

***Wayne County Board of Education
Policies Update: (Professional Staff) (6)***

- **WCBOE Policy 3122 (Professional Staff: Nondiscrimination, Equal Employment Opportunity, and Anti-Harassment)**
- **WCBOE Policy 3122.02 (Professional Staff: Nondiscrimination Based on Genetic Information of the Employee)**
- **WCBOE Policy 3123 (Professional Staff: Section 504/ADA Prohibition against Disability Discrimination in Employment)**
- **WCBOE Policy 3160.01 (Professional Staff: Tuberculosis Examination)**
- **NEOLA Policy 3242.05 (Professional Staff: Mandatory Staff Training – Individualized Education Program (IEP))**
- **WCBOE Policy 3362 (Professional Staff: Anti-Harassment and Violence)**

***Your comments concerning these policies should be sent
in writing (mail or email) to:***

***Mr. Todd Alexander
Superintendent
Wayne County Board of Education
PO Box 70
Wayne, WV 25570
Email: talexand@k12.wv.us***

**These policies are out for public comment for 10 working days beginning
Wednesday, April 29, 2026 through Tuesday, May 12, 2026.**

Book	Public Comment Period 4/29/26 thru 5/12/26
Section	Vol 17-2 Nondiscrimination-Ready for TAA/Director
Title	Replacement Policy - Volume 17, No. 2 - August 2025 - Nondiscrimination - NONDISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY, AND ANTI-HARASSMENT
Code	po3122
Status	
Adopted	May 26, 2015
Last Revised	October 26, 2021

Replacement Policy - Volume 17, No. 2 - August 2025 - Nondiscrimination

3122 - NONDISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY, AND ANTI-HARASSMENT

NONDISCRIMINATION

The Board of Education (hereinafter referred to as "the Board" or "the County") does not discriminate based on a person's Protected Class(es) in its education programs or activities and does not tolerate unlawful harassment. Protected Classes (which may also be referred to as Protected Categories) include race, color, national origin, sex (including pregnancy, childbirth, and related conditions), disability, age, religion, military status, ancestry, genetic information, or any other legally protected characteristics. The Board is an equal opportunity employer.

[DRAFTING NOTE: Given this policy pertains to discrimination/harassment in an employment context, there is a legal basis to include the optional language in the above parenthetical – i.e., “sexual orientation; and gender identity”; namely, the U.S. Supreme Court held in *Bostock v. Clayton Cnty.*, 590 U.S. 644 (2020), that Title VII’s prohibition of discrimination on the basis of sex necessarily includes a prohibition of discrimination on the basis of sexual orientation and gender identity. On May 15, 2025, however, a Federal County Court in Texas declared unlawful and vacated portions of the EEOC’s 2024 Enforcement Guidance on Harassment in the Workplace that had interpreted the *Bostock* ruling to control employment actions beyond simply prohibiting termination of an employee based on the person’s sexual orientation or gender identity, which was the interpretation recognized by a majority of the U.S. Circuit Courts. The Texas County Court, however, found that all language in the Guidance document defining “sex” under Title VII to include “sexual orientation” and/or “gender identity” was contrary to Title VII and therefore vacated. Neola recommends you discuss this issue with your local legal counsel before deciding whether to include the language. Regardless of whether you elect to include the language, it is critical that you consult with your local legal counsel if a situation arises involving a workplace dispute in which an employee could conceivably allege discrimination or harassment based upon the employee’s sexual orientation or gender identity.]

The Board is committed to providing a work environment that is free from Prohibited Conduct, responding promptly and effectively when it has knowledge of conduct that reasonably may constitute Prohibited Conduct, and addressing Prohibited Conduct in its education programs or activities. This commitment applies to all County operations, and this policy applies to Prohibited Conduct occurring within or as a part of the County's education programs and activities, whether on school property or at another location during an activity sponsored by the Board.

Persons who commit Prohibited Conduct are subject to the full range of disciplinary sanctions set forth in this policy.

The Board will provide persons who have experienced Prohibited Conduct ongoing remedies as reasonably necessary to restore or preserve access to the County's education programs or activities.

All school employees share responsibility for avoiding, discouraging, and reporting any form of Prohibited Conduct.

The Board will take immediate action to address the following prohibited acts:

- A. Retaliating against a person who has made a report or filed a complaint alleging Prohibited Conduct, or has participated in the below-described grievance procedures.
- B. Filing a malicious or knowingly false report or complaint of Prohibited Conduct.
- C. Disregarding, failing to appropriately address, or delaying action to appropriately address allegations of Prohibited Conduct when responsibility for reporting and/or investigating such charges comprises part of one's administrative/supervisory duties.

Definitions:

Words used in this policy shall have those meanings defined herein; words not defined herein shall be construed according to their plain and ordinary meanings.

Bullying means: any unwanted and repeated written, verbal, or physical behavior, including any threatening, insulting, or dehumanizing gesture, by an adult, that is sufficiently severe or pervasive to create an intimidating, hostile, or offensive work environment; or unreasonably interfere with the individual's work performance or participation. It may involve: (a) threats; (b) intimidation; (c) stalking; (d) cyberstalking; (e) cyberbullying; (f) physical violence; (g) theft; (h) sexual, religious, or racial harassment; (i) public humiliation; or (j) destruction of property. Bullying rises to the level of unlawful harassment when one (1) or more persons systematically and chronically inflict physical hurt or psychological distress on one (1) or more employees and that bullying is based upon one (1) or more Protected Classes, that is, characteristics that are protected by Federal and/or State civil rights laws. Ordinary teasing, horseplay, argument, and peer conflict do not constitute bullying for purposes of this policy.

Complainant means:

- A. an employee who is alleged to have been subjected to conduct that could constitute Prohibited Conduct; or
- B. a person other than an employee who is alleged to have been subjected to conduct that could constitute Prohibited Conduct and who was participating or attempting to participate in the County's education programs or activities at the time of the alleged Prohibited Conduct.

