Education is committed to providing a safe, positive, productive, and nurturing educational environment for all of its students. The Board encourages the promotion of positive interpersonal relations between members of the school community. Bullying, including cyberbullying toward a student, whether by other students, staff, or third parties is strictly prohibited and will not be tolerated. The Board will not tolerate any gestures, comments, threats, or actions that cause or threaten to cause bodily harm or personal degradation. This policy applies to all school activities in the County, including school activities on and off of school property at any school-sponsored, school-approved or school-related activity or function, such as a field trip or athletic event where students are under the school's control, or where an employee is engaged in school business in monitoring student activity. This policy shall also apply to students while on a school bus and at a school bus stop. Students' off-campus misconduct that might reasonably be expected to cause disruption in the school may constitute a violation of this policy and cause the student to be subject to discipline at school. Such off-campus misconduct would include, but is in no manner limited to, blogs and social media postings and/or other electronic communications created for the purpose of inviting others to participate in disruptive, hateful, or otherwise prohibited misconduct towards a student, staff member, or other member of the school community.

This policy has been developed in consultation with parents/guardians, school employees, school volunteers, students, and community members as prescribed in WV Code 18-2C-3.

"Bullying" includes harassment, intimidation, or bullying, and cyberbullying as defined by WV Code 18-2C-2 and is defined as any intentional gesture and intentional written, verbal, or physical acts or threats, or any intentional electronic communication, transmission or threat that a reasonable person under the circumstances should know will have the effect of physically harming a student; damaging a student's property; placing a student in reasonable fear of harm to his/her person; or placing a student in reasonable fear of damage to his/her property; or is sufficiently severe, persistent or pervasive that it creates an intimidating, threatening or emotionally abusive educational environment for a student or disrupts or interferes with the orderly operation of the school.

"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.

Acts of harassment, intimidation, or bullying that are reasonably perceived as being motivated by any actual or perceived differentiating characteristic, or by association with a person who has or is perceived to have one or more of these characteristics, shall be reported using the following list: race; color; religion; ancestry; national origin; gender; socioeconomic status; academic status; gender identity or expression; physical appearance; sexual orientation; mental/physical/developmental/sensory disability; or other characteristic.

Any student or student's parent/guardian who believes the student has been or is the victim of bullying should immediately report the situation to the building principal or assistant principal. The student may also report concerns to a teacher, counselor or staff member with whom the student feels comfortable who will be responsible for notifying the appropriate administrator or Board official. Complaints against the building principal should be filed with the Superintendent. Complaints against the Superintendent should be filed with the Board President.

Every student is encouraged, and every staff member is required, to report any situation that they believe to be bullying directed toward a student. Failure of a faculty member or staff member to report an observed or reported incident of bullying shall result in disciplinary action.

Reports may be made to those identified above. Parents or guardians of any student alleged to have been the perpetrator or victim of bullying shall be notified of the same.

All complaints about bullying that may violate this policy shall be promptly investigated and that investigation shall be completed as soon as practicable. The building principal, or appropriate administrator, or a third party shall prepare a written report of the investigation upon completion. Such report shall include findings of fact, a determination of whether acts of bullying were verified, and, when prohibited acts are verified, a recommendation for intervention, including disciplinary action shall be included in the report. Where appropriate, written witness statements shall be attached to the report.

If, during an investigation of a reported act of harassment, intimidation and/or bullying/cyberbullying, the principal or appropriate administrator believes that the reported misconduct may have created a hostile learning environment and may have constituted unlawful discriminatory harassment based on race, color, national origin, sex (including transgender status, change of sex, or gender identity or expression), creed or religion, genetic information, disability, marital status, citizenship status, veteran status, military service, national origin, ancestry, socioeconomic status, academic status; physical appearance; sexual orientation; mental/physical/developmental sensory disability, or any other characteristic protected by law (collectively, "Protected Classes") in its educational programs or activities, the principal will report the act of bullying and/or harassment to one of the Anti-Harassment Compliance Officers so that it may be investigated in accordance with the procedures set forth in Policy 5517 - Anti-Harassment.

