

Book	Policy Manual
Section	100 Programs
Title	Nondiscrimination/Discriminatory Harassment - School and Classroom Practices
Code	103
Status	Active
Legal	<ol style="list-style-type: none"><li>1. 20 U.S.C. 1681 et seq</li><li>2. 22 PA Code 12.1</li><li>3. 22 PA Code 12.4</li><li>4. 22 PA Code 15.1 et seq</li><li>5. 22 PA Code 4.4</li><li>6. 24 P.S. 1301</li><li>7. 24 P.S. 1310</li><li>8. 24 P.S. 1601-C et seq</li><li>9. 24 P.S. 5004</li><li>10. 29 U.S.C. 794</li><li>11. 42 U.S.C. 12101 et seq</li><li>12. 42 U.S.C. 1981 et seq</li><li>13. 42 U.S.C. 2000d et seq</li><li>14. 43 P.S. 951 et seq</li><li>15. Pol. 103.1</li><li>16. Pol. 218</li><li>17. Pol. 247</li><li>18. Pol. 249</li><li>19. U.S. Const. Amend. XIV, Equal Protection Clause</li><li>20. 29 CFR 1604.11</li><li>21. 29 CFR 1606.8</li><li>22. Davis v. Monroe County Board of Education, 526 U.S. 629 (1999)</li><li>23. Franklin v. Gwinnett County Public Schools, 503 U.S. 60 (1992)</li><li>24. Office for Civil Rights - Guidance on Schools' Obligations to Protect Students from Student-on-Student Harassment on the Basis of Sex; Race, Color and National Origin; and Disability (Oct. 26, 2010)</li><li>25. Office for Civil Rights - Resources for Addressing Racial Harassment</li><li>26. Office for Civil Rights - Revised Harassment Guidance: Harassment of Students by School Employees, Other Students or Third Parties Title IX (January 2001)</li><li>27. Pol. 806</li><li>28. 18 Pa. C.S.A. 2709</li><li>29. Pol. 815</li><li>30. Pol. 216</li><li>31. 20 U.S.C. 1232g</li><li>32. 34 CFR Part 99</li></ol>

28 CFR Part 35

28 CFR Part 41

34 CFR Part 100

34 CFR Part 104

34 CFR Part 106

34 CFR Part 110

Pol. 122

Pol. 701

Adopted

December 21, 2020

### **Authority**

The Joint Operating Committee declares it to be the policy of the School to provide an equal opportunity for all students to achieve their maximum potential through the programs offered in the School without discrimination on the basis of race, color, age, creed, religion, sex, sexual orientation, ancestry, national origin, marital status, pregnancy or handicap/disability.[\[1\]\[2\]\[3\]\[4\]\[5\]\[6\]\[7\]\[8\]\[9\]\[10\]\[11\]\[12\]\[13\]\[14\]\[15\]\[16\]\[17\]\[18\]\[19\]](#)

The Joint Operating Committee also declares it to be the policy of the School to comply with federal law and regulations under Title IX prohibiting sexual harassment, which is a form of unlawful discrimination on the basis of sex. Such discriminatory harassment is referred to as Title IX sexual harassment. All allegation of sexual harassment and discrimination on the basis of sex shall be first evaluated under Policy 103.2, Title IX/Nondiscrimination on the Basis of Sex. If the sexual harassment or discrimination on the basis of sex alleged does not fit the definition of Title IX sexual harassment or Title IX sex discrimination or Title IX sexual harassment and discrimination or harassment on the basis of another protected status, a joint, concurrent investigation under this policy and Policy 103.2 will be conducted.

The School strives to maintain a safe, positive learning environment for all students that is free from discrimination. Discrimination is inconsistent with the educational and programmatic goals of the School and is prohibited on school grounds, at school-sponsored activities and on any conveyance providing transportation to or from a school entity or school-sponsored activity.

The School shall provide to all students, without discrimination, course offerings, counseling, assistance, services, employment, athletics and extracurricular activities. The School shall make reasonable accommodations for identified physical and mental impairments that constitute handicaps and disabilities, consistent with the requirements of federal and state laws and regulations.

The Joint Operating Committee encourages students and third parties who believe they or others have been subject to discrimination to promptly report such incidents to designated employees, even if some elements of the related incident took place or originated away from school grounds, school activities or school conveyances.