Complaint means: an oral or written request to the County that objectively can be understood as a request for the County to investigate and make a determination about alleged Prohibited Conduct.

Day(s): Unless expressly stated otherwise, the term "day" or "days" as used in this policy means business day(s) (i.e., days that the Board office is open for normal operating hours, Monday–Friday, excluding State-recognized holidays).

Disciplinary sanctions means: consequences imposed on a respondent following a determination that the respondent engaged in Prohibited Conduct.

Education programs or activities refers to: all the County's operations including, but not limited to, in-person and online/remote educational instruction, employment, extracurricular activities, athletics, performances, and community engagement and outreach programs. The term applies to all programs and activities operated by the Board on school grounds or on other property owned or occupied by the Board. It also includes events and circumstances that take place off school property/grounds but over which the County asserts disciplinary authority (e.g., at off-campus activities sponsored by the Board).

Exculpatory evidence means: evidence that is favorable to a respondent because it helps excuse, justify, or absolve a respondent of alleged wrongdoing and tends to establish that a respondent did not engage in Prohibited Conduct.

Genetic information means: information about: (a) an individual's genetic tests; (b) the genetic tests of that individual's family members; (c) the manifestation of disease or disorder in family members of the individual (i.e., family medical history); (d) an individual's request for, or receipt of, genetic services, or the participation in clinical research that includes genetic services by the individual or a family member of the individual; or (e) the genetic information of a fetus carried by an individual or a pregnant woman who is a family member of the individual and the genetic information of an embryo legally held by an individual or family member using assistive reproductive technology.

Harassment means: any threatening, insulting, or dehumanizing gesture, use of technology, or written, verbal, or physical conduct directed against an employee that (a) places the employee in reasonable fear of harm to their person or damage to their property; (b) has the effect of substantially interfering with the employee's work performance; or (c) has the effect of substantially disrupting the orderly operation of a school. Each of the following types of harassment involves unwelcome physical, verbal, or nonverbal conduct that is based upon an individual's protected characteristic(s) and has the purpose or effect of interfering with the individual's work performance or creating an intimidating, hostile, or offensive work environment.

- A. **Age Harassment** means: harassment based on negative perceptions about older workers. It also includes harassment based on stereotypes about older workers, even if they are not motivated by animus, such as pressuring an older employee to transfer to a job that is less technology-focused because of the perception that older workers are not well-suited to such work or encouraging an older employee to retire.
- B. **Disability Harassment** means: harassment based upon a person's disability, and includes harassment based upon stereotypes about individuals with disabilities in general or about an individual's particular disability. It also includes harassment based on traits or characteristics linked to an individual's disability, such as how the person speaks, looks, or moves. For example, negative comments about an individual's speech patterns, movement, physical impairments, or defects/appearances, or the like. Disability-based harassment includes: (a) harassment because an individual requests or receives reasonable accommodation; (b) harassment because an individual is regarded as having an impairment, even if the individual does not have an actual disability or a record of disability; (c) harassment because an individual has a record of a disability, even if the individual currently does not have a disability; and (d) harassment based on the disability of an individual with whom the employee is associated. Finally, disability-based harassment may occur where conduct is directed at or pertains to a person's genetic information.
- C. **National Origin/Ancestry Harassment** means: harassment due to a person's (or their ancestor's) place of origin. Such harassing conduct can include ethnic slurs or epithets, derogatory comments about individuals of a particular nationality, and use of stereotypes about a person's national origin. Additionally, it can include harassment regarding traits or characteristics linked to an individual's national origin, such as physical characteristics, ethnic or cultural characteristics or customs (e.g., surnames, attire, or diet), or linguistic characteristics (e.g., a person's manner of speaking, non-English language accent, or a lack of fluency in English).
- D. **Race/Color Harassment** means: unwelcome physical, verbal, or nonverbal conduct that is based upon an individual's race or color and has the purpose or effect of interfering with the individual's work performance or creating an intimidating, hostile, or offensive work environment. Such harassment may occur where conduct is directed at the characteristics of a person's race or color, such as racial slurs, nicknames implying stereotypes, epithets, and/or negative references relative to racial customs.
- E. **Religious (Creed) Harassment** means: harassment based on a person's surname, religion (including atheism or lack of religious belief), religious traditions and practices, or religious dress/clothing, and includes making offensive comments about the same. It also includes religious slurs or epithets, harassing conduct based on religious stereotypes, and harassment associated with a person's request for and/or receipt of religious accommodation. Religious harassment also involves explicitly or implicitly coercing an employee to engage in religious practices at work.
- F. **Sexual Harassment** means (for purposes of this policy and consistent with Title VII of the Civil Rights Act of 1964): unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when: (a) submission to such conduct is made either implicitly or explicitly a term or condition of an individual's employment; (b) submission or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or (c) such conduct has the purpose or effect of interfering with the individual's work performance or creating an intimidating, hostile, or offensive working environment. Sexual harassment may involve the behavior of a person of any gender against a person of the same or another gender.
 - 1. Sexual Harassment covered by Policy 2266 - Nondiscrimination on the Basis of Sex in Education Programs or Activities is not included in this policy. Allegations of such conduct shall be addressed solely by Policy 2266.
 - 2. Prohibited acts that constitute sexual harassment under this policy may take a variety of forms. Examples of the kinds of conduct that may constitute sexual harassment include, but are not limited to:
 - a. Conduct of a sexualized nature, such as unwanted conduct expressing sexual attraction or involving sexual activity (e.g., unwelcome sexual propositions, invitations, solicitations, and flirtations;

unwanted physical and/or sexual contact, including unwelcome and inappropriate touching, patting, or pinching () and obscene gestures **[END OF OPTION]**.

