

## **Policy 226 – Nondiscrimination and Access to Equal Educational Opportunity**

### **Revised policy effective upon passage**

<i>1<sup>st</sup> reading</i>	August 13, 2020
<i>2<sup>nd</sup> reading</i>	August 27, 2020 (tentative)
<i>3<sup>rd</sup> reading and Adopted</i>	September 10, 2020 (tentative)

### **Statutory authority**

#### **Administrative Guidelines**

(none)

Any form of discrimination or harassment can be devastating to an individual's academic progress, social relationship and/or personal sense of self-worth. As such, the Board of Education does not discriminate on the basis of race, color, national origin, sex (including transgender status, change of sex, or gender identity), 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. (See West Virginia Board of Education policy 4373)

The provisions of this policy shall apply to any and all situations in which discrimination or harassment under Title II of the Americans with Disabilities Act (as amended), Title VI and Title VII of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973 (as amended). Any such incident or allegation under Title IX of the Education Amendment Act of 1972 shall instead be considered under Policy 226.1.

In order to achieve the aforesaid goal, the Superintendent shall:

#### **A. Curriculum Content**

review current and proposed courses of study and textbooks to detect any bias based upon the Protected Classes ascertaining whether or not supplemental materials, singly or taken as a whole, fairly depict the contribution of both genders, various races, ethnic groups, etc. toward the development of human society;

Provide that necessary programs are available for students with limited use of the English language;

#### **B. Staff Training**

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

#### **C. Student Access**

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

#### **D. County Support**

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

#### **E. Student Evaluation**

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

#### **County Compliance Officers**

The Board designates the Superintendent and the Director of Special Education to serve as the County's "Compliance Officers" (also known as "Civil Rights Coordinators") (hereinafter referred to as the "COs").

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

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

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

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

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

Members of the County School community, that includes students or third parties, who believe they have been unlawfully discriminated/retaliated against are entitled to utilize the complaint process set forth below. Initiating a complaint, whether formally or informally, will not adversely affect the complaining individual's employment or participation in educational or extra-curricular programs. While there are no time limits for initiating complaints under this policy, individuals should make every effort to file a complaint as soon as possible after the conduct occurs while the facts are known and potential witnesses are available.

If, during an investigation of alleged bullying, aggressive behavior and/or the principal believes that the reported misconduct may constitute unlawful discrimination based on a Protected Class, the principal shall report the act to one of the COs who shall investigate the allegation in accordance with this policy. While the CO investigates the allegation,

the principal shall suspend his/her investigation to await the CO's written report. The CO shall keep the principal informed of the status of the investigation and provide him/her with a copy of the resulting written report.

The COs will be available during regular school/work hours to discuss concerns related to unlawful discrimination/retaliation. COs shall accept complaints of unlawful discrimination/retaliation 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 discrimination/retaliation or the nature of the alleged discrimination/retaliation, within the discretion of the CO), or the CO will designate a specific individual to conduct such a process. The CO will provide a copy of this policy to any person who files a complaint. In the case of a formal complaint, the CO will prepare recommendations for the Superintendent or oversee the preparation of such recommendations by a designee. All members of the County school community must report incidents of discrimination/retaliation that are reported to them to the CO at his/her first opportunity, but no later than two business days of learning of the incident/conduct.

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

#### *Investigation and Complaint Procedure*

Any student who believes that s/he has been subjected to unlawful discrimination or retaliation may seek resolution of his/her complaint through the procedures described below. The formal complaint procedures involve an investigation of the individual's claims and a process for rendering a decision regarding whether the charges are substantiated.

Due to the sensitivity surrounding complaints of unlawful discrimination or retaliation, time lines 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. Once the formal complaint process is begun, the investigation will be completed in a timely manner (ordinarily, within fifteen business days of the complaint being received).

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

#### *Formal Complaint Procedure*

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

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

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

If a change in work assignment or schedule is deemed necessary, consideration shall first be given to a change in the work assignment or schedule of the person alleged to have engaged in the misconduct. In making such a determination, the CO should consult the Complainant to assess his/her agreement to the proposed action. If the Complainant is unwilling to consent to the proposed change, the CO may still take whatever actions s/he deem appropriate in consultation with the Superintendent.

Within two business days of receiving the complaint, the CO will initiate a formal investigation to determine whether the Complainant has been subjected to unlawful discrimination/retaliation. A principal will not conduct an investigation unless directed to do so by the CO, but will follow the protocols established in West Virginia Board of Education policy 4373 to require that the investigation will be completed as soon as practicable but no later than ten school days following the reported violation.