The Joint Operating Committee directs that verbal and written complaints of discrimination shall be investigated promptly, and appropriate corrective or preventative action be taken when allegations are substantiated. The Joint Operating Committee directs that any complaint of discrimination brought pursuant to this policy shall also be reviewed for conduct which may not be proven discriminatory under this policy but merits review and possible action under other Joint Operating Committee policies.

### **Confidentiality**



Confidentiality of all parties, witnesses, the allegations, the filing of a complaint and the investigation shall be handled in accordance with applicable laws, regulations, this policy and the School's legal and investigative obligations.

Based on the context of what is reported to the School, all incidents that are required by law to be reported to law enforcement and/or ChildLine will be made accordingly.

### Retaliation

The Joint Operating Committee prohibits retaliation against any person for making a report of discrimination or participating in a related investigation or hearing, or opposing practices the person reasonably believes to be discriminatory. A complaint of retaliation shall be handled in the same manner as a complaint of discrimination.

## **Definitions**

### Discriminatory Harassment

Harassment by students, employees or third parties on the basis of race, color, age, creed, religion, sex, sexual orientation, ancestry, national origin, marital status, pregnancy, handicap/disability or for participation in reports or investigations of alleged discrimination is a form of discrimination and is subject to this policy. A person who is not necessarily an intended victim or target of such harassment but is adversely affected by the offensive conduct may file a report of discrimination on his/her own behalf. [20][21][22][23][24][25][26]

For purposes of this policy, **harassment** shall consist of unwelcome conduct such as graphic, written, electronic, verbal or nonverbal acts including offensive jokes, slurs, epithets and name-calling, ridicule or mockery, insults or put-downs, offensive objects or pictures, physical assaults or threats, intimidation, or other conduct that may be harmful or humiliating or interfere with a person's school or school-related performance and which relates to an individual's or group's race, color, age, creed, religion, sex, sexual orientation, ancestry, national origin, marital status, pregnancy or handicap/disability when such conduct is:

1. Sufficiently severe, persistent or pervasive; and
2. A reasonable person in the complainant's position would find that it creates an intimidating, threatening or abusive educational environment such that it deprives or adversely interferes with or limits an individual or group of the ability to participate in or benefit from the services, activities or opportunities offered by a school.

### Sexual Harassment Not Covered Under Policy 103.2, Title IX Nondiscrimination

The following definition of sexual harassment applies only to allegations that the Title IX Coordinator has determined do not fit the definition of "Title IX sexual harassment" as stated in Policy 103.2, which allegations will be investigated pursuant to this policy.

Sexual harassment is a form of discrimination on the basis of sex and is subject to this policy. For purposes of this policy, **sexual harassment** shall consist of unwelcome sexual advances; requests for sexual favors; and other inappropriate verbal, nonverbal, written, graphic or physical conduct of a sexual nature when:

1. Submission to such conduct is made explicitly or implicitly a term or condition of a student's status in any educational or other programs offered by a school; or
2. Submission to or rejection of such conduct is used as the basis for educational or other program decisions affecting a student; or
3. Such conduct deprives a student or group of individuals of educational aid, benefits, services or treatment; or

4. Such conduct is sufficiently severe, persistent or pervasive that a reasonable person in the complainant's position would find that it unreasonably interferes with the complainant's performance in school or school-related programs, or otherwise creates an intimidating, hostile, or offensive school or school-related environment such that it unreasonably interferes with the complainant's access to or participation in school or school-related programs.

**Sexual violence** means physical or sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to the victim's use of drugs or alcohol. An individual may also be unable to give consent due to an intellectual or other disability. Sexual violence includes but is not limited to rape, sexual assault, sexual battery and sexual coercion.

Discrimination on the basis of sex and sexual harassment that violate Title IX are addressed in Joint Operating Committee Policy 103.2. This policy addresses sex discrimination and sexual harassment that do not fall under the purview of Title IX.

### **Delegation of Responsibility**

In order to maintain a program of nondiscrimination practices that is in compliance with applicable laws and regulations, the Joint Operating Committee designates the Administrative Director as the School's Compliance Officer. All nondiscrimination notices or information shall include the position, office address, telephone number and email address of the Compliance Officer.

The Compliance Officer shall publish and disseminate this policy and complaint procedure at least annually to students, parents/guardians, employees and the public to notify them of where and how to initiate complaints under this policy.