- b. Sexual attention or sexual coercion, such as demands or pressure for sexual favors (e.g., threats or insinuations that a person's employment, wages, or other conditions of employment may be adversely affected by not submitting to sexual advances; giving unwelcome personal gifts such as lingerie that suggest the desire for a romantic relationship; leering or staring at someone in a sexual way, such as staring at a person's breasts, buttocks, or groin).
- c. Rape, sexual assault, or other acts of sexual violence.
- d. Discussing or displaying visual depictions of sex acts or sexual remarks (e.g., unwelcome verbal expressions of a sexual nature, including graphic sexual commentaries about a person's body, dress, appearance, or sexual activities; the unwelcome use of sexually degrading language, profanity, jokes, or innuendoes; unwelcome suggestive or insulting sounds or whistles; obscene telephone calls, texts, etc.; sexually suggestive objects, pictures, graffiti, videos, posters, audio recordings, or literature placed in the work environment; asking about, or telling about, sexual fantasies, sexual preferences, or sexual activities; speculations about a person's sexual activities or sexual history, or remarks about one's own sexual activities or sexual history).
- e. A consensual sexual relationship where such relationship leads to favoritism of a subordinate employee with whom the superior is sexually involved and where such favoritism adversely affects other employees or otherwise creates a hostile work environment.
- f. Verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping that does not involve conduct of a sexual nature.
- g. Non-sexual conduct based on sex, such as sex-based epithets; sexist comments (such as remarks that women do not belong in management or that men do not belong in the nursing profession); or facially sex-neutral offensive conduct motivated by sex (such as bullying directed toward employees of one sex).
- h. Harassment based on pregnancy, childbirth, or related medical condition, which may include issues pertaining to lactation, using or not using contraception, or deciding whether to have, or not to have, an abortion.

Not all behavior with sexual connotations constitutes unlawful sexual harassment. Sex-based or gender-based conduct must be objectively offensive (a reasonable person would find it hostile or abusive), subjectively offensive (the complainant actually perceived it as abusive), and either sufficiently severe (a single extremely serious incident) or pervasive (a pattern of behavior), such that it adversely affects, limits, or denies an individual's employment or creates a hostile or abusive employment environment.

Inculpatory evidence means: evidence that links a respondent to alleged wrongdoing and tends to establish that a respondent engaged in Prohibited Conduct (i.e., has culpability).

Military status means: a person's past, current, or future membership, service, or obligation in a uniformed service (e.g., Army, Marine Corps, Navy, Air Force, Space Force, Coast Guard, Public Health Service Commissioned Corps, and National Oceanic and Atmospheric Administration Commissioned Officer Corps). Service in the uniformed services also means the performance of duty, on a voluntary or involuntary basis, in a uniformed service, under competent authority, and includes active duty, active duty for training, initial active duty for training, inactive duty for training, full-time National Guard duty, and performance of duty or training by a member of the West Virginia organized militia. It further includes the period of time for which a person is absent from employment for the purpose of an examination to determine the fitness of the person to perform any such duty as listed above.

Party means: a complainant or respondent.

Pregnancy, childbirth, or related medical conditions means:

- A. "Pregnancy" and "childbirth" refer to the pregnancy or childbirth of a specific employee and include, but are not limited to, current pregnancy; past pregnancy; potential or intended pregnancy (which can include infertility, fertility

treatment, and the use of contraception); labor; and childbirth (including vaginal and cesarean delivery).

- B. "Related medical conditions" are medical conditions relating to the pregnancy or childbirth of a specific employee, and may include termination of pregnancy, including via miscarriage, stillbirth, or abortion; ectopic pregnancy; preterm labor; pelvic prolapse; nerve injuries; cesarean or perineal wound infection; maternal cardiometabolic disease; gestational diabetes; preeclampsia; HELLP (hemolysis, elevated liver enzymes and low platelets) syndrome; hyperemesis gravidarum; anemia; endometriosis; sciatica; lumbar lordosis; carpal tunnel syndrome; chronic migraines; dehydration; hemorrhoids; nausea or vomiting; edema of the legs, ankles, feet, or fingers; high blood pressure; infection; antenatal (during pregnancy) anxiety, depression, or psychosis; postpartum depression, anxiety, or psychosis; frequent urination; incontinence; loss of balance; vision changes; varicose veins; changes in hormone levels; vaginal bleeding; menstruation; and lactation and conditions related to lactation, such as low milk supply, engorgement, plugged ducts, mastitis, or fungal infections. The preceding list of related medical conditions is not exhaustive.

Prohibited Conduct means: unlawful discrimination or harassment based on a person's Protected Class(es) or retaliation. Such misconduct involves a violation of Federal and/or State civil rights laws.

Relevant means: related to the allegations of Prohibited Conduct under investigation as part of the Board's grievance procedures. Questions are relevant when they seek evidence that may aid in showing whether the alleged Prohibited Conduct occurred, and evidence is relevant when it may aid a decisionmaker in determining whether the alleged Prohibited Conduct occurred.

Remedies means: measures provided, as appropriate, to a complainant or any other person the County identifies as having had their equal access to the County's education programs or activities limited or denied by Prohibited Conduct. These measures are provided to restore or preserve that person's access to the County's education program or activity after the County determines that Prohibited Conduct occurred.

Respondent means: a person who is alleged to have engaged in Prohibited Conduct.

Retaliation means: intimidation, threats, coercion, or discrimination against any person by the County, a student, a Board employee, or any other person authorized by the Board to provide aid, benefit, or service under the County's education programs or activities, for the purpose of interfering with any right or privilege secured by Federal or State law, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under applicable Federal or State laws or regulations.

School County community means: students and Board employees (i.e., administrators and professional/classified staff), as well as Board members, agents, volunteers, contractors, or other persons subject to the control and supervision of the Board.

Supportive measures means: non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, without fee or charge to the complainant or the respondent before or after making a report or filing a complaint. Such measures are designed to restore or preserve that party's access to the County's education programs or activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the County's educational environment or deter Prohibited Conduct. Supportive measures may include modifications of work schedules, mutual restrictions of contact between the parties, changes in work locations, leaves of absence, increased security and monitoring of certain work settings, training related to Prohibited Conduct, (x) referral to Employee Assistance Program, [END OF OPTION] and other similar measures.