Employee investigators may take immediate steps, at their discretion, to protect the complainant, pupils, teachers, administrators or other personnel pending completion of an investigation of alleged bullying. The investigation must at a minimum consist of personal interviews with the complainant, the individual(s) against whom the complaint is filed, and others who may have knowledge of the alleged incident(s) or circumstances giving rise to the complaint. The investigation may also consist of any other methods and review of circumstances deemed pertinent by the investigator. The investigators shall determine whether the alleged conduct constitutes a violation of this policy. In determining the appropriate response and/or punishment, the school or facility administrator should 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 incidents occurred.

If the investigation finds an instance of bullying has occurred, it will result in prompt and appropriate remedial action. This may include up to expulsion for students, up to discharge for employee, exclusion for parents, guests, volunteers, and contractors, and removal from any official position and/or a request to resign for Board members. Individuals may also be referred to law enforcement officials.

Retaliation against any person who reports, is thought to have reported, files a complaint, or otherwise participates in an investigation or inquiry concerning allegations of bullying is prohibited and will not be tolerated. Such retaliation shall be considered a serious violation of Board policy and independent of whether a complaint is substantiated. Suspected retaliation should be reported in same manner as bullying. Making intentionally false reports about bullying for the purpose of getting someone in trouble is similarly prohibited and will not be tolerated. Retaliation and intentionally false reports may result in disciplinary action as indicated above.

If a student or other individual believes there has been bullying, regardless of whether it fits a particular definition, s/he should report it and allow the administration to determine the appropriate course of action.

This policy shall not be interpreted to infringe upon the First Amendment rights of students (i.e., to prohibit a reasoned and civil exchange of opinions, or debate, that is conducted at appropriate times and places during the school day and is protected by State or Federal law).

The complainant shall be notified of the findings of the investigation, and as appropriate, that remedial action has been taken.

Complaints

Students and/or their parents/guardians may file reports regarding suspected bullying. Such reports should attempt to provide the following information: person(s) involved, number of times and places of the alleged conduct, the target of suspected bullying, and the names of any potential student or staff witnesses. However, any report filed with any school staff member or administrator shall be promptly forwarded to the building principal for review, investigation, and action.

Students, parents/guardians, and school personnel may make informal complaints of conduct that they consider to be bullying by verbal report to a teacher, school administrator, or other school personnel. Such informal complaints should attempt to provide the following information: person(s) involved, number of times and places of the alleged conduct, the target of suspected harassment, intimidation, and/or bullying, and the names of any potential student or staff witnesses. A school staff member or administrator who receives an informal complaint shall promptly document the complaint in writing, including the information provided. This written report shall be promptly forwarded by the school staff member and/or administrator to the building principal for review, investigation, and appropriate action.

Students who make informal complaints as provided above may request that their name be maintained in confidence by the school staff member(s) and administrator(s) who receive the complaint, unless such confidence would violate any mandatory reporting requirements pursuant to State and Federal law. Anonymous complaints shall be reviewed and reasonable action shall be taken to address the situation, to the extent such action may be taken that (1) does not disclose the source of the complaint, when appropriate, and (2) is consistent with the due process rights of the student(s) alleged to have committed acts of harassment, intimidation, and/or bullying.

Right to Alternative Complaint Procedures

This policy does not deny the right of any individual to pursue other avenues of recourse which may include filing charges with the West Virginia Human Rights Commission, initiating civil action or seeking redress under the State criminal statutes and/or Federal law.

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 complaint is essential to the effectiveness of this policy. Only those individuals necessary for the investigation and resolution of the complaint shall be given information about it. Therefore, the right of confidentiality of complainants, subjects, witnesses, and investigators as per WV Code 18-2C-3 will be vigorously protected and

violations of such confidentiality may itself be grounds for disciplinary action.

However, a proper investigation will, in some circumstances, require the disclosure of names and allegations. In such circumstances, those involved shall make only those disclosures absolutely necessary to the final resolution of the complaint and completion of the investigation.

Strategies to Protect Victims

When responding to verified acts of bullying, the administration shall consider appropriate strategies to protect victims from additional bullying, and from retaliation following a report. Available strategies include, but are not limited to:

- A. supervising and disciplining offending students fairly and consistently;
- B. providing adult supervision during recess, lunch time, bathroom breaks and in the hallways during times of transition;
- C. maintaining contact with parents and guardians of all involved parties;
- D. providing counseling for the victim if assessed that it is needed;
- E. informing school personnel of the incident and instructing them to monitor the victim and the offending party for indications of bullying behavior; instructing personnel to intervene when prohibited behaviors are witnessed;
- F. checking with the victim daily to ensure that there have been no incidents of bullying or retaliation from the offender(s).