The Compliance Officer is responsible to ensure adequate nondiscrimination procedures are in place, to recommend new procedures or modifications to procedures and to monitor the implementation of the School's (school's) nondiscrimination procedures in the following areas:

1. Curriculum and Materials - Review of curriculum guides, textbooks and supplemental materials for discriminatory bias.
2. Training - Provision of training for students and staff to prevent, identify and alleviate problems of discrimination.
3. Resources - Maintain and provide information to staff on resources available to alleged victims in addition to the school complaint procedure, such as making reports to the police, available assistance from domestic violence or rape crisis programs and community health resources including counseling resources.
4. Student Access - Review of programs, activities and practices to ensure that all students have equal access and are not segregated except when permissible by law or regulation.
5. School Support - Assurance that like aspects of the school program receive like support as to staffing and compensation, facilities, equipment, and related areas.
6. Student Evaluation - Review of tests, procedures, and guidance and counseling materials for stereotyping and discrimination.
7. Complaints - Monitor and provide technical assistance to building administrators or designees in processing complaints.

The building administrator or designee shall be responsible to promptly complete the following duties upon receipt of a report of discrimination or retaliation from a student, employee or third party:

1. Immediately notify the Title IX Coordinator of any complaint that involves a claim of sex discrimination or sexual harassment for a determination of whether an investigation under Title IX

should be commenced.

2. In cases that do not involve any allegations of sex discrimination or sexual harassment, or when the Title IX Coordinator has not already notified the building administrator that the investigation shall be handled solely under Policy 103.2, provide relevant information on resources available in addition to the school complaint procedure, such as making reports to the police, available assistance from domestic violence or rape crisis programs and community health resources including counseling resources.
3. If the building administrator is the subject of the complaint, refer the complainant to the Compliance Officer to carry out these responsibilities.
4. Inform the complainant about this policy including the right to an investigation of both oral and written complaints of discrimination.
5. **Seek to obtain** consent from parents/guardians to initiate an investigation where the complainant or alleged victim is under age eighteen (18). Inform parents/guardians **of the complainant** that **the complainant** may be accompanied by a parent/guardian during all steps of the complaint procedure. **When a parent/guardian requests confidentiality and will not consent to the alleged victim's participation in an investigation, explain that the School shall take all reasonable steps to investigate and respond to the complaint consistent with that request for confidentiality as long as doing so does not preclude the School from responding effectively to the discrimination and preventing discrimination of other students.**
6. Immediately notify the Compliance Officer of the complaint. The Compliance Officer shall assess whether the investigation should be conducted by the building administrator, another School employee, the Compliance Officer or an attorney and shall promptly assign the investigation to that individual. **When a parent/guardian has requested confidentiality and will not consent to the alleged victim's participation in an investigation, the Compliance Officer shall provide the parent/guardian with a letter containing information related to the School's (school's) legal obligations to conduct an investigation and address violations of this policy, and any other information appropriate to the specific complaint.**
7. After consideration of the allegations and in consultation with the Compliance Officer and other appropriate individuals, promptly implement interim measures as appropriate to protect the complainant and others as necessary from violation of this policy during the course of the investigation.

## Guidelines

### Complaint Procedure – Student/Third Party

#### **Step 1 – Reporting**

A student or third party who believes s/he has been subject to conduct by any student, employee or third party that constitutes a violation of this policy is encouraged to immediately report the incident to the building administrator. Any person with knowledge of conduct that may violate this policy, is encouraged to immediately report the matter to the building administrator.

A School employee who suspects or is notified that a student has been subject to conduct that constitutes a violation of this policy shall immediately report the incident to the building administrator, as well as properly making any mandatory police or child protective services reports required by law.  
[27]

If the building administrator is the subject of a complaint, the student, third party or employee shall report the incident directly to the Compliance Officer.

The complainant or reporting employee may be encouraged to use the School's report form, available from the building administrator or Compliance Officer, or to put the complaint in writing; however, oral complaints shall be accepted, documented and the procedures of this policy implemented. The person accepting the verbal or written complaint may provide factual information on the complaint and the



investigative process, the impact of choosing to seek confidentiality and the right to file criminal charges. In all other respects, the person accepting the complaint shall handle the report objectively, neutrally and professionally, setting aside personal biases that might favor or disfavor the complainant or those accused of a violation of this policy.

