

# SEXUAL HARASSMENT / SEXUAL DISCRIMINATION

## The Importance of the Discussion (An Overview)

- Sexual harassment lawsuits are serious legal threats to schools in terms of legal liability, damage to the learning environment and loss of community support. Adverse judgments can and do cost thousands of dollars. Even where the claim lacks merit, defense is extremely costly in legal fees, loss of time and disruption. Clearly, these cases present the classic situation where an ounce of prevention is worth a pound of cure.
- Sexual harassment has been found to be a form of sexual discrimination.
- For schools, sexual harassment cases fit into two categories:
  - Employee complaints brought under Title VII of the Civil Rights Act of 1964 which is designed to prevent discrimination in the workplace on the basis of race, sex, religion, color and national origin:
  - Student complaints brought under Title IX of the Educational Amendment of 1972 which was enacted to rid educational institutions of sex discrimination.
- Plaintiffs (be they employees or students) may also assert sexual harassment complaints under the Fourteenth Amendment to the U.S. Constitution or other relevant state statutes.

## I. SEXUAL HARASSMENT OF EMPLOYEES

### A. Generally

- Title VII of the Civil Rights Act of 1964 makes it an unlawful employment practice for an employer “to fail or refuse to hire or to discharge any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s...sex” 42 U.S.C. § 2000c
- Equal Employment Opportunity Commission (EEOC) Guidelines makes clear that sexual harassment violates Title VII. 1
- Note – the critical inquiry is whether the sexual conduct is unwelcome. It is not a defense that the complainant participated voluntarily in the conduct.

1 “Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission

to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission or reflection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment." 29 C.F.R. § 1604.11 (a)

## **B. Types of Harassment**

### **(1) *Quid Pro Quo* Sexual Harassment**

- Occurs when an individual with authority makes threats or promises to give or withhold something in exchange for sexual favors. The Employee does have to have consented in order to pursue claim.

### **(2) Hostile Environment Sexual Harassment**

- Must be sufficiently severe or pervasive to alter the conditions of the victims employment and create an abusive working environment." *Menitor Savings Bank*, 477 U.S. at 67. It may include:
  - a pattern of misconduct such as sexist remarks or sexual touching;
  - one very severe incident, such as sexual assault; or
  - offensive surroundings, such as pornography or graffiti.
- What factors are considered in determining a hostile environment?
  - Was the conduct verbal or physical, or both
  - Frequency of the conduct
  - Was the conduct hostile and patently offensive
  - Were others involved
  - Was the harassment directed at more than one individual
- Complainant does not have to show tangible harm – only that the misconduct interfered with his work on educational activities. Also, a psychological injury does not have to be shown. It is enough that the environment would reasonably be perceived, or was perceived, as hostile or abusive. *Harris v. Forklift Systems*, 510 U.S. 17 (1993)

### **C. Same Gender Harassment**

- May be actionable under Title VII. This does not require homosexual context. The crucial issue is whether members of one sex are exposed to disadvantageous terms or conditions of employment to which members of the other sex are not exposed. *Oncak v. Sundowner Offshore Services*, 523 U.S. 75 (1998)

### **D. School District Liability For Harassment of Employees**

#### **(1) By Supervisors**

- An employee is subject to vicarious liability under Title VII for an actionable hostile environment created by a supervisor with authority over an employee. *Faragher v. Boca Raton*, 524 U.S. 775 (1998); *Burlington Industries v. Ellerth*, 524 U.S. 742 (1998)
- Strict Liability, *i.e.*, no defenses if significant change in employment status.
- Affirmative defenses where no tangible employment action is taken
  - Employer exercised reasonable care to prevent or correct sexual harassment; and
  - Employee failed to take advantage of preventive or corrective opportunities provided by employer.

#### **(2) Sexual Harassment by Co-Workers**

- Vicarious liability does not attach unless employer (or supervisors) knew of harassment and failed to correct it.

#### **(3) Sexual Harassment by Third Parties**

- Employer may be liable for acts of non-employees in the workplace of employer knew or should have known of conduct and failed to correct it. 29 C.F.R. § 1604.11 (e)

## **II. SEXUAL HARASSMENT OF STUDENTS**

### **A. In General**

- Title IX provides that “no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to

discrimination under any educational program or activity receiving Federal financial assistance.” 20 U.S.C. § 168 (a)

- There is a private right of action under Title IX. This right extends to students seeking money damages for intentional acts of discrimination, including sexual harassment. *Franklin v. Gwinnett County Public Schools*, 502 U.S. 60 (1992); *Canmen v. University of Chicago*, 441 U.S. 677 (1979)

## B. Types of Sexual Harassment

### (1) *Quid Pro Quo* Harassment

- *Quid pro quo* harassment occurs when –

“A school employee explicitly or implicitly conditions a student’s participation in an education program or activity or bases an educational decision on the student’s submission to unwelcome sexual advances, requests for sexual favors, or other verbal, nonverbal, or physical conduct of a sexual nature. *Quid pro quo* harassment is equally unlawful whether the student resists and suffers the threatened harm or submits and thus avoids the threatened harm.” U.S. Department of Education, Office for Civil Rights (OCR), Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, 62 Fed. Reg. 12,034, 12,038 (March 13, 1997).

[Note: OCR’s Guidance should be used carefully. Some aspects of the Guidance no longer reflect the current state of the law after recent Supreme Court decisions under Title IX. OCR’s Guidance should be viewed as an agency enforcement/compliance document, not a definitive statement of the standards determining district liability for damages under Title IX.]

### (2) Hostile Environment Harassment

- According to the OCR, hostile environment sexual harassment occurs when –

“Sexually harassing conduct (which can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature) by an employee, by another student, or by a third party is sufficiently severe, persistent, or pervasive to limit a student’s ability to participate in or benefit from an education program or activity, or to create a hostile or abusive educational environment.” 62 Fed. Reg. at 12,038 (1997).