Third Parties means: guests and/or visitors on County 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 School County community at school-related events/activities (whether on or off County property).

Pregnancy, Childbirth, and Related Medical Conditions

The Board will not discriminate against an employee based on the person's current pregnancy, potential or intent to become pregnant, past pregnancy, or medical condition related to pregnancy or childbirth, or because the person uses birth control, or has had or not had an abortion.

Additionally, the Board will provide a reasonable accommodation to an employee's known limitation related to pregnancy, childbirth, or a related medical condition, unless the accommodation will cause the County undue hardship.

The Board will treat pregnancy, childbirth, and related medical conditions as any other temporary medical conditions for all job-related purposes, including commencement, duration, and extensions of leave; accrual of seniority and any other benefit or service; reinstatement; and under any fringe benefit offered to employees by virtue of employment.

The Board will provide reasonable break time for an employee to express breast milk while at work for the first year after the employee's child's birth. The Board will provide the employee with a space, other than a bathroom, that is clean, shielded from view, free from intrusion from coworkers and the public, and which the employee can use as needed to express breast milk. See Board Policy 6700 – Fair Labor Standards Act.

Nondiscrimination Based on Employee's Genetic Information

The Board prohibits discrimination on the basis of genetic information in all aspects of employment, including hiring, firing, compensation, job assignments, promotions, layoffs, training, fringe benefits, or any other terms, conditions, or privileges of employment. The Board also does not limit, segregate, or classify employees in any way that would deprive or tend to deprive them of employment opportunities or otherwise adversely affect the status of an employee as an employee, based on genetic information. Harassment of a person because of the individual's genetic information is also prohibited. Likewise, retaliation against an applicant or employee for engaging in protected activity is prohibited.

In accordance with the Genetic Information Nondiscrimination Act ("GINA"), the Board shall not request, require, or purchase genetic information of employees, their family members, or applicants for employment. Further, in compliance with GINA, employees are directed not to provide any genetic information, including the individual's family medical history, in response to necessary requests for medical information, with the exception that family medical history may be acquired as part of the certification process for FMLA leave, when an employee is asking for leave to care for an immediate family member with a serious health condition. Applicants for employment are directed not to provide any genetic information, including the individual's family medical history, in response to requests for medical information as part of the County's application process.

[] The County recognizes that genetic information may be acquired through commercially and publicly available documents like newspapers, books, magazines, periodicals, television shows, or the Internet. The County prohibits, however, its employees from searching such sources with the intent of finding or obtaining genetic information or accessing sources from which they are likely to acquire genetic information. **[END OF OPTION]**

If the County either legally and/or inadvertently receives genetic information about an employee or applicant for employment from the employee, applicant for employment, or a medical provider, it shall be treated as a confidential medical record in accordance with law.

The County Compliance Officer (see below) shall be responsible for overseeing the County's compliance with applicable Federal regulations and promptly dealing with any inquiries or complaints. The County Compliance Office or designee shall also verify that proper notice of nondiscrimination for Title II of the Genetic Information Nondiscrimination Act of 2008 is provided to staff members, and that all County requests for health-related information (e.g., to support an employee's request for reasonable accommodation under the Americans with Disabilities Act ("ADA") or a request for sick leave) is accompanied by a written warning that directs the employee or health care provider not to collect or provide genetic information. The warning shall read as follows:

The Genetic Information Nondiscrimination Act of 2008 ("GINA") prohibits employers and other entities covered by GINA Title II, including the Board of Education, from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by law. To comply with this law, do not provide any genetic information when responding to this request for medical information (unless the request pertains to a request for FMLA leave for purposes of caring for an immediate family member with a serious health condition). "Genetic information," as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic test, the fact that an individual or an individual's family member sought or received genetic services or participated in clinical research that includes genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.

[] The County offers health services (), including a wellness program **[END OF OPTION]**. Participation in the services/program is voluntary. Genetic information (such as family medical history) may be obtained as part of an

individual's participation in the service/program. If that occurs, individual genetic information may be provided to the individual receiving the services and to the person's health services providers, but only genetic information in aggregate form will be provided to the Board **[END OF OPTION]**.

County Compliance Officer(s)

[DRAFTING NOTES:

- 1. Neola suggests the Board appoint both a male and a female to serve as the County Compliance Officers. By appointing two (2) County Compliance Officers, there should always be a County Compliance Officer available to address a claim that pertains to the other County Compliance Officer. If, however, the Board appoints more than one (1) County Compliance Officer, Neola recommends that it designate one (1) of the County Compliance Officers to retain ultimate oversight over the assigned responsibilities and ensure the Board's consistent compliance with its responsibilities under applicable Federal and State laws that prohibit unlawful discrimination/harassment based on protected classes and retaliation. Alternatively, the Board could appoint a County Compliance Officer and one (1) or more persons to assist the County Compliance Officer with the performance of the responsibilities identified in this policy and its accompanying administrative guidelines. Often, the person(s) designated to assist a County Compliance Officer is/are called Deputy or Assistant Compliance Officer(s). If the Board elects this alternative approach, it would designate a County Compliance Officer for purposes of this policy, and then designate the other position(s) through its AG. The person(s) in the alternative support role(s) will need to be trained in the same manner as the County Compliance Officer (see AG 3122).**
- 2. The Board must list in this policy either the Name(s) or Title(s) of the County Compliance Officer(s); while the Board may list both the Name(s) and Title(s), Neola suggests that the Board only list the Title(s) in this policy (so the Board does not need to revise/amend the policy whenever there is a change in the actual person(s) holding the designated position(s)), but list both the Name(s) and Title(s) in the requisite notices/postings (e.g., website) and publications (e.g., handbooks). The County will also need to decide whether to list the Name(s) and Title(s), or just the Title(s), in Administrative Guideline 3122 if the County elects to identify the County Compliance Officer in the AG (see DRAFTING NOTE in the AG; again, if the County lists the Name(s) and Title(s), it will need to remember to update the AG whenever there is a change in the actual person(s) holding the designated position(s). No matter what, the Board will need to amend its policy and update its AG, requisite notices/postings, and publications whenever it changes the Title of the position(s) designated to serve as the County Compliance Officer(s).**
- 3. Reminder: Whenever a new person begins to serve as the County Compliance Officer (or in a support role to the County Compliance Officer), the County needs to make sure the new person is appropriately trained, in a timely manner, to fulfill the responsibilities of the position to which the person is assigned.]**

