

Harassment/Discrimination Definition

Harassment/Discrimination is unlawful behavior based on race, color, national origin, age, religion, sex or disability that is sufficiently severe, pervasive, or objectively offensive that it adversely affects a student's education or creates a hostile or abusive educational environment.

Discrimination based upon race, color, national origin, age, religion, sex or disability can consist of harassment which creates a hostile environment. Examples of harassment/hostile environment include offensive conduct such as racial or ethnic slurs, racial or gender based "jokes", derogatory comments or other verbal or physical conduct based upon an individual's race, color, descent, national or ethnic origin, age, religion, sex or disability. Prohibited discrimination also includes any distinction, exclusion, restriction or preference based on race, color, descent, national or ethnic origin, age, religion, sex or disability of a student which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise on an equal footing of educational opportunities, human rights and fundamental freedom.

The provisions in this policy shall not be interpreted as applying to speech otherwise protected under the state or federal constitutions where the speech does not otherwise materially or substantially disrupt the educational process, as defined by policy 09.426, or where it does not violate provisions of policy 09.422.

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, as well as students, administrators, faculty and other employees who may come into contact with students. (Acts of harassment/discrimination based on sex may be committed by persons of the same or the opposite sex.) The Superintendent shall provide for a prompt and equitable resolution of complaints concerning harassment/discrimination.

Disciplinary Action

Students who engage in harassment/discrimination of an employee or another student on the basis of any of the areas mentioned above shall be subject to disciplinary action including but not limited to suspension and expulsion. Employees who engage in harassment/discrimination of a student or another employee in contravention of this policy shall be subject to disciplinary action, including but not limited to suspension without pay and termination of employment.

Reporting & Guidelines

Students who believe they or any other student, employee, or visitor is being or has been subjected to 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. Reports of harassment/discrimination may also be made directly to the Superintendent or the District Harassment/Discrimination Coordinator. Contact information for those responsible for receiving reports of Harassment/Discrimination is as follows:

1. Principal: Russell High School – David Caniff, (606) 836-9658, david.caniff@russellind.kyschools.us
2. Principal: Russell Middle School - Jeff Frasure, (606) 836-8235, jeff.frasure@russellind.kyschools.us
3. Principal: Russell Primary School – LeaAnn Crager, (606) 836-0007, leaann.crager@russellind.kyschools.us
4. Principal: Russell-McDowell Intermediate School - Pamela Wright, (606) 836-8186, pamela.wright@russellind.kyschools.us
5. Harassment/Discrimination Coordinator: Joyce Moore, (606) 836-9679, joyce.moore@russellind.kyschools.us
6. Superintendent: Russell Independent Schools - Sean Horne, (606) 836-9679, sean.horne@russellind.kyschools.us

Complaints of harassment/discrimination, whether verbal or written, shall lead to a documented investigation and a written report. Without a report being made to the Principal, Superintendent or Harassment/Discrimination Coordinator, the District shall not be deemed to have received a complaint of harassment/discrimination. The term "REPORT" as used in this policy includes reports of harassment/discrimination which are made either orally or in writing.

All reports made to the Principal or Harassment/Discrimination Coordinator shall be communicated by them to the Superintendent, or where applicable to the Board Chairperson, in writing within one (1) working day of receipt. Employees who observe prohibited behaviors or with whom students share a complaint shall notify

the Superintendent, Principal or the Harassment/Discrimination Coordinator.

Employees who believe prohibited behavior is occurring or has occurred shall notify the victim's Principal, who shall immediately forward the information to the Superintendent. Employees who observe acts of harassment should intervene to stop it unless circumstances make such intervention dangerous.

The Superintendent or the Chairperson of the Board, as the case may be, 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 receipt of the report , regardless of the manner in which the complaint is communicated to a District administrator. The investigation shall be performed by the Harassment/Discrimination Coordinator or another formally trained investigator acting under his or her direct supervision.