- However, the Supreme Court has said the harassment must be “severe, pervasive **and objectively offensive**” to be actionable under Title IX. In addition, the Supreme Court stated that liability under Title IX will be limited to situations in which the school district exercised “substantial control” over both the harasser and the setting in which the harassment occurred, calling into question whether an actionable hostile environment can be created by the conduct of a third party. *Davis v. Monroe County Board of Education*, 119 S.Ct. 1661 (1999).
- The determination that a hostile environment exists should be made only after considering all relevant circumstances, including:
  - the degree to which the conduct affected the education of one or more students;
  - the type, frequency and duration of the conduct;
  - the identity of and relationship between the alleged harasser and the subject or subjects of the harassment;
  - the number of individuals involved;
  - the age and sex of the alleged harasser and the subject or subjects of the harassment;
  - the size of the school, location of the incidents, and context in which they occurred;
  - other incidents at the school;
  - incidents of gender-based, but non-sexual, harassment.
- In cases involving younger students, there will be a strong presumption that sexual conduct between an adult school employee and a student is not consensual. OCR has gone so far as to state that as to elementary age students, “welcomeness will not be an issue,” *i.e.*, it will always be viewed as wrongful. 62 Fed. Reg. at 12040. In cases involving older secondary students, subject to the presumption, OCR will consider a number of factors in determining whether a school employee’s sexual advances or other sexual conduct could be considered welcome. The factors include:
  - the nature of the conduct and relationship of the school employee to the student, including the degree of influence (which could, at least in part, be affected by the student’s age), authority, or control the employee has over the student;

- whether the student was legally or practically unable to consent to the sexual conduct in question.

### **C. Same Gender Harassment**

- There is no Supreme Court ruling on the issue of same sex harassment under Title IX. OCR contends that Title IX would cover this kind of harassment.

### **D. School District Liability For Harassment of Students**

#### **(1) Sexual Harassment by School Employees**

- A school district will not be liable under Title IX for sexual harassment of a student by a school employee unless all the following conditions are met:
  - an appropriate school official must have “actual knowledge” of discrimination;
  - the school official must have authority to take corrective action to address the alleged discrimination;
  - the school official must fail to respond adequately; and
  - the inadequate response must amount to deliberate indifference to discrimination. *Gebser v. Lago Vista Indep. School Dist.*, 524 U.S. 274 (1998).

#### **(2) Peer Sexual Harassment**

- Schools are liable for damages in peer harassment suits brought under Title IX when school officials are deliberately indifferent to student peer sexual harassment of which they have actual knowledge.
- In order to prevail, a student must show:
  - gender-oriented conduct that is “severe, pervasive and objectively offensive”;
  - the harassment has the impact of denying a student educational benefits or opportunities;
  - district had “actual knowledge” of the harassment; and
  - district responded with “deliberate indifference.” *Davis v. Monroe County Board of Education*, 119 S. Ct. 1661 (1999).

**a. Gender-oriented conduct that is “severe, pervasive and objectively offensive”**

- This is not the Title VII definition of harassment. Under Title VII the conduct need only be “sufficiently severe *or* pervasive” to alter the victim’s employment and create an abusive working environment.
- There is definitely a public policy trade off. School districts will be held liable, but the bar has been set high.

**b. Harassment has the impact of denying a student’s education**

- This is the damage required in order to bring a case of sexual harassment. The purpose of Title IX is to ensure equal educational opportunities. If a student is denied that right, then a Title IX violation may exist.
- Clearly here, as in the first element, the court provides a standard that precludes school districts from being held liable for minor incidents. Single incidents of teasing or taunting do not amount to sexual harassment under this standard.

**c. District had “actual knowledge” of the harassment**

- Although it is not clear what will constitute “actual knowledge,” it is likely that, at a minimum, the individual with knowledge would have to be someone who had the authority to take meaningful corrective action. This would be consistent with school liability standards for harassment of students by employees which requires that “an official of the recipient entity with authority to take corrective action to end the discrimination” have actual knowledge.

**d. District responded with “deliberate indifference”**

- In order to be responsible, the district must have had the ability to act and refused to do so or have acted in a way that is clearly unreasonable. This standard does respond to concerns that schools cannot provide a warranty for student behavior. Even after a school has disciplined a student, abuse may continue. Also, the school may be in a situation in which it cannot discipline the aggressor. “School administrators will continue to enjoy the flexibility they require so long as...[they are not] ‘deliberately



indifferent'...[or] clearly unreasonable in light of the known circumstances." *Davis*, 119 S. Ct. at 1674.

#### **e. Unresolved issues**

##### **▪ Definition of sexual harassment**

In incidents involving punishment of young students for alleged sexual harassment, age is relevant in determining whether particular conduct is sexual harassment. A one-time incident would constitute sexual harassment only if severe.

##### **▪ Who must have "actual knowledge"**

Who needs to "know?" OCR Guidance previously stated that districts may be liable for sexual harassment if they fail to take appropriate action after "an agent or responsible employee" of the district receives actual or constructive notice of the harassment. According to OCR, agents and responsible employees may include teachers, staff, and bus drivers, but post-*Davis* court decisions have clearly indicated that non-professional staff members should not be considered responsible employees for Title IX purposes and that indifference by one teacher may not be enough to impose liability on the district. See *Floyd v. Waiters*, 171 F.3d 1264 (11<sup>th</sup> Cir. 1999); *Murrell v. School Dist. No. 1*, 186 F.3d 1238 (10<sup>th</sup> Cir. 1999).

#### **(3) Third Party Harassment of Students**

- The OCR Guidance indicates that school districts could be held responsible for harassment of students by third parties visiting the school, such as guest speakers or contractors. 62 Fed. Reg. 12038. However, under the Supreme Court's ruling in *Davis*, prohibited conduct under Title IX is limited to those instances where the school exercises "substantial control" over both the harasser and the setting in which the harassment took place. 119 S. Ct. at 1672.

### **III. PRACTICAL AND PREVENTIVE STEPS FOR SCHOOLS**

- (1) Inform all members of the school community in writing about the district's anti-discrimination policies and have individuals sign to indicate receipt.
- (2) Clearly explain sexual harassment as behavior which will not be tolerated. Use official language where necessary but emphasize reader friendly and age-appropriate language.