Reporting Requirement

The Board shall input incidents of bullying into the West Virginia Educational Information System (WVEIS) and compile an annual report regarding the means of bullying that have been reported to it and the reasons therefore, if known.

Allegations of criminal misconduct and suspected child abuse will be reported to the appropriate law enforcement agency and/or to Child Protective Services in accordance with statute. County board personnel shall cooperate with investigations by such agencies.

Immunity

A school employee, student or volunteer is individually immune from a cause of action for damages arising from reporting said incident, if that person:

- A. in good faith promptly reports an incident of bullying;
- B. makes the report to the appropriate school official as designated by policy; and
- C. makes the report in compliance with the procedures as specified in policy.

Notification

Notice of this policy shall appear annually in any student handbook and in any Board publication that sets forth the comprehensive rules, procedures and standards of conduct for the school.

Policy Training and Education

The Board will provide training, to the extent State or Federal funds are appropriated, on the bullying policy to school employees and volunteers who have direct contact with students and develop a process for educating students on the same.

The schools task forces, programs and other initiatives involving school staff, students, teachers, administrators, volunteers, parents, law enforcement and community members.

Training will be developed and implemented for students and staff on these regulations, their implications and on

means for effectively promoting the goals of this policy. The training, at a minimum must: raise awareness of the different types of bullying including cyberbullying, or "sexting", how it manifests itself, the devastating emotional and educational consequences, and its legal consequences. In addition, multicultural education programs must be developed and implemented for faculty, staff and students to foster an attitude of understanding and acceptance of individuals from a variety of cultural, ethnic, racial and religious backgrounds.

Information regarding this policy against bullying shall be incorporated into each school's current employee training program.

Liability

Except as provided in this section of this policy or under WV Code 18-2C-4, nothing in this policy prohibits a victim from seeking redress under any other provision of civil or criminal law.

The Superintendent is directed to develop administrative guidelines to implement this policy. Guidelines shall include reporting and investigative procedures, as needed. The complaint procedure established by the Superintendent shall be followed.

~~West Virginia State Board of Education policy 4373~~

~~WV Code 18-2C-1 through 6~~

Sexual Violence

~~The Board of Education does not discriminate on the basis of race, color, national origin, sex (including sexual orientation or transgender identity), disability, age (except as authorized by law), religion, military status, ancestry, or genetic information (collectively, "Protected Classes") in its education programs and activities.~~ The Board is committed to maintaining an education and work environment that is free from all forms of unlawful harassment, including sexual harassment.

Sexual harassment, including sexual violence, interferes with students' rights to receive an education free from discrimination, and, in the case of sexual violence, is a crime. Pursuant to its Title IX obligations, the Board is committed to eliminating sexual violence in all forms and will take appropriate action against any individual found responsible for violating this policy. To further its commitment against sexual violence, the Board provides reporting options, an investigative and disciplinary process, and other related services as appropriate.

This policy applies to all student complaints, whether filed by a student, his/her parent, an employee, or third party on the student's behalf. It applies to all County operations, programs, and activities, as well as to unlawful conduct occurring on school property or during a Board-sponsored activity. All students, administrators, teachers, staff, and all other school personnel share responsibility for avoiding, discouraging, and reporting any form of unlawful harassment.

Definitions

Sexual Harassment

As detailed further in ~~Policy 5517~~ this policy, sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal or physical conduct of a sexual nature. Sexual harassment may involve the behavior of a person of either gender against a person of the same or opposite gender.

Examples include, but are not limited to:

- A. unwelcome sexual propositions, invitations, solicitations, and flirtations;
- B. unwanted physical and/or sexual contact;

- C. threats or insinuations implying that a person's conditions of education may be adversely affected by not submitting to sexual advances;
- D. unwelcome sexual verbal expressions, including graphic sexual commentaries about a person's body, dress, appearance, or sexual activities; unwelcome sexually degrading language, jokes or innuendoes; unwelcome suggestive or insulting sounds or whistles; obscene telephone calls;
- E. sexually suggestive objects, pictures, videotapes, audio recordings or literature;
- F. unwelcome and inappropriate touching, patting, or pinching; obscene gestures;
- G. a pattern of conduct, which can be subtle in nature, that has sexual overtones and is intended to create or has the effect of creating discomfort and/or humiliation to another;
- H. speculations about a person's sexual activities or sexual history, or remarks about one's own sexual activities or sexual history;
- I. inappropriate boundary invasions into a student's personal space and personal life; and
- J. verbal, nonverbal or physical aggression, intimidation, or hostility based on sex or sex-stereotyping that does not involve conduct of a sexual nature.

