



Book	Policy Manual
Section	5000 Students
Title	ANTI-HARASSMENT OF PERSONS WITH A DISABILITY
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#### 5517.03 - **ANTI-HARASSMENT OF PERSONS WITH A DISABILITY**

It is the policy of the Board of Education to maintain an education and work environment which is free from harassment and violence of person with a mental, physical, developmental, or sensory disability. This commitment applies to all Board operations, programs, and activities. All students, administrators, teachers, staff, and all other school personnel share responsibility for avoiding, discouraging, and reporting disability harassment and violence. This policy applies to unlawful conduct occurring on school property, or at another location if such conduct occurs during an activity sponsored by the Board.

Furthermore, the Board is committed to providing an educational setting that is safe, secure, and free from harassment, intimidation and bullying for all of its students and school employees. See Policy 5517.01 - Bullying for those instances addressing bullying which do not rise to the level of legally protected harassment under Federal law, but are, nonetheless, behaviors that may occur on school grounds, at school-sponsored events, on school buses, at school bus stops and through school computer networks and through other electronic communications or transmissions that will not be tolerated and must be appropriately identified, reported, investigated, and, when substantiated, be the subject of appropriate disciplinary action. An electronic act, communication, transmission or threat includes but is not limited to one which is administered via telephone, wireless phone, computer, pager or any electronic or wireless device whatsoever, and includes but is not limited to transmission of any image or voice, email or text message using any such device.

The Board will vigorously enforce its prohibition against harassment and violence based on a disability and encourages those within the County School System community as well as third parties, who feel aggrieved to seek assistance to rectify the problems. The Board will investigate all allegations of harassment and violence and in those cases where unlawful harassment and violence is substantiated, the Board will take immediate steps to end the harassment and violence. Individuals who are found to have engaged in unlawful harassment and violence will be subject to appropriate disciplinary action.

For purposes of this policy, "County School System community" means students, administrators, teachers, staff, and all other school personnel, including Board members, agents, volunteers, contractors, or other persons subject to the control and supervision of the Board.

For purposes of this policy, "third parties" include, but are not limited to, guests and/or visitors on County School System property (e.g., visiting speakers, participants on opposing athletic teams, parents), vendors doing business with, or seeking to do business with, the Board, and other individuals who come in contact with members of the County School System community at school-related events/activities (whether on or off School property).

Prohibited disability harassment occurs when unwelcome physical, verbal, or nonverbal conduct is based upon an individual's disability and when:

- A. the conduct has the purpose or effect of interfering with the individual's or educational performance;
- B. creates an intimidating, hostile, or offense working and/or learning environment; or of
- C. interfering with one's ability to participate in or benefit from a class or an educational program or activity.

Such harassment may occur where conduct is directed at the characteristics of a person's disabling condition, such as negative comments about speech patterns, movement, physical impairments or defects/appearances, or the like.

### **Reporting Procedures**

- A. In Each School Building. The building principal is the person responsible for receiving oral or written reports of disability harassment or violence at the building level. Upon receipt of a report of student conduct, the principal must notify the Human Rights Officer promptly, and shall commence investigation of the complaint. Upon completing the investigation, and in most cases, not later than ten (10) working days of receiving the complaint, a written report will be forwarded to the Human Rights Officer and to the Superintendent.

If the report alleges employee misconduct, the building principal must promptly notify the Human Rights Officer who will initiate, or direct, an investigation of the complaint. This investigation may conducted by school officials or third parties designated by the Superintendent. Within ten (10) working days of receiving the complaint, the investigating party shall provide a written status report to the Superintendent.

Anytime the report is given to the building principal verbally, the principal shall reduce it to written form before the close of the next working day. If the complaint involves the building principal, the complaint shall be made directly to the Human Rights Officer.

For school buildings/facilities which do not have a building principal, such as the transportation and maintenance departments, the Director of such building or facility will be the person responsible for receiving oral or written reports of disability harassment or violence. All other provisions of the paragraph above apply to such situations, except that the term "Director" shall be substituted for the term "building principal".