- (3) Have reporting mechanisms in place.
- (4) Have assurances against retaliation.
- (5) Respond with prompt investigation.
- (6) Train ALL staff.

**- CERTIFIED PERSONNEL -****Harassment/Discrimination****DEFINITION**

Harassment/Discrimination of employees is unlawful behavior based on the race, color, national origin, age, religion, sex or disability of an employee involving intimidation by threats of or actual physical violence; the creation, by whatever means, of a climate of hostility or intimidation, or the use of language, conduct, or symbols in such manner as to be commonly understood to convey hatred, or prejudice.

**PROHIBITION**

Harassment/Discrimination is prohibited at all times on school property and off school grounds during school-sponsored activities. This prohibition also applies to visitors to the school who may come into contact with employees and students. (Acts of harassment/discrimination based on sex may be committed by persons of the same or the opposite sex.)

District staff shall provide for a prompt and equitable resolution of complaints concerning harassment/discrimination.

**DISCIPLINARY ACTION**

Employees who engage in harassment/discrimination of another employee or a student on the basis of any of the areas mentioned above shall be subject to disciplinary action including, but not limited to, termination of employment.

**GUIDELINES**

Employees who believe they have been a victim of an act of harassment/discrimination or who have observed incidents involving students or other employees that they believe to be an act of harassment/discrimination shall, as soon as reasonably practicable, report it. In each school building, the Principal is the person responsible for receiving reports of harassment/discrimination at the building level. Otherwise, reports of harassment/discrimination may be made directly to the Superintendent. If an employee is not assigned to a particular school, a report of harassment/discrimination may be made to the employee's immediate supervisor or to the Superintendent. Additionally, if sexual discrimination or harassment is being alleged, reports may be made directly to the District Title IX Coordinator. Without a report being made to the Principal, Superintendent or Title IX/Equity Coordinator, the District shall not be deemed to have received a complaint of harassment/discrimination.

The Superintendent shall provide for the following:

1. Investigation of allegations of harassment/discrimination to commence as soon as circumstances allow, but not later than three (3) working days of submission of the original written complaint. A written report of all findings of the investigation shall be completed within thirty (30) calendar days, unless additional time is necessary due to the matter being investigated by a law enforcement or governmental agency.

The Superintendent/designee may take interim measures to protect complainants during the investigation.

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The Superintendent/designee may take interim measures to protect complainants during the investigation.

**Harassment/Discrimination****GUIDELINES (CONTINUED)**

2. A process to identify and implement, within three (3) working days of the submission of the written investigative report, methods to correct and prevent reoccurrence of the harassment/discrimination. If corrective action is not required, an explanation shall be included in the report.
3. A process to be developed and implemented to communicate requirements of this policy to all staff, which may include, but not be limited to the following:
  - written notice provided in publications such as handbooks, staff memoranda, and/or pamphlets;
  - postings in the same location as are documents that must be posted according to state/federal law; and/or
  - such other measures as determined by the Superintendent/designee.

Method(s) used shall provide a summary of this policy, along with information concerning how individuals can access the District's complete policy.

4. Development of alternate methods of filing complaints for individuals with disabilities and others who may need accommodation.

**PROHIBITED CONDUCT**

Depending on the circumstances and facts of the situation, and within the definition of harassment/discrimination contained in this policy, examples of conduct and/or actions that could be considered a violation of this policy include, but are not limited to:

1. Any nicknames, slurs, stories, jokes, written materials or pictures that are lewd, vulgar, or profane and relate to any of the protected categories listed in the definition of harassment/discrimination contained in this policy;
2. Unwanted touching, sexual advances, requests for sexual favors, and spreading sexual rumors;
3. Causing an employee to believe that he or she must submit to unwelcome sexual conduct in order to maintain employment or that a personnel decision will be based on whether or not the employee submits to unwelcome sexual conduct;
4. Implied or overt threats of physical violence or acts of aggression or assault based on any of the protected categories;
5. Seeking to involve individuals with disabilities in antisocial, dangerous or criminal activity where they, because of disability, are unable to comprehend fully or consent to the activity; and
6. Destroying or damaging an individual's property based on any of the protected categories.

**Harassment/Discrimination****CONFIDENTIALITY**

District employees involved in the investigation of complaints shall respect, as much as possible, the privacy and anonymity of all parties involved.

**APPEAL**

Upon the completion of the investigation and correction of the conditions leading to the harassment/discrimination, any party may appeal in writing any part of the findings and corrective actions to the Superintendent.

If a supervisory staff member is an alleged party in the harassment/discrimination complaint, provision shall be made for addressing the complaint to a higher level of authority.

Failure by a teacher, immediate supervisor, Principal, and/or Superintendent to report, notify, and/or initiate an investigation of alleged harassment/discrimination as required by this policy or to take corrective action shall be cause for disciplinary action.

**RETALIATION PROHIBITED**

No one shall retaliate against an employee or student because s/he files a written grievance, assists or participates in an investigation, proceeding, or hearing regarding the charge of harassment/discrimination of an individual or because s/he has opposed language or conduct that violates this policy.

Upon the resolution of allegations, the Superintendent shall take steps to protect employees and students against retaliation.

**OTHER CLAIMS**

When a complaint is received that does not appear to be covered by this policy, administrators shall review other policies that may govern the allegations, including but not limited to, 03.113, 03.1325 and/or 09.422.

**REFERENCES:**

- 42 USC 2000e, Civil Rights Act of 1964, Title VII
- 29 C.F.R. 1604, 11, Equal Employment Opportunity Commission (EEOC) Regulations Implementing Title VII
- 20 U.S.C. 1681, Education Amendments of 1972, Title IX
- 34 C.F.R. 106.1-106.71, U.S. Department of Education Office for Civil Rights Regulations Implementing Title IX
- KRS 161.164

**RELATED POLICIES:**

03.113, 03.1325, 03.16, 09.422, 09.42811

Adopted/Amended: 08/19/2004  
Order #: 1869

**Notice to Individuals Complaining of Harassment/Discrimination**

Please refer to Procedure 09.42811 AP.1 for a copy of the District's notice.

