

DISCRIMINATION, HARASSMENT AND BULLYING COMPLAINT PROCEDURE

Policy Code: 1720/4015/7225

The board takes seriously all complaints of unlawful discrimination, harassment and bullying. The process provided in this policy is designed for those individuals who believe that they may have been discriminated against, bullied or harassed in violation of policy 1710/4021/7230, Prohibition Against Discrimination, Harassment and Bullying. Individuals who have witnessed or have reliable information that another person has been subject to unlawful discrimination, harassment or bullying also should report such violations to one of the school system officials listed in subsection C.1. of this policy. Reports may be made anonymously.

A. DEFINITIONS

1. Alleged Perpetrator

The alleged perpetrator is the individual alleged to have discriminated against, harassed or bullied the complainant.

2. Complaint

A complaint is an oral or written notification made by a person who believes he or she is the victim of unlawful discrimination, harassment or bullying.

3. Complainant

The complainant is the individual complaining of being discriminated against, harassed or bullied.

4. Days

Days are the working days, exclusive of Saturdays, Sundays, vacation days or holidays, as set forth in the school calendar. In counting days, the first day will be the first full working day following receipt of the complaint. When a complaint is submitted on or after May 1, time limits will consist of all weekdays (Monday–Friday) so that the matter may be resolved before the close of the school term or as soon thereafter as possible.

5. Investigative Report

The investigative report is a written account of the findings of the investigation conducted in response to a complaint.

6. Investigator

The investigator is the school official responsible for investigating and responding

to the complaint.

7. Report

A report is an oral or written notification that an individual, other than the reporter, is a suspected perpetrator or victim of unlawful discrimination, harassment or bullying.

8. Serious bullying

Serious bullying occurs when (1) one incident of bullying inflicts more than trivial physical or psychological injury; or (2) two or more bullying incidents in a school year involve the same victim or perpetrator. (“Bullying” is defined in policy 1710/4021/7230.)

B. REPORTING BY EMPLOYEES OR OTHER THIRD PARTIES

1. Mandatory Reporting by School Employees

Any employee who witnessed or who has reliable information or reason to believe that an individual may have been discriminated against, harassed or bullied in violation of policy 1710/4021/7230 must report the offense immediately to an appropriate individual designated in subsection C.1., below. An employee who does not promptly report possible discrimination, harassment or bullying shall be subject to disciplinary action.

2. Reporting by Other Third Parties

All members of the school community including students, parents, volunteers and visitors are also strongly encouraged to report any act that may constitute an incident of discrimination, harassment or bullying.

3. Anonymous Reporting

Reports of discrimination, harassment or bullying may be made anonymously but formal disciplinary action may not be taken solely on the basis of an anonymous report.

4. Investigation of Reports

Reports of discrimination, harassment or serious bullying shall be investigated sufficiently to determine whether further action under this policy or otherwise is necessary, and school officials shall take such action as appropriate under the circumstances. At the option of the alleged victim, the report may be treated as a complaint by the alleged victim under this policy.

Investigations of reports under this subsection shall be performed in accordance with section D.2 below. In such investigations, where section D. 2 refers to “complainant” the term “alleged victim” will be substituted as required by context. The investigator shall prepare and file a report and otherwise proceed as provided in section D.3 below except the investigator is not required to notify the person filing the report of the results of the investigation.

C. COMPLAINTS BROUGHT BY ALLEGED VICTIMS OF DISCRIMINATION, HARASSMENT OR BULLYING

1. Filing a Complaint

Any individual, who believes that he or she has been discriminated against, harassed or bullied is strongly encouraged to file a complaint orally or in writing to any of the following individuals:

- a. for a student, to the student’s teacher, the principal or the assistant principal at the student’s school;
- b. for an employee, to an immediate supervisor;
- c. if the designated recipient of a complaint is the alleged perpetrator, the complaint should be filed with the next person in the following line: (1) the assistant superintendent of human resources; (2) the superintendent; (3) the chairman of the board of education;
- d. in addition to the above, any student or employee shall have the right to file a complaint directly with the Title IX coordinator for claims of sex discrimination or sexual harassment; and
- e. in addition to the above, any student or employee shall have the right to file a complaint directly with the Section 504 coordinator or the ADA coordinator for claims of discrimination on the basis of a disability.