The Board designates and authorizes the following individual(s) to coordinate its efforts to comply with the Board's responsibilities under Federal and State laws that prohibit discrimination, including harassment, based on Protected Classes and retaliation (also known as "Civil Rights Coordinator(s)" or "Anti-Harassment Compliance Officer(s)") (hereinafter referred to as the "County Compliance Officer(s)" or "CO(s)"):

Director of High Schools
Wayne County Board of Education
212 North Court Street
Wayne, WV 25570
304-272-5116

[DRAFTING NOTE: The County may want to create a static (i.e., fixed) County Compliance Officer-specific email address and phone number that will not change when the person(s) and/or position(s) designated to be the CO(s) change(s) – e.g., CO4CivilRights@(insert County's domain) – which the Technology Director/Department can program to be forwarded to the actual individual(s) serving as the County Compliance Officer(s) at any given time. Likewise, the County may want to establish a static Telephone Number for the position of County Compliance Officer that can be forwarded to, and accessed by, the actual person(s) serving in the CO position(s) at any given time. These two (2) steps will help reduce the information

that needs to be updated in policy, AG, and/or the requisite notices/postings and publications when changes occur to the specific person(s)/position(s) designated to serve as the CO(s).]

[DRAFTING NOTE: Complete the following information if the Board appoints more than one (1) County Compliance Officer.]

[x] [DESIGNATION OF A SECOND County COMPLIANCE OFFICER]

Director of Special Education
Wayne County Board of Education
212 North Court Street
Wayne, WV 25570
304-272-5116

[END OF OPTION]

[DRAFTING NOTE: As discussed above, if the Board designates more than one (1) CO, Neola recommends that the County select the following option.]

[] The Board designates _____ **[DRAFTING NOTE: Insert Name and/or Title of the County Compliance Officer who is ultimately responsible for the County's compliance with its responsibilities under Federal and State laws that prohibit discrimination/harassment based on Protected Classes and retaliation]** as the individual who is ultimately responsible for oversight over the Board's compliance with applicable Federal and State laws and regulations that prohibit discrimination based on the basis of protected classes and retaliation. **[END OF OPTION]**

x] The County Compliance Officer may delegate specific duties to one (1) or more designees. **[END OF OPTION]**

The contact information concerning the County Compliance Officer(s) will be published on the School County's website () and annually **[END OF OPTION]**:

- A. () in parent/student and staff handbooks.
- B. () in the School County Annual Report to the public.
- C. () on each individual school's website.
- D. () in the School County's calendar.
- E. () **[Other]** _____.

[DRAFTING NOTE: The Board may want to select the following option when the Superintendent is not the CO. While Neola recognizes that this may not always be possible, it may be preferable to have the CO be someone other than the Superintendent because then – if the CO serves as the investigator and decisionmaker – the Superintendent can serve as the appeal decisionmaker or the facilitator for the informal resolution process.]

[x] The County Compliance Officer(s) shall report directly to the Superintendent except when the Superintendent is a party to a complaint (i.e., either the complainant or the respondent). Under such circumstances, the CO(s) shall report directly to **[SELECT ONE OF THE FOLLOWING]** () the Board President (**x**) the Board's Legal Counsel () _____ **[OTHER]** **[END OF OPTIONS]** until the matter in which the Superintendent is a party is concluded. **[END OF OPTION]**

Questions about this policy () and AG 3122 **[END OF OPTION]** should be directed to the County Compliance Officer(s).

The CO(s) is/are responsible for coordinating the County's efforts to comply with applicable Federal and State laws and regulations, including the County's duty to address in a prompt and equitable manner any inquiries or complaints regarding discrimination, harassment, retaliation, or denial of equal opportunity/access. The CO(s) shall also verify that proper notice of nondiscrimination for Title II of the Americans with Disabilities Act (as amended), Title VI and Title VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973 (as amended), Genetic Information Nondiscrimination Act ("GINA"), and the Age Discrimination in Employment Act of 1975 is provided to staff members and the general public. () Any sections of the County's collective bargaining agreements dealing with hiring, promotion, demotion, discipline, and

tenure need to contain a statement of nondiscrimination similar to that in the Board's statement set forth above. **[END OF OPTION]** () In addition, as practical, gender-specific terms should be eliminated from such contracts. **[END OF OPTION]** Copies of the laws and regulations listed above are available upon request from the CO(s).

The CO(s) will be available during regular work hours to discuss concerns related to Prohibited Conduct, to assist employees, other members of the County community, and third parties who seek support or advice when informing another individual about Prohibited Conduct, including unwelcome conduct, or to intercede informally on behalf of the individual in those instances where concerns have not resulted in the filing of a formal complaint and where all parties are in agreement to participate in an informal process.

The CO(s) shall monitor the County's education programs and activities for barriers to reporting information about conduct that reasonably may constitute Prohibited Conduct pursuant to Federal and/or State laws that prohibit discrimination/harassment based on the basis of a Protected Class/Category and retaliation, and take steps reasonably calculated to address such barriers.