Sexual Violence

Sexual violence, as used in this policy, refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent (e.g., due to the student's age, intellectual or other disability, or use of drugs or alcohol).

Sexual violence includes rape, sexual assault, sexual battery, sexual abuse, and sexual coercion. Sexual violence can be carried out by school employees, other students, or third parties. All such acts of sexual violence are forms of sexual harassment and, in turn, sex discrimination prohibited by Title IX.

Harassing conduct creates a hostile environment when it interferes with or limits a student's ability to participate in or benefit from the school's program. A single or isolated incident of sexual harassment may create a hostile environment if the incident is sufficiently severe. For example, a single instance of rape is sufficiently severe to create a hostile environment.

Anti Harassment Compliance Officers

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

Dr. William Chapman _____ Mrs. Melissa O'Brien

(Name) _____ (Name)

Personnel Director _____ Special Education Director

(County Title) _____ (County Title)

(304) 927-6406 _____ (304) 927-6411

(Telephone Number) _____ (Telephone Number)

813 Capitol St. _____ 813 Capitol St.

Spencer, WV 25276 _____ Spencer, WV 25276

(Office Address) _____ (Office Address)

wchapman@k12.wv.us _____ mobrien@k12.wv.us

(E-mail Address) _____ (E-mail Address)

~~The names, titles, and contact information of these individuals will be published annually in the staff handbooks and/or on the County's web site.~~

The Compliance Officers are available during regular school/work hours to discuss Title IX questions, sexual violence concerns, and to assist students, other members of the County community, and third parties. Compliance Officers shall accept sexual violence complaints directly from any members of the County community or a visitor to the County, as well as those initially filed within a school building administrator. Upon receiving a complaint, the Compliance Officer or designee will discuss confidentiality issues with the complainant (and his/her parent, if the complainant is a minor), and open an investigation as described below.

Complaint Procedures

Reporting

Students and Board employees are required, and parents, community members, and third parties are encouraged, to report sexual violence promptly to a teacher, administrator, supervisor, or other school official. Reports can be made orally or in writing, and should be as specific as possible. The person making the report shall identify the alleged victim, perpetrator(s), and witness(es), and describe in detail what occurred, including date(s), time(s), and location(s). The County, however, will investigate and address all reports to the extent possible.

A student has a right to file criminal and/or Title IX complaints simultaneously. A student does not need to wait until the Title IX investigation is completed before filing a criminal complaint. Likewise, questions or complaints relating to sexual violence or any other Title IX concerns may also be filed with the U.S. Department of Education's Office for Civil Rights.

Any teacher, administrator, supervisor, or other school employee or official who receives such a complaint shall file it with the County's Compliance Officer within two (2) school days, and shall comply with his/her mandatory reporting responsibilities pursuant to State law. The Compliance Officer will oversee the County's investigation and response to any Title IX-related complaints, but s/he may delegate the investigative process to another individual ("Designee"). The Board reserves the right to have the formal complaint investigation conducted by an external person in accordance with this policy.

Confidentiality

The County respects students' privacy and will only disclose information regarding alleged sexual violence to individuals who are responsible for handling the school's response, the student's parents (if the student is a minor or is considered a dependent under Section 152 of the Internal Revenue Code), or as otherwise required by law. During the course of a formal investigation, the Compliance Officer/designee will instruct all interviewees about the importance of maintaining confidentiality. Interviewees will be directed not to disclose any information that s/he learns or that s/he provides during the course of the investigation to third parties.

Students or their parents sometimes ask that the students' names not be disclosed to the alleged perpetrators or that no investigation or disciplinary action be pursued to address the alleged sexual violence. Upon such a request, the Compliance Officer/designee will inform the student and his/her parent that honoring the request may limit the County's ability to respond fully to the incident, including pursuing disciplinary action against the alleged perpetrator. The official will also explain that Title IX includes protections against retaliation, and that school officials will not only take steps to prevent retaliation but also take strong responsive action if it occurs.