Any school official who receives a complaint of sex discrimination or sexual harassment shall forward such complaint to the Title IX coordinator and any school official who receives a complaint of discrimination on the basis of a disability shall forward such complaint to the Section 504 coordinator or the ADA coordinator.

2. Time Period for Filing a Complaint

A complaint should be filed as soon as possible but no later than 30 days after disclosure or discovery of the facts giving rise to the complaint. Complaints submitted after the 30-day period may be investigated; however, individuals should recognize that delays in reporting may significantly impair the ability of

school officials to investigate and respond to such complaints.

3. Informal Resolution

The board acknowledges that many complaints may be addressed informally through such methods as conferences or mediation, and the board encourages the use of such procedures to the extent possible. If an informal process is used, the principal or other designated personnel must (1) notify the complainant that he or she has the option to request formal procedures at any time and (2) make a copy of this policy and other relevant policies available to the complainant. In those circumstances in which informal procedures fail or are inappropriate or in which the complainant requests formal procedures, the complaints will be investigated promptly, impartially and thoroughly according to the procedures outlined in the remainder of this policy.

D. PROCESS FOR ADDRESSING COMPLAINTS OF ALLEGED INCIDENTS OF DISCRIMINATION, HARASSMENT OR BULLYING

1. Initiating the Investigation

- a. Whoever receives a complaint of discrimination, harassment or bullying pursuant to subsection C.1. shall immediately notify the appropriate investigator who shall respond to the complaint and investigate. The investigator of a complaint is determined as follows:
 - i. If the alleged incident occurred under the jurisdiction of the principal, the investigator is the principal or designee, unless the alleged perpetrator is the principal, the assistant superintendent of human resources, the superintendent or a member of the board. If the alleged perpetrator is any other employee, the principal or designee shall conduct the investigation in consultation with the assistant superintendent of human resources or designee.
 - ii. If the alleged perpetrator is the principal, the assistant superintendent of human resources or designee is the investigator.
 - iii. If the alleged incident occurred outside of the jurisdiction of a principal (for example, at the central office), the assistant superintendent of human resources or designee is the investigator unless the alleged perpetrator is the assistant superintendent of human resources, the superintendent or a member of the board.
 - iv. If the alleged perpetrator is the assistant superintendent for human resources, the superintendent or designee is the investigator.
 - v. If the alleged perpetrator is the superintendent, the board attorney

or such other person designated by the board attorney is the investigator. (In such cases, whoever receives a complaint of discrimination, harassment or bullying shall immediately notify the assistant superintendent of human resources who shall immediately notify the board chair. The board chair shall direct the board attorney to respond to the complaint and investigate.)

- vi. If the alleged perpetrator is a member of the board, the board attorney or such other person designated by the board attorney is the investigator. (In such cases, whoever receives a complaint of discrimination, harassment or bullying shall immediately notify the superintendent who shall direct the board attorney to respond to the complaint and investigate. Unless the board chair is the alleged perpetrator, the superintendent shall also notify the board chair of the complaint.)
- b. As applicable, the investigator shall immediately notify the Title IX, Section 504 or ADA coordinator of the complaint, and, as appropriate, may designate the coordinator to conduct the investigation.
- c. The investigator shall explain the process of the investigation to the complainant and inquire as to whether the complainant would like to suggest a course of corrective action.
- d. Written documentation of all reports and complaints, as well as the school system's response, must be maintained in accordance with policy 1710/4021/7230.
- e. Failure to investigate and/or address claims of discrimination, harassment or bullying shall result in disciplinary action.

2. Conducting the Investigation

- a. The investigator is responsible for determining whether the alleged act(s) constitutes a violation of policy 1710/4021/7230. In so doing, the investigator shall impartially, promptly and thoroughly investigate the complaint. The investigator shall interview (1) the complainant; (2) the alleged perpetrator(s); and (3) any other individuals, including other possible victims, who may have relevant information.