- B. County-wide. The Board hereby designates its Title IX Coordinator as the Human Rights Officer to receive reports or complaints of Disability harassment or violence from any individual, employee or victim of disability harassment or violence and also from the building principals as outlined above. If the complaint involves the Human Rights Officer, the complaint or report shall be filed directly with the Superintendent, who shall then be responsible for the investigation and recommendation described in the Investigation and Recommendation section of this policy. The name of the Human Rights Officer, including a mailing address and telephone number, shall be conspicuously posted in the office of each school building and in other buildings to which employees of the Board are assigned to work.
- C. Submission of a complaint or report of disability harassment or violence will not affect the future employment, grades, or work assignments of the person who submits the complaint or report.
- D. Use of formal reporting forms is not mandatory.
- E. All alleged incidents of harassment or violence observed by faculty, staff or other employees of the Board must report the incident to either the building principal or the Human Rights Officer within twenty-four (24) hours of observing the incident.

The Board's investigation of disability harassment or violence complaints will be conducted with maximum effort to protect the confidentiality of all those involved in the complaint or investigative process and to facilitate prompt resolution of the complaint.

School officials, may in their discretion, take immediate steps to protect individual privacy and safety pending resolution.

### **Investigation and Recommendation**

The individual(s) designated by this policy to investigate, shall, upon receipt of a report or complaint alleging disability harassment or violence, immediately will authorize an investigation. The investigation may be conducted by school officials or by a third party designated by the school officials if necessary. The investigating party shall provide a written report of the result of the investigation and a recommendation of discipline within ten (10) working days to the Superintendent and to the Human Rights Officer. If the Superintendent is the subject of the complaint, the report shall be submitted to the Human Rights Officer and to the President of the Board. The report shall include a determination of whether the allegations have been substantiated as factual and whether they appear to be violations of this policy.

In determining whether alleged conduct constitutes disability harassment or violence, consideration shall be given to the surrounding circumstances, the nature of the conduct involved, relationships between the parties involved, and the context in which the alleged incidents occurred.

The investigation must, at a minimum, consist of personal interviews with the complainant, the individual(s) against whom the complaint is filed, and other who may have knowledge of the alleged incident(s) or circumstance(s) giving rise to the complaint. The investigation may also consist of any other methods, documents, and review of circumstances deemed pertinent by the investigator(s).

### **Confidentiality**

Confidentiality of the filing of complaints, the identity of subject and witnesses of any complaint, and of any action taken as a result of such complaints is essential to the effectiveness of this policy. Only those individuals necessary for the investigation and resolution of the complaint shall be given information about it. Therefore, the right of confidentiality of complainants, subject, witnesses, and investigators will be vigorously protected and violations of such confidentiality may, itself, be grounds for disciplinary action.

### **Results of the Investigation**

The result of the investigation of each complaint filed under these procedures will be reported in writing to the complainant and his/her legal guardian by the Superintendent, or, if the Superintendent is the subject of the complaint, by the President of the Board.

### **Discipline and Other Actions**

In determining the appropriate response and/or punishment, the Board shall consider the surrounding circumstances, the nature of the behavior, past incidents or past or continuing patterns of behavior, the relationships between the parties involved and the context in which the alleged incident occurred.

- A. Upon receipt of a recommendation that the complaint is valid, the Board will take such action as appropriate based on the results of the investigation. Such action may include, but is not limited to, warning, suspension, exclusion, expulsion, transfer, termination, and revocation of license.
- B. The Board shall also initiate such other action as is appropriate to ease tensions and affirm the values of respect and understanding in accordance with this policy.
- C. The Superintendent shall immediately file a report with the West Virginia Department of Education of all reports of harassment or violence when an investigation shows that harassment or violence did occur and all actions taken in response to the incident.
- D. **Student Discipline**

In the event the building principal recommends that a student be expelled from school, the student shall be suspended for a period of time not to exceed ten (10) days. The principal shall notify the student's parents, in writing of the

recommendation. The principal shall notify the Superintendent, in writing, of his/her decision.