Notice of Nondiscrimination

The Superintendent shall provide a notice of nondiscrimination to students, parents, guardians, or other authorized legal representatives of elementary and secondary students; employees; applicants for admission and employment; and all unions and professional organizations holding collective bargaining or professional agreements with the Board. Specifically, the Superintendent shall post the notice of nondiscrimination on the County's website and in each handbook, catalog, announcement, bulletin, and application form that it makes available to the persons listed above, or which are otherwise used in connection with the recruitment of employees. () See AG 3122 - Nondiscrimination, Equal Employment Opportunity, and Anti-Harassment and Form 3122 F1 – Notice and Statement of Nondiscrimination. **[END OF OPTION]**

NOTIFICATION/REPORTS OF PROHIBITED CONDUCT

Any person may provide information to the CO(s) concerning conduct that reasonably may constitute Prohibited Conduct. Such information may be submitted in person, by mail, by telephone, or by electronic mail using the CO's(s') published contact information, or by any other means (oral or written) that results in the CO(s) receiving the information. Information may be provided at any time (including during non-work hours). () Anonymous reports may be submitted using () the online reporting form posted at _____ **[insert the web address for the reporting form, or insert a hyperlink tied to the phrase "online reporting form"]** [or] () the hotline reporting number (_____ **[insert phone number]**). **[END OF OPTION]**

All Board employees are required to notify the CO(s) of conduct that reasonably may constitute Prohibited Conduct. For the Board to fulfill its responsibilities under applicable Federal and/or State laws, if a Board employee has knowledge of conduct that reasonably may constitute Prohibited Conduct, the Board employee must notify the/a CO within two (2) days of learning the information or receiving the report. **[DRAFTING NOTE: The applicable statutes and regulations do not specify within how many days the Board employee must notify the CO of receiving notification/a report of Prohibited Conduct; Neola suggests "two (2) days". Alternatively, the Board could make this language more open-ended – e.g., "** * * must immediately/promptly notify the/a CO of such information or report."]** The Board employee must also comply with mandatory reporting responsibilities pursuant to Policy 8462 – Student Abuse and Neglect, if applicable. If the Board employee's knowledge about the alleged Prohibited Conduct is based on another individual bringing the information to the Board employee's attention and the reporting individual submitted a written notification/report or complaint to the Board employee, the Board employee must provide the written notification/report or complaint to the CO.

Notification can be provided orally or in writing and should be as specific as possible. The person making the notification/report should, to the extent known, identify the alleged victim(s), perpetrator(s), and witness(es), and describe in detail what occurred, including date(s), time(s), and location(s).

If a notification/report or complaint involves allegations of Prohibited Conduct by or involving the CO, the person making the report (i.e., providing the notification or filing the complaint) should submit it to the Superintendent or another Board employee who, in turn, will notify the Superintendent of the report/complaint. The Superintendent will then serve in place of the CO for purposes of addressing that report of Prohibited Conduct. **[DRAFTING NOTE: If the Superintendent is the CO, substitute "Board President" in place of "Superintendent."]**

When a Board employee notifies the CO of suspected Prohibited Conduct, the employee is required to report all known details about the alleged Prohibited Conduct including: (1) the name of the alleged respondent(s); (2) the person who experienced the alleged Prohibited Conduct (i.e., the complainant); (3) other persons involved in the alleged Prohibited Conduct (e.g., witnesses); and (4) any other relevant facts, such as date, time, and location. Failure to provide such notification may result in discipline, up to and including suspension or termination of employment.

Any allegations of misconduct not involving Prohibited Conduct as defined in this policy will be addressed through the procedures outlined in other Board policies (**x**) and/or administrative guidelines **[END OF OPTION]**, the applicable Student Code of Conduct, applicable collective bargaining agreement, and/or Employee/Administrator Handbook.

When a notification/report or complaint of Prohibited Conduct is made, the CO shall promptly (i.e., within two (2) days **[DRAFTING NOTE: The applicable laws and/or regulations do not define "promptly" or otherwise specify within how many days the contact has to be made; Neola suggests "two (2) days."]** of the CO's receipt of the notification/report or complaint of Prohibited Conduct) contact the purported complainant to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a complaint, and explain to the complainant the process for filing a complaint. The CO is responsible for coordinating the effective implementation of supportive measures. Any supportive measures provided to the complainant or respondent shall be maintained as confidential, to the extent that maintaining such confidentiality will not impair the ability of the County to provide the supportive measures.

GRIEVANCE PROCEDURES

Overview:

The Board adopts the following grievance procedures to provide for the prompt, effective, and equitable resolution of complaints made by employees, applicants, or other individuals who are participating or attempting to participate in the County's education programs or activities (i.e., members of the School County community and third parties), or by the CO, alleging any act of Prohibited Conduct.

These grievance procedures shall be used for all complaints of Prohibited Conduct, unless it involves conduct involving a student, in which case the grievance procedures set forth in Policy 2260 or Policy 5517.01 shall apply. These grievance procedures set forth the means for investigating and resolving claims involving such Prohibited Conduct; in particular, the procedures provide a method for assessing – in a prompt, effective, and equitable manner – whether an applicable Federal or State law was violated and, if it was, how best to end the Prohibited Conduct, prevent its recurrence, and remedy its effects.

Due to the sensitivity surrounding complaints of Prohibited Conduct, timelines are flexible for initiating the grievance procedures; however, individuals are encouraged to file a complaint within thirty (30) days after the conduct occurs. Once the formal complaint process is begun, the investigation will be completed in a timely manner.

[DRAFTING NOTE: Title VII of the Civil Rights Act of 1964 ("Title VII") prohibits discrimination in employment. Specifically, it prohibits employment discrimination based on race, color, religion, sex, or national origin, and applies to employers with fifteen (15) or more employees. Title IX, on the other hand, specifically prohibits discrimination based on sex in education programs and activities that receive Federal financial assistance, including employment within those institutions. Title IX is addressed by Board Policy 2266 and AG 2266. While both laws aim to prevent sex-based discrimination in the workplace, Title VII applies more broadly to various types of employers, whereas Title IX is limited to educational institutions receiving Federal funds. Ultimately, both laws aim to ensure equal employment opportunities and protect individuals from discrimination. When a County Compliance Officer receives a complaint or notification of alleged misconduct involving sex discrimination (in particular, sexual harassment) that involves an employee complainant and an employee respondent, the County Compliance Officer should consult with the Title IX Coordinator and/or the Board's Legal Counsel concerning which law – it may be both – the County will need to comply with when investigating the allegations.]