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

The CO will complete an investigation into the allegations of discrimination/retaliation as soon as practical but no later than ten (10) business days of receiving the formal complaint. The investigation will include:

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

Pursuant to West Virginia State Board of Education policy 4373 at the conclusion of the investigation, the CO shall provide the principal with a written report that summarizes the evidence gathered during the investigation and recommendations based on the evidence and the definition of unlawful discrimination/retaliation as provided in Board policy and State and Federal law as to whether the Complainant has been subjected to unlawful discrimination/retaliation. The CO's recommendations must be based upon the totality of the circumstances, including the ages and maturity levels of those involved. In determining if unlawful discrimination or retaliation occurred, a preponderance of evidence standard will be used. The CO may consult with the Board's legal counsel before finalizing the report to the principal.

Further, at the conclusion of the investigation, the CO shall deliver the report provided to the principal to the Superintendent that summarizes the evidence gathered during the investigation and the recommendations given to the principal that were based on the evidence and the definition of unlawful discrimination/retaliation as provided in Board policy and State and Federal law as to whether the Complainant has been subjected to unlawful discrimination/retaliation.

Absent extenuating circumstances, within five (5) business days of receiving the report of the CO or designee, the Superintendent must either issue a final 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) days. At the conclusion of the additional investigation, the Superintendent shall issue a final written decision as described above.

If the Superintendent determines the Complainant was subjected to unlawful discrimination/retaliation, 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 student alleging the unlawful discrimination/retaliation pursues the complaint. The Board also reserves the right to have the formal complaint investigation conducted by an external person in accordance with this policy or in such other manner as deemed appropriate by the Board or its designee.

The Complainant 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*

The County School will employ all reasonable efforts to protect the rights of the Complainant, the Respondent(s) individual(s), and the witnesses as much as possible, consistent with the Board's legal obligations to investigate, to take appropriate action, and to conform with any discovery or disclosure obligations. All records generated under the terms of this policy shall be maintained as confidential to the extent permitted by law. Confidentiality, however, cannot be guaranteed. All Complainants proceeding through the formal investigation process will be advised that their identities may be disclosed to the Respondent(s).

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 records created as a part of an investigation of a complaint of discrimination/retaliation will be maintained by the CO in accordance with the Board's records retention policy. Any records that are considered student education records in accordance with the Family Educational Rights and Privacy Act or under student records law will be maintained in a manner consistent with the provisions of the Federal and State law.

### *Sanctions and Monitoring*

The Board shall vigorously enforce its prohibitions against unlawful discrimination/retaliation by taking appropriate action reasonably calculated to stop and prevent further misconduct. While observing the principles of due process, a violation of this policy may result in disciplinary action up to and including the discharge of an employee or the suspension/expulsion of a student. All disciplinary action will be taken in accordance with applicable State law and the terms of the relevant collective bargaining agreement(s). When imposing discipline, the Superintendent shall consider the totality of the circumstances involved in the matter, including the ages and maturity levels of those involved. In those cases where unlawful discrimination/retaliation is not substantiated, the Board may consider whether the alleged conduct nevertheless warrants discipline in accordance with other Board policies, consistent with the terms of the relevant collective bargaining agreement(s).

Where the Board becomes aware that a prior remedial action has been taken against a member of the County School community, all subsequent sanctions imposed by the Board and/or Superintendent shall be reasonably calculated to end such conduct, prevent its reoccurrence, and remedy its effects.

### *Retaliation*

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

### *Education and Training*

In support of this policy, the Board promotes preventative educational measures to create greater awareness of unlawful discriminatory practices. The Superintendent or designee shall provide appropriate information to all members of the County school community related to the implementation of this policy and shall provide training for County students and staff where appropriate. All training, as well as all information, provided regarding the Board's policy and discrimination in general, will be age and content appropriate.

## **Section 504 / ADA Prohibition Against Discrimination Based on Disability**

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

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

Major life activities also include the operation of a major bodily function, including, but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

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

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

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

- A. who is of an age during which nondisabled persons are provided educational services;
- B. who is of any age during which it is mandatory under West Virginia law to provide educational services to disabled persons; or
- C. to whom the State is required to provide a free appropriate public education pursuant to the Individuals with Disabilities Education Improvement Act (IDEIA).

With respect to vocational education services, a qualified person with a disability means a disabled person who meets the academic and technical standards requisite to admission or participation in the vocational program or activity.

#### *Compliance Officer(s)*

The Board designates the Superintendent and Director of ~~Special Education~~ Student Support Services to serve as the County's 504 Compliance Officer(s)/ADA Coordinator(s) (hereinafter referred to as the "County CO(s)").