**RELATED PROCEDURE:**

09.42811 AP.1

Review/Revised:1/25/07

**Harassment/Discrimination Reporting Form**

This form provides the opportunity for an employee to report violation(s) of Board Policy 03.162 or 03.262 and to secure an equitable, prompt, and satisfactory solution. This procedure shall be implemented in compliance with Board policy and shall be used to document all complaints, whether addressed informally or formally.

<b>Employee's Name</b> _____			
_____	_____	_____	_____
<i>Last Name</i>	<i>First Name</i>	<i>Middle Initial</i>	
<b>Employee's Address</b> _____			
_____		_____	_____
<i>City</i>		<i>State</i>	<i>Zip Code</i>
<b>Employee's Home Phone Number</b> _____		<b>Daytime Phone #</b> _____	
<b>Work Site</b> _____			

**CONFIDENTIALITY**

Information regarding an investigation of alleged harassment/discrimination shall be kept confidential to the extent possible. Individuals involved in the investigation shall not discuss information regarding the complaint outside of the investigation process.

**HARASSMENT/DISCRIMINATION COMPLAINT (USE ADDITIONAL SHEETS IF NECESSARY.)**

Date(s)/approximate time of the alleged incident(s): \_\_\_\_\_

Place alleged incident(s) occurred: \_\_\_\_\_

What type of harassment or discrimination was involved in the alleged incident?

- ☐ sexual      ☐ racial      ☐ on the basis of national origin      ☐ on the basis of disability  
☐ other type of harassment/discrimination? If other, specify: \_\_\_\_\_

Name of person you believe is guilty of harassment or discrimination: \_\_\_\_\_

Position: \_\_\_\_\_

If the alleged behavior was directed toward another person, name that person: \_\_\_\_\_

Describe the alleged incident as clearly as possible, including such information as verbal statements (i.e. slurs, threats, other verbal or physical abuse or prohibited requests), what physical contact, if any was involved, what force, if any was used. \_\_\_\_\_

List any witnesses to these events: \_\_\_\_\_

*PLEASE ATTACH ANY EXHIBITS OR OTHER TANGIBLE EVIDENCE (I.E., NOTES).*

**WHAT RESULTS ARE YOU SEEKING BY FILING THIS FORM?** \_\_\_\_\_

*I agree that all information reported here is complete, accurate and true to the best of my knowledge and affirm that I honestly believe that the person named harassed or discriminated against me or another person.*

\_\_\_\_\_  
*Signature of Employee*

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Received by*

\_\_\_\_\_  
*Date*

Review/Revised:1/25/07



**Harassment/Discrimination Investigation and Appeals****EMPLOYEE COMPLAINANT** \_\_\_\_\_*Last Name**First Name**Middle Initial***WORK SITE** \_\_\_\_\_

The Superintendent shall appoint an investigator who is not an alleged party in the complaint to investigate allegations of harassment/discrimination. The investigator shall be trained in this area, and her/his duties shall be set out in a contract or job description, as appropriate. If the Superintendent is the alleged party, the Board shall designate an outside investigator and, after presentation of the final investigative report, determine when and how it is to be released. All instances involving suspected child abuse shall be reported as required by law.

**ALLEGED HARASSER/DISCRIMINATING PARTY:** \_\_\_\_\_

Investigator: \_\_\_\_\_

Date Complaint Form is Received: \_\_\_\_\_

**INFORMAL PROCEDURE**

If both parties agree, prior to a formal grievance process an administrator may facilitate a conversation between the complainant and the party alleged to have harassed or discriminated against the complainant. Both the complainant and the accused party may be accompanied by a person of their choice. If both parties feel that a resolution has been achieved, no further action need be taken. The results of an informal resolution shall be reported by the facilitator, in writing, to the Principal/immediate supervisor, along with a signed agreement, if one is reached. If any of the interested parties choose not to utilize the informal procedure, or feel that it has been unsuccessful, s/he may opt to proceed to the formal grievance procedure. However, any complaints directed at school employees or alleging criminal acts must be formally investigated.

Was this complaint resolved informally, as indicated by an agreement signed by both parties?

☐ Yes ☐ No Date: \_\_\_\_\_

Facilitator: \_\_\_\_\_

**FORMAL PROCEDURE**

Employees should make their complaint to their Principal/immediate supervisor, who shall immediately, without screening or beginning an investigation, inform the Superintendent of receipt of the complaint. Otherwise, the complaint can be filed directly with the Superintendent or, in cases involving sexual harassment/discrimination, with the Title IX/Equity Coordinator. Employees who have knowledge of alleged or observed harassment/discrimination shall immediately notify their Principal, immediate supervisor, or the Superintendent. **Without a report being made to the Principal or immediate supervisor, Superintendent or Title IX/Equity Coordinator, the District shall not be deemed to have received a complaint of harassment/ discrimination.**

The Superintendent shall designate an individual to investigate the complaint. If necessary, the investigator will seek assistance from District administrators. In some instances it may be necessary to involve legal counsel, when authorized by the Superintendent, or by the Board if the Superintendent is the subject of the complaint.

**TIMELINE**

The investigator shall provide the complainant and the accused with a copy of the District's policy 03.162 or 03.262 and inform the complainant and the accused of required timelines that have been established for initiation and completion of an investigation.

**REVIEW OF FINDINGS (USE ADDITIONAL SHEETS IF NECESSARY.)**

Were the allegations substantiated?

☐ Yes☐ No

Did the incident(s), if substantiated, constitute a violation of Board policy?

☐ Yes☐ No

Comments: \_\_\_\_\_

**Harassment/Discrimination Investigation and Appeals****CORRECTIVE ACTION (USE ADDITIONAL SHEETS IF NECESSARY.)**

Is corrective action recommended? ☐ Yes ☐ No If yes, state the type of corrective action.  
Include methods to prevent reoccurrence of the harassment/discrimination. If no, explain why.