Should the student or his/her parents continue to request complete confidentiality, the Compliance Officer/designee will balance the student's privacy request with the County's obligation to provide a safe and non-discriminatory environment for all students. Should the official determine that the County can honor the student's or parent's request

and remain in compliance with its Federal and State obligations, the County may limit its investigation and/or formal action against the alleged perpetrator. The County will, however, take other action to address the sexual violence. This may include increasing monitoring and security, offering schedule changes, and conducting climate surveys.

If the Compliance Officer/designee determines that the County must disclose the student's identity to an alleged perpetrator, s/he will inform the student and his/her parents prior to disclosure. The County will then afford interim protection measures to the student as appropriate.

Investigation

The County is committed to investigating all sexual violence complaints in an adequate, reliable, impartial, and prompt manner. The investigation will seek to determine whether the conduct occurred, and if so, what actions the school will take to end the sexual violence, eliminate the hostile environment, prevent its recurrence, and remedy its effects.

The investigation may include:

- A. interviewing the complainant, perpetrator, and any witnesses;
- B. reviewing law enforcement investigation documents;
- C. reviewing student and personnel files;
- D. gathering and examining other relevant documents or evidence; and
- E. providing a disciplinary hearing as needed.

The County affords both parties a balanced and fair process. Specifically, the complainant has the same rights throughout the proceeding as the alleged perpetrator. Both parties, for example, will have an equal opportunity to present relevant witnesses and other evidence at a disciplinary hearing. Likewise, the County's appeal process is available to both parties. The County, however, does not require complainants to be present for the hearing or appeal. Further, the County will not permit parties to personally question or cross-examine each other directly.

Additionally:

- A. The County permits both parties to have legal counsel or other advisors at any stage of the proceedings. Any restrictions on legal counsel participation apply to both parties equally.
- B. The County permits both parties to submit third-party testimony.
- C. The County permits both parties to be present for the entire hearing, but it will not require the complainant and alleged perpetrator to be present in the same room at the same time.

In resolving a complaint, the County uses a preponderance of the evidence standard, determining whether it is more likely that not that sexual violence occurred.

Timeline

The Compliance Officer/designee must contact the student, if age eighteen (18) or older, or the student's parents if under the age eighteen (18), within two (2) school days after receipt of a report of sexual violence to advise s/he/them of the Board's intent to investigate the alleged misconduct. The Compliance Officer/designee will also inform the alleged perpetrator of the opportunity to submit a written response to the complaint within five (5) business days. The County's investigation, including a disciplinary hearing process (but not appeal), may take up to sixty (60) calendar days to complete. This timeframe may be extended on a case-by-case basis, depending on the complexity and severity of the matter, criminal investigation requirements, and school breaks. During this period, the County will provide the complainant with periodic updates on the status of the investigation.

Interim Measures

During the investigation, the County will take interim steps to facilitate the complainant's equal access to its education

programs. These steps may include, but are not limited to: (1) notifying the complainant of his/her options to avoid contact with the alleged perpetrator; (2) allowing the complainant to change his/her academic, extracurricular, transportation, dining, and working situation as appropriate; and (3) informing complainant of other available resources, such as counseling, legal assistance, and victim advocacy. Specific interim measures will be considered and offered on a case-by-case basis.

Notice

Upon completing its investigation, the County will notify both parties in writing about the outcome of the complaint and any appeal. Specifically, the County will notify the complainant: (1) as to whether the investigation substantiated the allegations; (2) of individual remedies offered to the complainant; (3) of sanctions imposed on the perpetrator that directly relate to the complainant; and (4) other steps the County has taken to eliminate the hostile environment and prevent recurrence. The alleged perpetrator will be notified of the investigation's result and disciplinary consequence to him/her, if any. The County will not notify the alleged perpetrator about the individual remedies afforded to the complainant. All aforementioned notifications will comply with Federal and State privacy laws, including the Family Education Rights and Privacy Act (FERPA).

Remedies

The County will provide a prompt and equitable resolution. If the investigation substantiates the complaint, the County will take steps to end the sexual violence, eliminate the hostile environment, prevent its recurrence, and remedy its effects. In addition to imposing disciplinary consequences on the perpetrator, the County will consider the following individual and global remedies, on a case-by-case basis.