School officials should be particularly sensitive to the fact that anonymous reports can be fraught with personal retribution, improper motives and abuse. As a result, investigations based on anonymous reports should be conducted with extreme care and should initially include an interview with any witnesses who could confirm or refute the allegation and should also include an interview with the alleged victim or class of victims, unless

there is compelling reasons not to conduct such interviews at the initial stage of an investigation. After these initial steps, if the investigator finds no substantiation that the alleged perpetrator has engaged in discrimination, harassment or bullying, the investigator may elect to end the investigation. In such case, however, the investigator should make a report of the anonymous complaint to the assistant superintendent who is responsible for personnel and both the investigator and the assistant superintendent shall, to the extent practical, be sensitive to any developing patterns of conduct by the alleged perpetrator consistent with discrimination, harassment or bullying, and if those patterns develop, shall respond accordingly.

- b. Information may be shared only with individuals who need the information in order to investigate and address the complaint appropriately. Any requests by the complainant for confidentiality shall be evaluated within the context of the legal responsibilities of the school system. Any complaints withdrawn to protect confidentiality must be recorded in accordance with policy 1710/4021/7230.
- c. The investigator shall review the factual information gathered through the investigation to determine whether the alleged conduct constitutes discrimination, harassment or bullying, giving consideration to all factual information, the context in which the alleged incidents occurred, the age and maturity of the complainant and alleged perpetrator(s), and any other relevant circumstances.

3. Investigative Report

- a. The investigator shall submit a written investigative report to the superintendent and, as applicable, to the Title IX, Section 504 or ADA coordinator.
- b. The investigator shall notify the complainant of the results of the investigation within 15 days of receiving the complaint, unless additional time is necessary to conduct an impartial, thorough investigation. The investigator shall specify whether the complaint was substantiated and, if so, shall also specify:
 - i. reasonable, timely, age-appropriate, corrective action intended to end the discrimination, harassment or bullying and prevent it from recurring;
 - ii. as needed, reasonable steps to address the effects of the discrimination, harassment or bullying on the complainant; and
 - iii. as needed, reasonable steps to protect the complainant from

retaliation as a result of communicating the complaint.

- c. Information regarding specific disciplinary action imposed on the alleged perpetrator(s) will not be given to the complainant unless the information relates directly to the complainant (e.g., an order requiring the perpetrator not to have contact with the complainant).
- d. If the investigator determines that the complaint was substantiated, the perpetrator(s) shall be subject to discipline or other corrective steps, as described in policy 1710/4021/7230. If the corrective steps involve actions outside the scope of the investigator's authority, the superintendent will be notified so that responsibility for taking the corrective steps may be delegated to the appropriate individual.
- e. Each alleged perpetrator will be provided with a written summary of the results of the investigation in regard to whether, the complaint was substantiated, whether the alleged perpetrator violated relevant law or board policies by his or her actions, and what, if any, disciplinary actions or consequences will be imposed upon the perpetrator, or recommended for imposition, in accordance with board policy. All disciplinary action against the alleged perpetrator will be taken pursuant to board policy and, if applicable, law.

4. Appeal of Investigative Report

- a. If the complainant is dissatisfied with the investigative report, he or she may appeal the decision to the superintendent (unless the alleged perpetrator is the superintendent, in which cases the complainant may appeal directly to the board in accordance with the procedure described in subsection E.4.b below). The appeal must be submitted in writing within five days of receiving the investigative report. The superintendent may review the documents, conduct any further investigation necessary or take any other steps the superintendent determines to be appropriate in order to respond to the complaint. The superintendent shall provide a written response within 10 days after receiving the appeal, unless further investigation is needed.
- b. If the complaint is against the superintendent, and the appeal is to the board, the board will respond within a reasonable time after receiving the appeal taking into account its normal meeting schedule.
- c. If the complainant is dissatisfied with the superintendent's response, he or she may appeal the decision to the board within five days of receiving the superintendent's response. The board will review the documents, direct that further investigation be conducted if the board determines further investigation advisable, and take any other steps that the board determines

to be appropriate in order to respond to the complaint. Upon request of the complainant, and if the complainant is entitled to a hearing, the board will hold a hearing pursuant North Carolina General Statute 115C-45(c). Any such hearing will be held by the board within a reasonable time after receiving the appeal taking into account its normal meeting schedule. Decisions will be issued within a reasonable time after the hearing.