**A RESPONSE SHALL BE PRESENTED TO THE COMPLAINANT WITHIN THREE (3) WORKING DAYS OF COMPLETION OF THIS LEVEL OF INVESTIGATION.**

\_\_\_\_\_  
*Signature of Investigator*

\_\_\_\_\_  
*Date*

Board policy allows for appeal of the investigator's decision and the opportunity to address the complaint to a higher level of authority. An appeal must be made within ten (10) working days of receipt of a response at this level.

Is this complaint to be referred/appealed to a higher level of authority? ☐ Yes ☐ No

If yes, to whom will the complaint be referred? \_\_\_\_\_ Date \_\_\_\_\_

**FIRST APPEAL LEVEL**

<b>EMPLOYEE COMPLAINANT</b> _____	<i>Last Name</i>	<i>First Name</i>	<i>Middle Initial</i>
<b>WORK SITE</b> _____			

**ALLEGED HARASSER/DISCRIMINATING PARTY:** \_\_\_\_\_

Superintendent/designee who will consider appeal: \_\_\_\_\_

Date appeal and related data received by Superintendent/designee: \_\_\_\_\_

In some instances it may be necessary to involve legal counsel at the appeal level, when authorized by the Superintendent, or by the Board if the Superintendent is the subject of the complaint.

**REVIEW OF FINDINGS (USE ADDITIONAL SHEETS IF NECESSARY.)**

Were the allegations substantiated? ☐ Yes ☐ No

Did the incident(s), if substantiated, constitute a violation of Board policy? ☐ Yes ☐ No

Comments: \_\_\_\_\_

**CORRECTIVE ACTION (USE ADDITIONAL SHEETS IF NECESSARY.)**

Is corrective action recommended? ☐ Yes ☐ No If yes, state the type of corrective action. Include methods to prevent reoccurrence of the harassment/discrimination. If no, explain why.

**A RESPONSE SHALL BE PRESENTED TO THE COMPLAINANT WITHIN THREE (3) WORKING DAYS OF COMPLETION OF THIS LEVEL OF INVESTIGATION.**

\_\_\_\_\_  
*Signature of Superintendent/designee*

\_\_\_\_\_  
*Date*

Board policy allows for appeal of the decision made at this level and the opportunity to address the complaint to the Board of Education. An appeal must be made within ten (10) working days of receipt of a response at this level.

Is this complaint to be referred/appealed to a higher level of authority? ☐ Yes ☐ No

If yes, to whom will the complaint be referred? \_\_\_\_\_ Date: \_\_\_\_\_

**Harassment/Discrimination Investigation and Appeals****SECOND APPEAL LEVEL**

EMPLOYEE COMPLAINANT	_____	_____	_____
	<i>Last Name</i>	<i>First Name</i>	<i>Middle Initial</i>
WORK SITE	_____		

**ALLEGED HARASSER/DISCRIMINATING PARTY:** \_\_\_\_\_

Board Chairperson: \_\_\_\_\_

Date appeal and related data received by the Chairperson on behalf of the Board: \_\_\_\_\_

**REVIEW OF FINDINGS (USE ADDITIONAL SHEETS IF NECESSARY.)**Were the allegations substantiated? ☐ Yes ☐ NoDid the incident(s), if substantiated, constitute a violation of Board policy? ☐ Yes ☐ No

Comments: \_\_\_\_\_

**CORRECTIVE ACTION (USE ADDITIONAL SHEETS IF NECESSARY.)**Is corrective action recommended? ☐ Yes ☐ No If yes, state the type of corrective action. Include methods to prevent reoccurrence of the harassment/discrimination. If no, explain why.  
\_\_\_\_\_  
\_\_\_\_\_**A RESPONSE SHALL BE PRESENTED TO THE COMPLAINANT WITHIN THREE (3) WORKING DAYS OF COMPLETION OF THIS LEVEL OF INVESTIGATION.**\_\_\_\_\_  
*Signature of Board Chairperson*\_\_\_\_\_  
*Date***GUIDELINES**

1. The Board shall not hear grievances concerning personnel actions taken by the Superintendent/designee, unless the grievance is based on an alleged violation of constitutional, statutory, regulatory, or policy provisions.
2. In some instances it may be necessary to involve legal counsel, when authorized by the Board.
3. The Superintendent/designee shall implement corrective action as determined by the Superintendent or by the Board, as appropriate under law, after appeal rights have been exhausted. If the Superintendent is subject to corrective action, the Board shall implement the action.
4. The District is prohibited from disclosing personally identifiable information contained in student discipline records under the Federal Educational Rights and Privacy Act and corresponding state law.
5. Employee evaluation and private reprimand information generally is confidential and may require consent of the employee prior to release.

**RELATED POLICY:**

09.227

**RELATED PROCEDURES:**

03.162 (all procedures); 09.227 AP.1

Review/Revised:8/30/07

Witness' Name \_\_\_\_\_

*Last Name*                      *First Name*                      *Middle Initial*

**Witness' Address**

<i>City</i>	<i>State</i>	<i>ZIP Code</i>
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Witness' Phone Number \_\_\_\_\_

Is witness a ☐ student, ☐ school employee, or ☐ other? If other, specify \_\_\_\_\_

**School (if a student):** \_\_\_\_\_ **Grade** \_\_\_\_\_ **Homeroom/Classroom** \_\_\_\_\_

**Work Site (if an employee):**

**Witness' relationship, if any, to the complainant:**

**Witness' relationship, if any, to the accused:**

On the date(s) of \_\_\_\_\_, an employee has claimed to be the target of harassment or discrimination on the basis of \_\_\_\_\_. Did you observe or are you aware of such an incident? ☐ Yes ☐ No

If yes, describe the incident(s) that you witnessed as clearly as possible, including such information as the following:

- What verbal statements, if any, were made (i.e., slurs, threats, other verbal or physical abuse or prohibited requests)?
- What physical contact, if any, was involved?
- What force, if any, was used?
- Did other actions occur? If so, please describe.