Upon receipt of the principal's recommendation, the Superintendent shall review the allegations contained in the complaint and the investigative report and recommendation. If the allegations in the complaint have been substantiated, the Superintendent shall recommend to the Board that the student be expelled for a period not to exceed one (1) school year.

The principal shall notify the parent of the student, in writing, of the recommendation prior to presenting any evidence to the Board.

Upon notice of the right to be present before the Board at the hearing, the administration shall present evidence in support of its recommendation. If the Board finds, by a preponderance of the evidence, that the provisions of this policy have been violated, the Board shall a) expel the student for up to one (1) school year, or b) expel the student for such other time, up to one (1) school year, as the Board deems just.

The student shall have the opportunity to present evidence to the Board at the hearing, including calling witnesses and cross-examining those of the administration. Nothing in this policy shall prevent the student from being represented by counsel, at his/her expense, nor shall the student be compelled to present any evidence that may tend to incriminate himself/herself.

In the event the student who is accused of committing the act is a student who receives special education and related services, no disciplinary action can be taken until and unless the student's individualized committee has determined that the student's actions did not arise as a result of his/her disability.

#### **E. Faculty and Staff Discipline**

If a faculty or staff person is accused of a violation of this policy, the disciplinary procedures found in the regulations regarding disciplinary action shall apply.

#### **F. Discipline of Non-School Related Personnel**

Should any person that is not an employee or student of the Board be found to have violated this policy, that person shall, forthwith, be prohibited from entering any school building, facility, or property.

Nothing in this policy shall prohibit contacting law enforcement or other personnel, including the Human Rights Commission, regarding the actions of any party subject to a complaint.

### **Reprisal**

The Board will discipline, as appropriate, any individual who retaliates against any person who reports allegations of disability harassment or violence, or any person who cooperates, testifies, assists, or participates in any disability harassment or violence investigation, proceeding, or hearing. "Retaliation" includes, but is not limited to, any form of retaliation or intimidation, reprisal, coercion, provocation, or harassment. The Board will also discipline, as appropriate, any person who falsely reports disability harassment.

### **Non-Harassment**

The Board recognizes that not all reports of allegations of disability harassment will result in findings that such an incident has occurred. However, the Board encourages all persons who believe that they are a victim of such harassment to come forward and affirms its policy that no adverse action will be taken upon the filing of a complaint under this policy, unless it is shown, through investigation, that the complaint is patently false.

### **Right to Alternative Complaint Procedures**

These procedures do not deny the right of any individual to pursue other avenues of recourse which may include the filing of charges with the West Virginia Human Rights Commission, filing an employee grievance under WV Code 18-29-1, et. seq., filing a

citizen's appeal under West Virginia Board of Education policy 7211, filing a Title IX grievance under the appropriate procedures, filing charges with the Federal Equal Employment Opportunity Commission, or initiating civil or criminal action under State and/or Federal law.

#### Dissemination of the Policy

This policy or a summary shall be conspicuously posted throughout each school or facility of the Board in areas accessible to students and staff members.

This policy shall appear in the Student and Staff Handbooks and, if no handbook is available, a copy shall be distributed to all students, faculty, and staff.

The students and staff of the Board shall be trained on these regulations and on means for effectively promoting the goals of this policy.

The Board policy shall be reviewed at least bi-annually to assure compliance with State and Federal law and with State Board of Education policy.

Groups and person utilizing school properties for curricular and extra-curricular activities shall be provided a copy of this policy prior to the use of any Board facility. Failure to comply with this policy by a non-student group will result in the immediate forfeiture of the group's use of the school properties.

#### Implementation and Education

The Human Rights Officer shall develop a program designed to raise the awareness of the different types of harassment, how it manifests itself, its emotional, educational and legal consequences.

The Human Rights Officer shall present written and verbal information to all faculty, staff and students at least once annually. Dissemination of written and verbal information may be made by a designee(s) of the Human Rights Officer as appropriate, and such presentation must be age-appropriate for students K-4, 5-8, and 9-12.

T.C. 10/31/19

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