- A. providing medical, counseling, and academic support services to the complainant and/or perpetrator;
- B. re-arranging schedules at the complainant's request;
- C. affording the complainant extra time to complete or retake classes without academic penalty;
- D. reviewing any disciplinary proceedings against the complainant;
- E. training or retraining employees;
- F. developing materials on sexual violence;
- G. conducting sexual violence prevention programs; and
- H. conducting climate checks.

The County will not offer mediation in cases involving sexual violence. Disciplinary consequences against offenders may include suspension, expulsion, termination, and any other sanctions the Board deems appropriate. Any discipline meted out to offenders will comply with special education and Section 504 laws and regulations.

Appeals Process

Both complainants and perpetrators may appeal the outcome of the investigation. Any appeal opportunities afforded to the alleged perpetrator are also afforded to the complainant. Any party wishing to appeal the outcome of the investigation must submit a written appeal to the Board within ten (10) school days after receipt of the written notice of the outcome of the investigation. The Board shall, within twenty (20) work days, conduct a hearing concerning the appeal. The Board shall provide a written decision to the appealing individual within ten (10) work days following completion of the hearing.

Retaliation

Federal law strictly prohibits retaliation against a complainant or witness. The County will inform complainant of this prohibition and direct him/her to report retaliation, whether by students or school officials, to the Compliance Officer. Upon learning of retaliation, school officials will take strong responsive action as appropriate.

Training

All staff will be trained so they know to report harassment to appropriate school officials. This training will include practical information about how to identify and report sexual harassment, including sexual violence. The training will be provided to any employees likely to witness or receive complaints involving sexual harassment and/or sexual violence, including teachers, school law enforcement unit employees or school resource officers, school administrators, school counselors, and health personnel. Further, school administrators responsible for investigating allegations of sexual harassment and sexual violence will be trained how to conduct such investigations and respond properly to such charges.

~~20 U.S.C. 1681 et seq., Title IX of the Education Amendments of 1972 (Title IX)~~

~~20 U.S.C. 1400 et seq., The Individuals with Disabilities Education Improvement Act of 2004 (IDEIA)~~

~~42 U.S.C. 2000c et seq., Title IV of the Civil Rights Act of 1964~~

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

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

~~42 U.S.C. 1983~~

~~34 C.F.R. Part 106~~

~~Dear Colleague Letter on Sexual Violence (Office for Civil Rights, 2011)~~

~~OCR's Revised Sexual Harassment Guidance (2001)~~

Anti Harrassment of Persons with a Disability

~~It is the policy of the Board of Education to maintain an education and work environment which is free from harassment of a person with a mental, physical, developmental, or sensory disability. This commitment applies to all Board operations, programs, and activities. All students, administrators, teachers, staff, and all other school personnel share responsibility for avoiding, discouraging, and reporting disability harassment. This policy applies to unlawful conduct occurring on school property, or at another location if such conduct occurs during an activity sponsored by the Board.~~

~~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 which do not rise to the level of legally protected harassment under Federal law, but are, nonetheless behaviors that may occur on school grounds, at school sponsored events, on school buses, at school bus stops, and through school computer networks and through other electronic communication or transmission that will not be tolerated and must be appropriately identified, reported, investigated, and when substantiated, be the subject of appropriate disciplinary action. An electronic act, communication, transmission or threat includes but is not limited to one which is administered via telephone, wireless phone, computer, pager, or any electronic or wireless device whatsoever, and includes but is not limited to transmission of any image or voice, email or text message using any such device.~~

~~The Board will vigorously enforce its prohibition against harassment based on a disability and encourages those within the County School System community as well as third parties, who feel aggrieved to seek assistance to rectify the problems. The Board will investigate all allegations of harassment and in those cases where unlawful harassment is substantiated; the Board will take immediate steps to end the harassment. Individuals who are found to have engaged in unlawful harassment will be subject to appropriate disciplinary action.~~

~~For purposes of this policy, "County School System community" means students, administrators, teachers, staff, and all~~

other school personnel, including Board members, agents, volunteers, contractors, or other persons subject to the control and supervision of the Board.

For purposes of this policy, "third parties" include, but are not limited to, guests and/or visitors on County School System property (e.g., visiting speakers, participants on opposing athletic teams, parents), vendors doing business with, or seeking to do business with, the Board, and other individuals who come in contact with members of the County School System community at school related events/activities (whether on or off School property).