## **Step 2 – Investigation**

**The Compliance Officer shall ensure that the individual assigned to investigate the complaint has an appropriate understanding of the relevant laws pertaining to discrimination issues and this policy and how to conduct investigations.**

The investigator shall work with the Compliance Officer to assess the anticipated scope of the investigation, who needs to be interviewed and what records may be relevant to the investigation.

The investigator shall conduct an adequate, reliable and impartial investigation. The complainant and the accused **may suggest additional** witnesses and **provide** other evidence during the course of the investigation. When the initial complaint involves allegations relating to conduct which took place away from school property, school-sponsored activities or school conveyances, the investigation may include inquiries related to these allegations to determine whether they resulted in continuing effects such as harassment in school settings.

The investigation may consist of individual interviews with the complainant, the accused, and others with knowledge relative to the allegations. The investigator may also evaluate any other information and materials relevant to the investigation. The person making the report, parties, parents/guardians and witnesses shall be informed of the prohibition against retaliation for anyone's participation in the process and that conduct believed to be retaliatory should be reported. All individuals providing statements or other information or participating in the investigation shall be instructed to keep the matter confidential and to report any concerns about confidentiality to the investigator.

If the investigation reveals that the conduct being investigated may involve a violation of criminal law, the investigator shall promptly notify the Compliance Officer, who shall promptly inform law enforcement authorities about the allegations.[27][28][29]

The obligation to conduct this investigation shall not be negated by the fact that a criminal or child protective services investigation of the allegations is pending or has been concluded. The investigator should coordinate with any other ongoing investigations of the allegations, including agreeing to requests for a short delay in fulfilling the School's (school's) investigative responsibilities during the fact-finding portion of a criminal or child protective services investigation. Such delays shall not extend beyond the time necessary to prevent interference with or disruption of the criminal or child protective services investigation.

## **Step 3 – Investigative Report**

The investigator shall prepare and submit a written report to the Compliance Officer within twenty (20) school days of the initial report of alleged discrimination, unless the nature of the allegations, anticipated extent of the investigation or the availability of witnesses requires the investigator and the Compliance Officer to establish a different due date. The parties shall be notified of the anticipated date the investigative report will be completed and of any changes to the anticipated due date during the course of the investigation.

The report shall include a summary of the investigation, a determination of whether the complaint has been substantiated as factual, the information and evaluation that formed the basis for this determination, whether the conduct violated this policy and of any other violations of law or Joint Operating Committee policy which may warrant further action by the School, and a recommended disposition of the complaint. An investigation into discriminatory harassment or sexual harassment shall consider the record as a whole and the totality of circumstances in determining whether a violation of this policy has occurred, recognizing that persistent and pervasive conduct, when taken together, may be a violation even when the separate incidents are not severe.



The complainant and the accused shall be informed of the outcome of the investigation, **for example, whether the investigator believes the allegations to be founded or unfounded**, including the recommended disposition within a reasonable time of the submission of the written report **to the extent authorized by the Family Educational Rights and Privacy Act (FERPA) and other applicable laws**. The accused shall not be notified of the individual remedies offered or provided to the complainant.[\[30\]](#)[\[31\]](#)[\[32\]](#)

#### Step 4 – Action of the School

If the investigation results in a finding that some or all of the allegations of the complaint are established and constitute a violation of this policy, the School shall take prompt, corrective action designed to ensure that such conduct ceases and that no retaliation occurs. The School shall promptly take appropriate steps to prevent the recurrence of the prohibited conduct and to address the discriminatory effect the prohibited conduct had on the complainant and the school or school program environment. School staff shall document the corrective action taken and, where not prohibited by law, inform the complainant. The Compliance Officer shall follow up by assessing the effectiveness of the corrective action at reasonable intervals.

If an investigation results in a finding that a different policy was violated separately from or in addition to violations of this policy, or that there are circumstances warranting further action, such matters shall be addressed at the conclusion of this investigation or through disciplinary or other appropriate referrals where further evaluation or investigation is necessary.

Disciplinary actions shall be consistent with the Code of Student Conduct, Joint Operating Committee policies and School administrative regulations, School procedures, applicable collective bargaining agreements, and state and federal laws.