To ensure an adequate, reliable and impartial investigation of reported incidents of harassment/discrimination, each investigation shall include as a minimum, the following procedural steps:

- a. The investigator shall first, after being assigned the investigation make a determination as to whether he or she has a conflict of interest or due to some fact, relationship or predisposition cannot fairly and adequately conduct an impartial investigation of the allegation.
- b. If the investigator concludes that he or she cannot or should not proceed with the investigation, the matter shall be reassigned to another investigator.
- c. The investigator shall make contact with and interview or document all attempts to interview the complainant(s), if known or identifiable.
- d. Interview the alleged victims(s) or document all attempts to interview the alleged victims(s).
- e. Interview or document attempts to interview the alleged perpetrator(s).
- f. Interview all known witnesses and other identified as potential witnesses or document attempts to do so.
- g. Gather all available documents, photographs, writings and materials, including materials electronically stored, if available, and all other evidence which may be considered by the investigator to be relevant to the allegations under investigation.
- h. Each interview shall be memorialized by investigator notes of each conversation and may be electronically recorded after prior permission has been obtained from the witness. The witness may also provide a written statement if he or she so desires.

At the conclusion of the investigation, the investigator shall, based upon the totality of the evidence obtained including the circumstances surrounding the incident, documentary evidence obtained, if any, and the statements obtained from and the credibility of each of the witnesses, arrive at findings and conclusions as to whether the allegations are true and as to whether in the opinion of the investigator a hostile environment exists. The standard upon which the investigator's opinion is to be based shall be that findings and conclusions are within a "reasonable probability" or stated another way, as to whether or not the findings and conclusions are "more likely than not".

The investigation shall be completed within ten (10) working days. The investigation of allegations involving the Superintendent shall be conducted by a formally trained investigator or attorney not employed by the School District. Investigations shall include the right to the complainant to present witnesses, documents and other evidence in support of the complaint. A written report of all findings of the investigation shall be completed within fifteen (15) calendar days, unless additional time is necessary due to the matter being investigated by a law enforcement or governmental agency.

1. The Superintendent/designee may take interim measures to protect complainants during the investigation.
2. A process to identify and implement, within five (5) working days of the submission of the written investigative report, methods to correct and prevent reoccurrence of the harassment/discrimination, including disciplinary action where appropriate . 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 students, which may include, but not be limited to, the following:
 - Written notice provided in publications such as handbooks, codes, and or pamphlets;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/procedures and obtain assistance in reporting and responding to alleged incidents. Students, parents or guardians, as appropriate, will be directed to sign an acknowledgement form verifying receipt of information concerning this policy as part of the Board-approved code of acceptable behavior and discipline.

4. Age-appropriate training during the first month of school to include an explanation of prohibited behavior and the necessity for prompt reporting of alleged harassment/discrimination;

5. The District's Harassment/Discrimination Coordinator shall document all reports of incidents of harassment/discrimination; and

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

Student handbooks shall include information to assist individuals in reporting alleged harassment/discrimination.

When sexual harassment is alleged, the District's Title IX Coordinator, as designated in the student handbook, shall be notified.

Notifications

Within twenty-four (24) hours of receiving an allegation of harassment/discrimination, District personnel shall attempt to notify parents of both student victims and students who have been accused of harassment/discrimination. In circumstances also involving suspected child abuse, additional notification shall be required by law. (See Policy 09.227.)

In applicable cases, employees must report harassment/discrimination to appropriate law enforcement authorities in accordance with law. 1

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. Instances involving sexual violence;

4. Causing a student to believe that he or she must submit to unwelcome sexual conduct in order to participate in a school program or activity or that an educational decision will be based on whether or not the student submits to unwelcome sexual conduct;

5. Implied or overt threats of physical violence or acts of aggression or assault based on any of the protected categories;

6. Seeking to involve students with disabilities in antisocial, dangerous or criminal activity where the students, because of disability, are unable to comprehend fully or consent to the activity; and

7. 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 both victims and persons accused of violations.