Prohibited disability harassment occurs when unwelcome physical, verbal, or nonverbal conduct is based upon an individual's disability and when:

- A. the conduct has the purpose or effect of interfering with the individual's or educational performance;
- B. creates an intimidating, hostile, or offense working and/or learning environment; or of
- C. 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 disabling condition, 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.

Reporting Procedures

—A. In Each School Building—The building principal is the person responsible for receiving oral or written reports of disability harassment at the building level. Upon receipt of a report of student conduct, the principal must notify the Human Rights Officer promptly, and shall commence investigation of the complaint. No later than ten (10) school days of receiving the complaint, a written report will be forwarded to the Human Rights Officer and to the Superintendent. — If the report alleges employee misconduct, the building principal must promptly notify the Human Rights Officer who will initiate, or direct, an investigation of the complaint. This investigation may conducted by school officials or third parties designated by the Superintendent. Within ten (10) school days of receiving the complaint, the investigating party shall provide a written status report to the Superintendent.

— Anytime the report is given to the building principal verbally, the principal shall reduce it to written form before the close of the next working day. If the complaint involves the building principal, the complaint shall be made directly to the Human Rights Officer.

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

—B. County-wide—The Board hereby designates its Title IX Coordinator as the Human Rights Officer to receive reports or complaints of Disability harassment from any individual, employee or victim of disability harassment and also from the building principals as outlined above. If the complaint involves the Human Rights Officer, the complaint or report shall be filed directly with the Superintendent, who shall then be responsible for the investigation and recommendation described in the Investigation and Recommendation section of this policy. The name of the Human Rights Officer, including a mailing address and telephone number, shall be conspicuously posted in the office of each school building and in other buildings to which employees of the Board are assigned to work.

—C. Submission of a complaint or report of disability harassment will not affect the future employment, grades, or work assignments of the person who submits the complaint or report.

—D. Use of formal reporting forms is not mandatory.

—E. All alleged incidents of harassment or violence observed by faculty, staff or other employees of the Board must

report the incident to either the building principal or the Human Rights Officer within twenty four (24) hours of observing the incident.

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

Investigation and Recommendation

The individual(s) designated by this policy to investigate, shall, upon receipt of a report or complaint alleging disability harassment, immediately will authorize an investigation. The investigation may be conducted by school officials or by a third party designated by the school officials if necessary. The investigating party shall provide a written report of the result of the investigation and a recommendation of discipline within ten (10) school days of receiving the complaint to the Superintendent and to the Human Rights Officer. If the Superintendent is the subject of the complaint, the report shall be submitted to the Human Rights Officer and to the President of the Board. The report shall include a determination of whether the allegations have been substantiated as factual and whether they appear to be violations of this policy.

In determining whether alleged conduct constitutes disability harassment, consideration shall be given to the surrounding circumstances, the nature of the conduct involved, relationships between the parties involved, and the context in which the alleged incidents occurred.

The investigation must, at a minimum, consist of personal interviews with the complainant, the individual(s) against whom the complaint is filed, and other who may have knowledge of the alleged incident(s) or circumstance(s) giving rise to the complaint. The investigation may also consist of any other methods, documents, and review of circumstances deemed pertinent by the investigator(s).

Confidentiality

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

Results of the Investigation

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

Discipline and Other Actions

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

—A. Upon receipt of a recommendation that the complaint is valid, the appropriate school official shall take action appropriate to the status of the offender (student, staff, or public guest). Such action for students may include all options listed in Policy 5600. Actions for staff may include, but not be limited to, warning, suspension, termination, revocation of license, 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 when an investigation shows that harassment 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.

Reprisal

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

Non-Harassment

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

Right to Alternative Complaint Procedures

These procedures do not deny the right of any individual to pursue other avenues of recourse which may include the filing of charges with the West Virginia Human Rights Commission, filing an employee grievance under WV Code 18-29-1, et seq., filing a citizen's appeal under West Virginia 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.

Dissemination of the Policy

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

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

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

~~goals of this policy.~~

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

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

~~Implementation and Education~~

~~The Human Rights Officer shall develop a program designed to raise the awareness of the different types of harassment, how it manifests itself, and its emotional, educational and legal consequences.~~

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

~~WV State Board policy 4373~~