(Use additional sheets if necessary.) \_\_\_\_\_

**LIST ANY OTHER WITNESSES TO THESE EVENTS:**

- *I understand that Board policy prohibits retaliation against witnesses who assist or participate in an investigation.*
- *I agree that all information reported here is accurate and true to the best of my knowledge and, by my signature, agree to its release.*

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*Signature of Witness*
*Date*

Received by	Date
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Review/Revised:1/25/07

**- CLASSIFIED PERSONNEL -****Harassment/Discrimination****DEFINITION**

Harassment/Discrimination of employees is unlawful behavior based on the race, color, national origin, age, religion, sex or disability of an employee involving intimidation by threats of or actual physical violence; the creation, by whatever means, of a climate of hostility or intimidation or the use of language, conduct, or symbols in such manner as to be commonly understood to convey hatred or prejudice.

**PROHIBITION**

Harassment/Discrimination is prohibited at all times on school property and off school grounds during school-sponsored activities. This prohibition also applies to visitors to the school who may come into contact with employees and students. (Acts of harassment/discrimination based on sex may be committed by persons of the same or the opposite sex.)

District staff shall provide for a prompt and equitable resolution of complaints concerning harassment/discrimination.

**DISCIPLINARY ACTION**

Employees who engage in harassment/discrimination of another employee or a student on the basis of any of the areas mentioned above shall be subject to disciplinary action including but not limited to termination of employment.

**GUIDELINES**

Employees who believe they have been a victim of an act of harassment/discrimination or who have observed incidents involving students or other employees that they believe to be an act of harassment/discrimination shall, as soon as reasonably practicable, report it. In each school building, the Principal is the person responsible for receiving reports of harassment/discrimination at the building level. Otherwise, reports of harassment/discrimination may be made directly to the Superintendent. If an employee is not assigned to a particular school, a report of harassment/discrimination may be made to the employee's immediate supervisor or to the Superintendent. Additionally, if sexual discrimination or harassment is being alleged, reports may be made directly to the District Title IX Coordinator. Without a report being made to the Principal, Superintendent or Title IX/Equity Coordinator, the District shall not be deemed to have received a complaint of harassment/discrimination.

The Superintendent shall provide for the following:

1. Investigation of allegations of harassment/discrimination to commence as soon as circumstances allow, but not later than three (3) working days of submission of the original written complaint. A written report of all findings of the investigation shall be completed within thirty (30) calendar days, unless additional time is necessary due to the matter being investigated by a law enforcement or governmental agency;

The Superintendent/designee may take interim measures to protect complainants during the investigation.



**Harassment/Discrimination****GUIDELINES (CONTINUED)**

2. A process to identify and implement, within three (3) working days of the submission of the written investigative report, methods to correct and prevent reoccurrence of the harassment/discrimination. If corrective action is not required, an explanation shall be included in the report.
3. Development of alternate methods of filing complaints for individuals with disabilities and others who may need accommodation.

**PROHIBITED CONDUCT**

Depending on the circumstances and facts of the situation, and within the definition of harassment/discrimination contained in this policy, examples of conduct and/or actions that could be considered a violation of this policy include, but are not limited to:

1. Any nicknames, slurs, stories, jokes, written materials or pictures that are lewd, vulgar, profane or relating to any of the protected categories listed in the definition of harassment/discrimination contained in this policy;
2. Unwanted touching, sexual advances, requests for sexual favors and spreading sexual rumors;
3. Causing an employee to believe that he or she must submit to unwelcome sexual conduct in order to maintain employment or that a personnel decision will be based on whether or not the employee submits to unwelcome sexual conduct;
4. Implied or overt threats of physical violence or acts of aggression or assault based on any of the protected categories;
5. Seeking to involve individuals with disabilities in antisocial, dangerous or criminal activity where they, because of disability, are unable to comprehend fully or consent to the activity; and
6. Destroying or damaging an individual's property based on any of the protected categories.

**CONFIDENTIALITY**

District employees involved in the investigation of complaints shall respect, as much as possible, the privacy and anonymity of all parties involved.

**APPEAL**

Upon the completion of the investigation and correction of the conditions leading to the harassment/discrimination, any party may appeal in writing any part of the findings and corrective actions to the Superintendent.

If a supervisory staff member is an alleged party in the harassment/discrimination complaint, provision shall be made for addressing the complaint to a higher level of authority.

**Harassment/Discrimination****APPEAL (CONTINUED)**

Failure by an employee, immediate supervisor, Principal, and/or Superintendent to report, notify, and/or initiate an investigation of alleged harassment/discrimination as required by this policy, or to take corrective action shall be cause for disciplinary action.

**RETALIATION PROHIBITED**

No one shall retaliate against an employee or student because s/he files a written grievance, assists or participates in an investigation, proceeding, or hearing regarding the charge of harassment/discrimination of an individual or because s/he has opposed language or conduct that violates this policy.

Upon the resolution of allegations, the Superintendent shall take steps to protect employees and students against retaliation.

**OTHER CLAIMS**

When a complaint is received that does not appear to be covered by this policy, administrators shall review other policies that may govern the allegations, including but not limited to, 03.212, 03.2325 and/or 09.422.

**REFERENCES:**

- 42 USC 2000e, Civil Rights Act of 1964, Title VII
- 29 C.F.R. 1604.11, Equal Employment Opportunity Commission (EEOC) Regulations Implementing Title VII
- 20 U.S.C. 1681, Education Amendments of 1972, Title IX
- 34 C.F.R. 106.1-106.71, U. S. Department of Education Office for Civil Rights Regulations Implementing Title IX
- KRS 161.164

**RELATED POLICIES:**

03.212, 03.2325, 03.26, 09.422, 09.42811

Adopted/Amended: 08/19/2004  
Order #: 1869



**Harassment/Discrimination Reporting Form**

This form provides the opportunity for an employee to report violation(s) of Board Policy 03.162 or 03.262 and to secure an equitable, prompt, and satisfactory solution. This procedure shall be implemented in compliance with Board policy and shall be used to document all complaints, whether addressed informally or formally.