The name(s), title(s), and contact information of this/these individual(s) will be published in the parent/student and staff handbooks and/or on the County's web site.

Building principals shall serve as Building Section 504/ADA Compliance Officer(s) ("Building Compliance Officers").

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

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

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

#### *Training*

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

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

### *Facilities*

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

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

### *Education*

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

An appropriate education may include regular or special education and related aids and services to accommodate the unique needs of students with disabilities. For disabled students who are not eligible for specially designed instruction under the IDEIA, the special education and related aids and services (including accommodations/modifications/interventions) they need in order to have their needs met as adequately as the needs of nondisabled students are met, shall be delineated, along with their placement, in a Section 504 Plan (Form 2260.01A F13). Parents/guardians/custodians ("parents") are invited and encouraged to participate fully in the evaluation process and development of a Section 504 Plan.

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

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

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

### *Notice*



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

### *Complaint Procedures*

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

In accordance with Section 504 of the Rehabilitation Act of 1973 and its implementing regulations ("Section 504"), parents and students will be notified of their right to file an internal complaint regarding an alleged violation, misinterpretation, or misapplication of Section 504. In addition, students and their parents will be notified of their right to file a complaint with the U.S. Department of Education's Office for Civil Rights. Finally, students and parents will be advised of their right to request a due process hearing before an Impartial Hearing Officer (IHO) regarding the identification, evaluation, or educational placement of persons with disabilities, and their right to examine relevant education records.

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

### *Internal Complaint Procedures*

An internal complaint may be filed by a student and/or parent. A student and/or parent may initiate the internal complaint procedure when s/he/they believe that a violation, misapplication, or misinterpretation of Section 504 has occurred. Additionally, the following procedure may be used for any disagreement with respect to actions regarding the identification, evaluation, or educational program or placement of students who are identified as disabled or believed to be disabled pursuant to Section 504, and are not eligible under the IDEIA, except in the case of disciplinary actions where the provisions of the Student Code of Conduct apply. Use of the internal complaint procedure is not a prerequisite to the pursuit of other remedies, including the filing of a complaint with the U.S. Department of Education's Office for Civil Rights or requesting a due process hearing.

#### **Step 1**

**Investigation by the Building CO:** A student or parent may initiate an investigation by filing a written internal complaint with the Building CO. The complaint should fully describe the circumstances giving rise to the dispute and how the child is adversely affected. The complaint must be filed as soon as possible, but not longer than thirty (30) calendar days after disclosure of the facts giving rise to the complaint. The Building CO shall conduct an impartial investigation of the complaint. As part of the investigation, the Building CO shall permit the complainant to present witnesses and other evidence in support of the complaint. The investigation shall be completed within fifteen (15) school days of the written complaint being filed. The Building CO will notify the complainant in writing of his/her decision.

#### **Step 2**

**Appeal to the CO:** If the complaint is not resolved satisfactorily at Step 1, the student or parent may appeal the Building CO's decision in writing to the CO. The appeal must be made within five (5) school days following receipt of the Building CO's decision. The CO will review the case, may conduct an informal hearing, and will notify all parties in writing of his/her decision within ten (10) school days of receiving the appeal.

#### **Step 3**

If the complaint is not resolved satisfactorily at Step 2, the student or parent may request a due process hearing, provided the complaint involves an issue related to the identification, evaluation, or placement of the student.

If it is determined that the Complainant was subjected to unlawful discrimination, the Building COs and County COs must identify what corrective action will be taken to stop, remedy, and prevent the recurrence of the discrimination/retaliation. The corrective action should be reasonable, timely, age-appropriate and effective, and tailored to the specific situation.

#### *OCR Complaint*

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

U.S. Department Health and Human Services

Office for Civil Rights

Philadelphia

150 S. Independence Mall West, Suite 372,

Public Ledge Building

Philadelphia, PA 19016-9111

Main Line: (800) 368 – 1019

FAX: (215) 861-4431

TDD: (800) 537-7697

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

#### *Retaliation*

Retaliation against a person who makes a report or files a complaint alleging unlawful discrimination, 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 Section 504 or the ADA, or because that individual made a charge, testified, assisted or participated in any manner in an investigation, proceeding, or hearing under those laws, or because that individual exercised, enjoyed, aided, or encouraged any other person in the exercise or enjoyment of any right granted or protected by those laws.

#### **Single-Gender Classes and Activities**

The Board of Education does not discriminate based on gender or any other protected class. Equal educational opportunities are available to all students regardless of race, color, national origin, sex (including sexual orientation and transgender identity), disability, age (except as authorized by law), religion, military status, ancestry, or genetic information. The Board recognizes, however, that some circumstances may prompt program coordinators or administrators to offer a single-gender class or activity. This policy delineates the circumstances permitting administrators to create single-gender educational offerings, and addresses additional requirements for such programs. The County's Title IX Officer(s) is responsible for overseeing compliance with this policy.