Under all circumstances, the CO shall offer and coordinate supportive measures, as appropriate, in accordance with this policy () and AG 3122 **[END OF OPTION]**.

Complaints:

The following people may make a complaint of Prohibited Conduct – i.e., request that the County investigate and determine

whether Prohibited Conduct occurred:

A. A "complainant," which includes:

1. an employee of the County who is alleged to have been subjected to conduct that could constitute Prohibited Conduct; or
2. a person other than an employee of the County who is alleged to have been subjected to conduct that could constitute Prohibited Conduct at a time when that individual was participating or attempting to participate in the County's education programs or activities;

B. An authorized legal representative with the legal right to act on behalf of a complainant;

C. County Compliance Officer.

A person is entitled to make a complaint of unlawful harassment only if they themselves are alleged to have been subjected to the unlawful harassment, or if the CO initiates a complaint.

[DRAFTING NOTE: This paragraph emphasizes that in order for a person to file a complaint of unlawful harassment, the person has to have been subjected to the alleged misconduct directly or be a person who has a legal right to act on behalf of the person who was subjected to the alleged misconduct. This is consistent with the prior paragraph where the complainant is identified as an employee who was "subjected to conduct that could constitute Prohibited Conduct." The following paragraph, on the other hand, expands who can file a complaint – when the alleged Prohibited Conduct does not involve unlawful harassment, or the complaint involves allegations of retaliation – to persons who are aware of the alleged Prohibited Conduct, even if that person was not directly affected by or subject to the alleged Prohibited Conduct.]

With respect to complaints of Prohibited Conduct other than unlawful harassment, or complaints involving allegations of retaliation, in addition to the people listed above, the following persons have a right to make a complaint:

A. any employee of the County; or

B. any person other than an employee who was participating or attempting to participate in the County's education programs or activities at the time of the alleged Prohibited Conduct.

The County may consolidate complaints of Prohibited Conduct against more than one (1) respondent, or by more than one (1) complainant against one (1) or more respondents, or by one (1) party against another party, when the allegations of Prohibited Conduct arise out of the same facts or circumstances. When more than one (1) complainant or more than one (1) respondent is involved, references below to a party, complainant, or respondent include the plural, as applicable.

A person may file criminal charges simultaneously with filing a complaint. A person does not need to wait until the County's internal grievance procedures are completed before filing a criminal complaint. Likewise, questions or complaints relating to alleged violations of applicable Federal or State laws may be filed with the U.S. Department of Education's Office for Civil Rights, the U.S. Department of Justice's Civil Rights Division, the U.S. Equal Employment Opportunity Commission, or the West Virginia Human Rights Commission at any time based on the underlying statutory basis for the complaint.

Basic Requirements:

The County will treat complainants and respondents equitably.

All persons involved with implementing the grievance procedures and any other aspects of this Policy, including the County Compliance Officer, the investigator, the decisionmaker, and the appeal decisionmaker, () and the facilitator of the informal resolution process, **[END OF OPTION]** shall be free from any conflicts of interest or bias for or against complainants or respondents generally, or an individual complainant or respondent.

x] The CO may serve simultaneously as an investigator and/or a decisionmaker. **[END OF OPTION] [DRAFTING NOTE: Neola recommends the Board select this OPTION; note it is "may" (i.e., optional) so the CO can decide when to serve in both roles and when to designate one or more persons to perform these responsibilities in a given case.]**

If the CO does not intend to serve as the investigator/decisionmaker in a specific case, the CO shall designate one (1) or more administrators who are appropriately trained to serve in the role.

In circumstances when the CO and trained administrators do not have time/capacity to serve, or are prevented due to a conflict of interest, bias, or partiality, or other reasons impair the CO and other trained administrators from serving as an investigator/decisionmaker in a specific case, the CO shall (☒), in consultation with (☒) and approval of **[END OF OPTION]** the Superintendent or () Board () Board President (as appropriate), **[END OF OPTION]** secure one (1) or more independent third parties to serve as the investigator and/or decisionmaker.

The County presumes that the respondent is not responsible for the alleged Prohibited Conduct until a determination is made at the conclusion of its grievance procedures.

Under ordinary circumstances, the Board expects to complete the major stages of the grievance procedures within the timeframe specified below:

- A. **Evaluation** – The County Compliance Officer will determine whether to dismiss a complaint or investigate it within ten (10)_____ **[INSERT # OF DAYS]** days of receiving the complaint. **[DRAFTING NOTE: Neola recommends that the evaluation stage be completed within ten (10) days of the CO receiving notice of the complaint.]**
- B. **Investigation** – The CO, or designated investigator/decisionmaker, shall ordinarily complete the investigation (i.e., collect relevant evidence that is not otherwise impermissible) and issue a Determination (i.e., consider the relevant and not otherwise impermissible evidence and decide whether Prohibited Conduct occurred) within twenty (20)_____ **[INSERT # OF DAYS]** days of the CO determining the charges require investigation. **[DRAFTING NOTE: Recognizing that it is important for investigations to be completed and Determinations issued in a prompt and equitable manner, Neola recommends that a school County typically complete an investigation and issue a Determination within twenty (20) days.]**

[DRAFTING NOTE: If the investigator/decisionmaker is someone other than the CO, upon written request from the investigator/decisionmaker, the CO should be permitted to approve a reasonable extension of time for the investigation to be completed and the Determination issued. If the CO is the investigator/decisionmaker: upon written request from the CO, the Superintendent should be permitted to approve a reasonable extension of time for the investigation to be completed and the Determination issued. In either situation, the administrator granting the extension should communicate to the parties the new deadline along with a rationale for the extension.] If, however, the CO, or designated investigator/decisionmaker, determines that the investigation is going to take longer, the CO will so notify the parties () and the Superintendent **[END OF OPTION]** and will thereafter keep the parties () and the Superintendent **[END OF OPTION]** informed of the status of the matter on a regular _____ **[INSERT TIME PERIOD – E.G., BIWEEKLY OR REGULAR]** basis.