<b>Employee's Name</b> _____			
<i>Last Name</i>	<i>First Name</i>	<i>Middle Initial</i>	
<b>Employee's Address</b> _____			
<i>City</i>	<i>State</i>	<i>Zip Code</i>	
<b>Employee's Home Phone Number</b> _____		<b>Daytime Phone #</b> _____	
<b>Work Site</b> _____			

**CONFIDENTIALITY**

Information regarding an investigation of alleged harassment/discrimination shall be kept confidential to the extent possible. Individuals involved in the investigation shall not discuss information regarding the complaint outside of the investigation process.

**HARASSMENT/DISCRIMINATION COMPLAINT (USE ADDITIONAL SHEETS IF NECESSARY.)**

Date(s)/approximate time of the alleged incident(s): \_\_\_\_\_

Place alleged incident(s) occurred: \_\_\_\_\_

What type of harassment or discrimination was involved in the alleged incident?

- ☐ sexual      ☐ racial      ☐ on the basis of national origin      ☐ on the basis of disability  
☐ other type of harassment/discrimination? If other, specify: \_\_\_\_\_

Name of person you believe is guilty of harassment or discrimination: \_\_\_\_\_

Position: \_\_\_\_\_

If the alleged behavior was directed toward another person, name that person: \_\_\_\_\_

Describe the alleged incident as clearly as possible, including such information as verbal statements (i.e. slurs, threats, other verbal or physical abuse or prohibited requests), what physical contact, if any was involved, what force, if any was used. \_\_\_\_\_

List any witnesses to these events: \_\_\_\_\_

*PLEASE ATTACH ANY EXHIBITS OR OTHER TANGIBLE EVIDENCE (I.E., NOTES).*

**WHAT RESULTS ARE YOU SEEKING BY FILING THIS FORM?** \_\_\_\_\_

*I agree that all information reported here is complete, accurate and true to the best of my knowledge and affirm that I honestly believe that the person named harassed or discriminated against me or another person.*

\_\_\_\_\_  
*Signature of Employee*

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Received by*

\_\_\_\_\_  
*Date*

Review/Revised:1/25/07

**Harassment/Discrimination Investigation and Appeals****EMPLOYEE COMPLAINANT** \_\_\_\_\_*Last Name**First Name**Middle Initial***WORK SITE** \_\_\_\_\_

The Superintendent shall appoint an investigator who is not an alleged party in the complaint to investigate allegations of harassment/discrimination. The investigator shall be trained in this area, and her/his duties shall be set out in a contract or job description, as appropriate. If the Superintendent is the alleged party, the Board shall designate an outside investigator and, after presentation of the final investigative report, determine when and how it is to be released. All instances involving suspected child abuse shall be reported as required by law.

**ALLEGED HARASSER/DISCRIMINATING PARTY:** \_\_\_\_\_

Investigator: \_\_\_\_\_

Date Complaint Form is Received: \_\_\_\_\_

**INFORMAL PROCEDURE**

If both parties agree, prior to a formal grievance process an administrator may facilitate a conversation between the complainant and the party alleged to have harassed or discriminated against the complainant. Both the complainant and the accused party may be accompanied by a person of their choice. If both parties feel that a resolution has been achieved, no further action need be taken. The results of an informal resolution shall be reported by the facilitator, in writing, to the Principal/immediate supervisor, along with a signed agreement, if one is reached. If any of the interested parties choose not to utilize the informal procedure, or feel that it has been unsuccessful, s/he may opt to proceed to the formal grievance procedure. However, any complaints directed at school employees or alleging criminal acts must be formally investigated.

Was this complaint resolved informally, as indicated by an agreement signed by both parties?

☐ Yes ☐ No Date: \_\_\_\_\_ Facilitator: \_\_\_\_\_

**FORMAL PROCEDURE**

Employees should make their complaint to their Principal/immediate supervisor, who shall immediately, without screening or beginning an investigation, inform the Superintendent of receipt of the complaint. Otherwise, the complaint can be filed directly with the Superintendent or, in cases involving sexual harassment/discrimination, with the Title IX/Equity Coordinator. Employees who have knowledge of alleged or observed harassment/discrimination shall immediately notify their Principal, immediate supervisor, or the Superintendent. **Without a report being made to the Principal or immediate supervisor, Superintendent or Title IX/Equity Coordinator, the District shall not be deemed to have received a complaint of harassment/ discrimination.**

The Superintendent shall designate an individual to investigate the complaint. If necessary, the investigator will seek assistance from District administrators. In some instances it may be necessary to involve legal counsel, when authorized by the Superintendent, or by the Board if the Superintendent is the subject of the complaint.

**TIMELINE**

The investigator shall provide the complainant and the accused with a copy of the District's policy 03.162 or 03.262 and inform the complainant and the accused of required timelines that have been established for initiation and completion of an investigation.

**REVIEW OF FINDINGS (USE ADDITIONAL SHEETS IF NECESSARY.)**

Were the allegations substantiated?

☐ Yes☐ No

Did the incident(s), if substantiated, constitute a violation of Board policy?

☐ Yes☐ No

Comments: \_\_\_\_\_

**Harassment/Discrimination Investigation and Appeals****CORRECTIVE ACTION (USE ADDITIONAL SHEETS IF NECESSARY.)**

Is corrective action recommended? ☐ Yes ☐ No If yes, state the type of corrective action. Include methods to prevent reoccurrence of the harassment/discrimination. If no, explain why.

A RESPONSE SHALL BE PRESENTED TO THE COMPLAINANT WITHIN THREE (3) WORKING DAYS OF COMPLETION OF THIS LEVEL OF INVESTIGATION.

\_\_\_\_\_  
Signature of Investigator

\_\_\_\_\_  
Date

Board policy allows for appeal of the investigator's decision and the opportunity to address the complaint to a higher level of authority. An appeal must be made within ten (10) working days of receipt of a response at this level.