#### Appeal Procedure

1. If the complainant or the accused is not satisfied with a finding made pursuant to the policy or with recommended corrective action, s/he may submit a written appeal to the Compliance Officer within fifteen (15) school days. If the Compliance Officer investigated the complaint, such appeal shall be made to the Administrative Director.
2. The individual receiving the appeal shall review the investigation and the investigative report and may also conduct or designate another person to conduct a reasonable supplemental investigation to assess the sufficiency and propriety of the prior investigation.
3. The person handling the appeal shall prepare a written response to the appeal within twenty (20) school days. Copies of the response shall be provided to the complainant, the accused and the investigator who conducted the initial investigation.

103-Attach1RprtForm.docx (20 KB)

103Attach2-TemplateLetter.docx (24 KB)

**REPORT FORM FOR COMPLAINTS OF  
DISCRIMINATION/DISCRIMINATORY HARASSMENT**

Complainant: \_\_\_\_\_

Home Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Date of Alleged Incident(s): \_\_\_\_\_

Alleged discrimination/**discriminatory harassment** was based on: \_\_\_\_\_

Name of person you believe violated the Joint Operating Committee's  
nondiscrimination/**discriminatory harassment** policy: \_\_\_\_\_

If the alleged discrimination/**discriminatory harassment** was directed against another person,  
identify the other person: \_\_\_\_\_

Describe the incident(s) as clearly as possible, including any graphic, written, electronic, verbal  
or nonverbal acts (i.e., offensive jokes, slurs, epithets and name-calling, ridicule or mockery,  
insults or put-downs, offensive objects or pictures, physical assaults or threats, intimidation, or  
other conduct). Attach additional pages if necessary: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

When and where **alleged** incident(s) occurred: \_\_\_\_\_

List any witnesses who were present: \_\_\_\_\_

\_\_\_\_\_

This complaint is based on my honest belief that \_\_\_\_\_ has discriminated  
against me or another person. I certify that the information I have provided in this complaint is  
true, correct and complete to the best of my knowledge.

\_\_\_\_\_  
Complainant's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Received By

\_\_\_\_\_  
Date



**NOTE: THIS DOCUMENT SERVES AS A TEMPLATE ONLY AND HAS TO BE MODIFIED BY THE SCHOOL ENTITY PRIOR TO USE. THE DOCUMENT CANNOT BE USED IN ITS CURRENT FORM.**

**[CENTER (SCHOOL) LETTERHEAD]**

**ADDRESSED TO: Alleged Victims' Parents/Guardians**

**RE: Complaint of discrimination made on [DATE] on behalf of [STUDENT]**

**Dear \_\_\_\_\_:**

**On [DATE] you met with [NAME OF: PRINCIPAL, COMPLIANCE OFFICER, DESIGNEE] to discuss an alleged violation of [CENTER (SCHOOL)] Policy No. 103, prohibiting discrimination/discriminatory harassment in school and classroom practices. The allegations involved *[VERY BRIEF DESCRIPTION OF INCIDENT OR GENERAL INCIDENTS WITHOUT NAMING NAMES, e.g. that a fellow student reported a teacher in the high school inappropriately texted your child suggesting they have dinner together; that your student reported a classmate in his math class has been touching his thigh every day and talking about how cute he is, making him uncomfortable; that a custodian reported hearing an identified group of students use racial slurs against your child; that your child reported to you that a teacher criticized your family's religion as being terroristic, etc.]***

**In this discussion, you stated that you wish to maintain confidentiality and do not consent to [STUDENT'S] participation in an investigation. Because the center (school) has a legal obligation to address potential violations of Policy 103, the center (school) will conduct an investigation and maintain confidentiality to the extent this is consistent with the center's (school's) obligations to address and prevent violations of this policy. Any violations of policy which may be uncovered through this investigation will be addressed. The [CENTER (SCHOOL)] prohibits retaliation against any individual who has made a complaint, and alleged victims or individuals who participate in related investigations. If at any time you wish to withdraw your request for confidentiality and have your child participate in the investigation, please notify me immediately. If at any time your child believes there have been additional violations of Policy 103, including any retaliatory behavior, please contact me at your earliest convenience to permit the center (school) to properly address such matters. This will be treated as a new complaint with a new opportunity to determine your child's participation.**

**Feel free to contact me with any questions. My contact information is:**

**Sincerely,**

\_\_\_\_\_  
**Compliance Officer**