This policy addresses traditional non-vocational classes, as well as extracurricular activities and programs, including field trips, lunch, and recess. The policy applies regardless of whether the County administers a program directly or through another entity. This policy, however, does not apply to single-gender schools or athletic programs.

#### *General Requirements and Overview*

The County may offer single-gender programs when needed to achieve an important objective, and the single-gender

nature of the class is substantially related to that objective. Only two objectives are allowed:

- A. improving achievement through providing diverse educational opportunities; or
- B. meeting a particular, identified educational need.

Further, these objectives shall be met in an evenhanded manner, and staff shall provide a substantially equal coeducational class for each subject. Additionally, student enrollment in the single-gender program shall be completely voluntary. The Superintendent shall conduct an annual evaluation to verify that the program complies with these requirements and established administrative guidelines.

#### *Students with Special Requirements*

Students with disabilities or language challenges shall not be excluded from single gender classes because of their needs.

#### **Programs of Study for Limited English Proficient Students**

A limited English proficient (LEP) student in the State of West Virginia is classified according to the Federal government definition as described in Public Law 107-110, the No Child Left Behind Act of 2001. An LEP student is classified as one:

- A. who is aged 3 through 21;
- B. who is enrolled or preparing to enroll in an elementary school or secondary school;
- C. who was not born in the United States or whose native language is a language other than English; or
  - 1. who is a Native American or Alaska Native, or a native resident of outlying areas; and who comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or
  - 2. who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant;
- D. whose difficulties speaking, reading, writing, or understanding the English language may be sufficient to deny the individual:
  - 1. the ability to meet the West Virginia Department of Education proficiency level of achievement on State assessments;
  - 2. the ability to achieve successfully in classrooms where the language of instruction is English;
  - 3. the opportunity to participate fully in society.

The criteria for English Language Proficiency (hereinafter referred to as "ELP") (exit LEP status) are:

- A. student no longer meets the definition of LEP;
- B. student no longer participates in alternative language programs nor receives monitoring services;
- C. student scores at composite level five on the West Virginia English Language Proficiency Assessment for two (2) consecutive years or tests proficient for two (2) consecutive years on the Alternate Assessment;
- D. student scores at level three or four or above on the West Virginia General Summative Assessment for English Language Arts/Literacy at the assessed grade levels;
- E. student scores at target or above on the Alternate Assessment.

"Follow Content Standard" (FCS) signifies that students should follow the content standards and objectives for Reading and English Language Arts as a guideline, implementing the ELP standard when appropriate for their grade level.

The County shall identify LEP students within thirty (30) days of enrollment based on criteria established by the West Virginia Department of Education and available through the Office of Federal Programs.

The County shall use the ELP standards as a framework for providing a scientifically research-based alternative language program. The purpose of the program is to facilitate the student's achievement of English proficiency and the academic content standards as set forth in West Virginia State Board of Education policy 2520.1 through policy 2520.15, Content Standards and Objectives for West Virginia Schools.

The County shall seek highly qualified teachers to deliver the alternative language program and shall provide on-going, sustained, annual opportunities for professional development.

The County shall annually address classroom and assessment accommodations through an LEP committee for each LEP student participating in the alternative language program.

All public school students identified as LEP shall participate in the West Virginia Measures of Academic Progress (WVMAP) as set forth in the West Virginia Board of Education Policy 2340 as determined by the LEP committee. Using the LEP Assessment Participation Form, the committee will annually determine the appropriate accommodations.

The County shall conduct an annual assessment of LEP students' English language proficiency using the WESTELL during the testing window established by the WVDE.

The County Title III Director shall be responsible for the collection and maintenance of LEP student data using the West Virginia Education Information System (WVEIS).

When the LEP student is a student with an exceptionality, as identified under West Virginia ~~State~~ Board of Education Policy 2419, Regulations for the Education of Exceptional Students and/or Section 504 of The Rehabilitation Act of 1973, Public Law 93-112, the respective IEP Team/LEP committee or Section 504 committee/LEP committee shall determine the student's appropriate WVMAP assessment participation as set forth in policy 2340.

The County shall promote the involvement of parents of LEP students in the educational program of their children.

The County shall exit LEP students from the alternative language program based on criteria established by the WVDE and available through the Office of Federal Programs.

A copy of the English Language Proficiency Standards and Objectives for West Virginia Schools is attached and incorporated by reference into this policy.