Written Report

The investigatory procedures documented in the investigative report shall include the following:

1. The name, race and national origin of the alleged victim and, if different, the name and race of the person reporting the allegation;

2. The nature of the allegation, a description of the incident and the date and time if known of the alleged incident;

3. The names and races of all person alleged to have committed the alleged harassment/discrimination if known;

4. The names and races of all known witnesses to the alleged incident;

5. Any written statements of the reporter, the victim (if different than the reporter), the accused perpetrators and any known witnesses;

6. The outcome of the investigation; and

7. The response of school personnel and if applicable, District-level officials, including the date any incident was reported to the police.

Upon completion of the investigation, the investigator(s) shall submit a preliminary written report, including the names and addresses of those interviewed and a summary of the information obtained, to the Superintendent who shall prepare a final written report containing the facts obtained as a result of the investigation and his/her conclusions, within a reasonable probability as to whether harassment/discrimination has occurred and a hostile environment resulted therefrom. If harassment/discrimination has been found to have occurred, the final written report shall provide in detail the methods to be utilized in correcting the situation and preventing its reoccurrence, including but not limited to, disciplinary action where appropriate.

In the event that the Superintendent's alleged conduct was the subject of the investigation, the Board shall consider the preliminary written report in executive session and prepare and adopt by majority vote a final written report containing the facts obtained as a result of the investigation and its conclusions as to whether harassment/discrimination occurred and whether a hostile environment resulted therefrom, within a reasonable probability, as well as specific remedies designed to correct the situation and prevent its reoccurrence, including but not limited to, disciplinary action where appropriate. The findings and conclusions of the Board, as well as the remedies contained in the final report, shall be final. The written report, upon conclusions of Board, as well as the remedies contained in the final report, shall be final. The written report, upon completion, shall be furnished to the interested parties, including the complainant, by personal delivery or by registered or certified mail, return receipt requested.

Appeal

Upon the completion of the investigation and submission of the written report to the parties involved, any party may appeal in writing all or any part of the findings, conclusions and remedies, if any, including any discipline proposed by the Superintendent to the Board of Education within ten (10) working days of receipt of the report. If no appeal has been filed within ten (10) working days following receipt of the Superintendent's written report, the Superintendent's findings, conclusions and proposed remedies shall become final. Upon appeal, the Board of Education may affirm the Superintendent's findings, conclusions, and proposed remedies in whole, or in part or may make its own findings and conclusions and fashion its own remedies as it deems necessary or appropriate under the circumstances. Consideration of the appeal by the Board of Education shall be based on the record made during the investigation and the standard of review shall be de novo. The findings, conclusions, and remedies, including any discipline imposed by the Board of Education shall be final.

Harassment Not Tolerated – Counseling & Services to be Offered

The District will not tolerate discrimination/harassment in any form. The District is committed to identifying harassment and finding a remedy for harassment found to have existed and to prevent its reoccurrence. A remedy may include, but is not limited to, discipline, training, and counseling. The District will offer counseling and/or academic services to any person found to have been subjected to harassment/discrimination on the basis of race, color or national origin. Where appropriate, counseling services shall also be made to the person(s) who committed the harassment/discrimination.

Obligation to Report and Cooperate

Failure by employees 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, up to and including possible termination of employment.

Retaliation Prohibited

No one shall retaliate against an employee or student because s/he submits a 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.

False Complaints

Deliberately false or malicious complaints of harassment/discrimination may result in disciplinary action taken against the complainant.

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, 09.422 and/or 09.426.

Training Program

The Superintendent shall develop a comprehensive training program for District personnel responsible for implementing and enforcing federal anti-discrimination and anti-harassment laws and related policies and procedures and for all school-level District security personnel.

References:

1 KRS 158.156

42 USC 2000e, Civil Rights Act of 1964, Title VII

Racial Incidents and Harassment Against Students at Educational Institutions;
Investigative Guidance (U.S. Department of Education)

U. S. Supreme Court - Franklin vs. Gwinnett County

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

Gebser v. Lago Vista Independent School Dist., 118 S. Ct. 1989 (1998)

Davis v. Monroe County Bd. of Educ., 119 S. Ct. 1661 (1999)

Related Policies:

03.162, 03.262, 09.13, 09.2211, 09.227, 09.422, 09.426, 09.438