Is this complaint to be referred/appealed to a higher level of authority? ☐ Yes ☐ No

If yes, to whom will the complaint be referred? \_\_\_\_\_ Date \_\_\_\_\_

**FIRST APPEAL LEVEL**

EMPLOYEE COMPLAINANT \_\_\_\_\_  
Last Name First Name Middle Initial

WORK SITE \_\_\_\_\_

ALLEGED HARASSER/DISCRIMINATING PARTY: \_\_\_\_\_

Superintendent/designee who will consider appeal: \_\_\_\_\_

Date appeal and related data received by Superintendent/designee: \_\_\_\_\_

In some instances it may be necessary to involve legal counsel at the appeal level, when authorized by the Superintendent, or by the Board if the Superintendent is the subject of the complaint.

**REVIEW OF FINDINGS (USE ADDITIONAL SHEETS IF NECESSARY.)**

Were the allegations substantiated? ☐ Yes ☐ No

Did the incident(s), if substantiated, constitute a violation of Board policy? ☐ Yes ☐ No

Comments: \_\_\_\_\_

**CORRECTIVE ACTION (USE ADDITIONAL SHEETS IF NECESSARY.)**

Is corrective action recommended? ☐ Yes ☐ No If yes, state the type of corrective action. Include methods to prevent reoccurrence of the harassment/discrimination. If no, explain why.

A RESPONSE SHALL BE PRESENTED TO THE COMPLAINANT WITHIN THREE (3) WORKING DAYS OF COMPLETION OF THIS LEVEL OF INVESTIGATION.

\_\_\_\_\_  
Signature of Superintendent/designee

\_\_\_\_\_  
Date

Board policy allows for appeal of the decision made at this level and the opportunity to address the complaint to the Board of Education. An appeal must be made within ten (10) working days of receipt of a response at this level.

Is this complaint to be referred/appealed to a higher level of authority? ☐ Yes ☐ No

If yes, to whom will the complaint be referred? \_\_\_\_\_ Date: \_\_\_\_\_

**Harassment/Discrimination Investigation and Appeals****SECOND APPEAL LEVEL**

<b>EMPLOYEE COMPLAINANT</b> _____	<i>Last Name</i>	<i>First Name</i>	<i>Middle Initial</i>
<b>WORK SITE</b> _____			

**ALLEGED HARASSER/DISCRIMINATING PARTY:** \_\_\_\_\_

Board Chairperson: \_\_\_\_\_

Date appeal and related data received by the Chairperson on behalf of the Board: \_\_\_\_\_

**REVIEW OF FINDINGS (USE ADDITIONAL SHEETS IF NECESSARY.)**Were the allegations substantiated? ☐ Yes ☐ NoDid the incident(s), if substantiated, constitute a violation of Board policy? ☐ Yes ☐ No

Comments: \_\_\_\_\_

**CORRECTIVE ACTION (USE ADDITIONAL SHEETS IF NECESSARY.)**Is corrective action recommended? ☐ Yes ☐ No If yes, state the type of corrective action. Include methods to prevent reoccurrence of the harassment/discrimination. If no, explain why.**A RESPONSE SHALL BE PRESENTED TO THE COMPLAINANT WITHIN THREE (3) WORKING DAYS OF COMPLETION OF THIS LEVEL OF INVESTIGATION.**\_\_\_\_\_  
*Signature of Board Chairperson*\_\_\_\_\_  
*Date***GUIDELINES**

1. The Board shall not hear grievances concerning personnel actions taken by the Superintendent/designee, unless the grievance is based on an alleged violation of constitutional, statutory, regulatory, or policy provisions.
2. In some instances it may be necessary to involve legal counsel, when authorized by the Board.
3. The Superintendent/designee shall implement corrective action as determined by the Superintendent or by the Board, as appropriate under law, after appeal rights have been exhausted. If the Superintendent is subject to corrective action, the Board shall implement the action.
4. The District is prohibited from disclosing personally identifiable information contained in student discipline records under the Federal Educational Rights and Privacy Act and corresponding state law.
5. Employee evaluation and private reprimand information generally is confidential and may require consent of the employee prior to release.

**RELATED POLICY:**

09.227

**RELATED PROCEDURES:**

03.162 (all procedures); 09.227 AP.1

Review/Revised:8/30/07

## Witness Disclosure Form

**Witness' Name** \_\_\_\_\_  
                                     *Last Name*                                 *First Name*                                 *Middle Initial*

**Witness' Address** \_\_\_\_\_  
   *City*   *State*                                 *ZIP Code*

**Witness' Phone Number** \_\_\_\_\_

Is witness a ☐ student, ☐ school employee, or ☐ other? If other, specify \_\_\_\_\_

School (if a student): \_\_\_\_\_ Grade \_\_\_\_\_ Homeroom/Classroom \_\_\_\_\_

Work Site (if an employee): \_\_\_\_\_

Witness' relationship, if any, to the complainant: \_\_\_\_\_

Witness' relationship, if any, to the accused: \_\_\_\_\_

On the date(s) of \_\_\_\_\_, an employee has claimed to be the target of harassment or discrimination on the basis of \_\_\_\_\_. Did you observe or are you aware of such an incident? ☐ Yes ☐ No

If yes, describe the incident(s) that you witnessed as clearly as possible, including such information as the following:

- What verbal statements, if any, were made (i.e., slurs, threats, other verbal or physical abuse or prohibited requests)?
- What physical contact, if any, was involved?
- What force, if any, was used?
- Did other actions occur? If so, please describe.

(Use additional sheets if necessary.)

**LIST ANY OTHER WITNESSES TO THESE EVENTS:** \_\_\_\_\_

- *I understand that Board policy prohibits retaliation against witnesses who assist or participate in an investigation.*
- *I agree that all information reported here is accurate and true to the best of my knowledge and, by my signature, agree to its release.*

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Date

Received by	Date
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Review/Revised:1/25/07