E. TIMELINESS OF PROCESS

The number of days indicated at each step of the process should be considered a maximum. Every effort should be made to expedite the process. However, and notwithstanding the time sensitivity in processing complaints under this policy, the overriding concern during the *investigatory stage* is a full, fair and thorough investigation and if the investigator or reviewer needs additional time in order to complete his or her work, he or she may seek an extension of time from the superintendent (or from the chairman of the board if the superintendent is the investigator). The reason for an extension of time shall be documented and each time extension granted shall also be documented. The complainant will be advised of all extensions of time to complete the investigation that are granted and the reasons for such extension.

If any school official charged with investigating the complaint or reviewing the investigation fails at any step in the process to communicate a decision within the specified time limit, the complainant will be entitled to appeal the complaint to the next step unless the official has notified the complainant of the delay and the reason for the delay, such as the complexity of the investigation, review or report. The school official shall make reasonable efforts to keep the complainant apprised of progress being made during any period of delay. Delays that interfere with the exercise of any legal rights are not permitted.

Failure by the complainant at any step in the process to appeal a complaint to the next step within the specified time limit will be considered acceptance of the decision at that step, unless the complainant has notified the investigator of a delay and the reason for the delay and the investigator has consented in writing to the delay.

F. GENERAL REQUIREMENTS

1. No reprisals or retaliation of any kind will be taken by the board or by an employee of the school system against the complainant or other individual on account of his or her filing a complaint or report or participating in an investigation of a complaint or report filed and decided pursuant to this policy, unless the person knew or had reason to believe that the complaint or report was false or knowingly provided false information.
2. All meetings and hearings conducted pursuant to this policy will be private.
3. The board and school system officials will consider requests to hear complaints

from a group, but the board and officials have the discretion to hear and respond to complainants individually.

4. The complainant may be represented by an advocate, such as an attorney, at any meeting with school system officials.
5. Should, in the judgment of the superintendent or designee, the investigation or processing of a complaint require that an employee be absent from regular work assignments, such absences shall be excused without loss of pay or benefits. This shall not prevent the superintendent or designee from suspending the alleged perpetrator without pay during the course of the investigation.

G. RECORDS

Records will be maintained as required by policy 1710/4021/7230.

Legal References: Age Discrimination in Employment Act of 1967, 29 U.S.C. 621 *et seq.*; Americans With Disabilities Act, 42 U.S.C. 12101 *et seq.*, 28 C.F.R. pt. 35; Family Educational Rights and Privacy Act, 20 U.S.C. 1232g; Rehabilitation Act of 1973, 29 U.S.C. 705(20), 794, 34 C.F.R. pt. 104; Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.*, 34 C.F.R. pt. 100; Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.*, 29 C.F.R. pt. 1604; Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.*, 34 C.F.R. pt. 106; *Racial Incidents and Harassment Against Students at Educational Institutions: Investigative Guidance*, U.S. Department of Education, Office for Civil Rights (1994); *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties*, U.S. Department of Education, Office for Civil Rights (2001); *Gebser v. Lago Vista Independent School District*, 524 U.S. 274, (1998); *Davis v. Monroe County Board of Education*, 526 U.S. 629 (1999); G.S. 115C-407.10; State Board of Education Policy HRS-A-007

Cross References: Prohibition Against Discrimination, Harassment and Bullying (policy 1710/4021/7230), Student and Parent Grievance Procedure (policy 1740/4010), Hearings Before the Board (policy 2500), Assaults, Threats and Harassment (policy 4331)

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