- C. **Appeal** – A party filing an appeal of the CO's decision to dismiss a complaint (☒), or the Determination, **[END OF OPTION]** must do so within two (2)_____ **[INSERT # OF DAYS]** days of receiving the Dismissal (☒) or Determination **[END OF OPTION]**.

[DRAFTING NOTE: Neola recommends the Board allow limited appeals based on the Determination. See DRAFTING NOTE below in the Appeal section.]

The CO, or the Superintendent if the CO is the individual requesting an extension, may approve reasonable extensions of the preceding timeframes on a case-by-case basis for good cause with notice to the parties.

The County will take reasonable steps to protect the privacy of the parties and witnesses. () These steps will not restrict the ability of the parties to present evidence or otherwise participate in the grievance procedures. **[END OF OPTION]** The parties shall not engage in retaliation, including against witnesses.

The CO, or designated investigator/decisionmaker, shall objectively evaluate all evidence that is relevant and not otherwise impermissible, including both inculpatory and exculpatory evidence. Credibility determinations shall not be based on a person's status as a complainant, respondent, or witness.

The following types of evidence, and questions seeking such evidence, are impermissible (i.e., will not be accessed or

considered, except by the County to determine whether one (1) of the exceptions listed below applies; will not be disclosed; and will not otherwise be used), regardless of whether they are relevant:

- A. evidence that is protected under a privilege recognized by Federal or State law, unless the person to whom the privilege or confidentiality is owed voluntarily waived the privilege or confidentiality; and
- B. a party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless the County obtains that party's or witness's voluntary, written consent for use in its grievance procedures.

Notice of Allegations:

Upon initiation of the Board's grievance procedures, the County Compliance Officer shall notify the parties of the following:

- A. the Board's grievance procedures **(x)** and informal resolution process **[END OF OPTIONS]** associated with claims involving Prohibited Conduct; **[DRAFTING NOTE: Neola encourages the Board to include an informal resolution process.]**
- B. sufficient information available at the time to allow the parties to respond to the allegations, including the identities of the parties involved in the incident(s), the conduct alleged to constitute Prohibited Conduct, and the date(s) and location(s) of the alleged incident(s); and
- C. retaliation is prohibited.

Should the CO decide, at any point, to investigate allegations that are materially beyond the scope of the initial written notice, the CO will provide a supplemental written notice describing the additional allegations to be investigated.

Dismissal of a Complaint:

The CO may dismiss a complaint of Prohibited Conduct if:

- A. the County is unable to identify the respondent after taking reasonable steps to do so;
- B. the respondent is not participating in the County's education program or activity and is not employed by the Board;
- C. the complainant voluntarily withdraws any or all of the allegations in the complaint, the CO declines to initiate a complaint, and the County determines that, without the complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute Prohibited Conduct even if proven; or
- D. the County determines that the conduct alleged in the complaint, even if proven, would not constitute Prohibited Conduct. Before dismissing the complaint, the CO will make reasonable efforts to clarify the allegations with the complainant.

Upon dismissal, the CO will promptly notify, in writing, the complainant of the basis for the dismissal. If the dismissal occurs after the respondent has been notified of the allegations, the CO will also simultaneously notify, in writing, the respondent of the dismissal and the basis for the dismissal.

The CO will further notify the complainant that a dismissal may be appealed and will provide the complainant with an opportunity to appeal the dismissal of the complaint. If the dismissal occurs after the respondent has been notified of the allegations, then the CO will also notify the respondent that the dismissal may be appealed.

Dismissals may be appealed on the following bases:

- A. procedural irregularity that would change the outcome;
- B. new evidence that would change the outcome and that was not reasonably available when the dismissal was made; and
- C. the CO had a conflict of interest or bias for or against complainants or respondents generally, or the individual complainant or respondent, that would change the outcome.

If the dismissal is appealed, the CO will:

- A. notify the parties of any appeal, including notice of the allegations, if notice was not previously provided to the respondent;
- B. implement appeal procedures equally for the parties;
- C. ensure that the appeal decisionmaker did not take part in the original dismissal of the complaint;
- D. ensure that the appeal decisionmaker has been trained consistent with this Policy () and AG 3122 **[END OF OPTION]**;
- E. provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome; and
- F. notify the parties of the result of the appeal and the rationale for the result.

When a complaint is dismissed, the CO will, at a minimum:

- A. offer supportive measures to the complainant as appropriate;
- B. if the respondent has been notified of the allegations, offer supportive measures to the respondent as appropriate; and
- C. take other prompt and effective steps, as appropriate, to ensure that Prohibited Conduct does not continue or recur within the County's education programs or activities.

[DRAFTING NOTE: Neola encourages the Board to select the following option so the CO can choose, in appropriate circumstances, to offer the parties the opportunity to participate in an informal resolution process, or to honor the parties' request to use an informal resolution process, to end the Prohibited Conduct, prevent its recurrence, and remedy its effects.]

[☒ [OPTIONAL LANGUAGE: INFORMAL RESOLUTION PROCESS]

Informal Resolution Process:

In lieu of resolving a complaint through the Board's formal grievance procedures, the parties may instead elect to participate in an informal resolution process. The County will not offer an informal resolution to resolve a complaint when such a process would conflict with Federal, State, or local law.

[END OF OPTIONAL LANGUAGE: INFORMAL RESOLUTION PROCESS]

Adding Allegations and/or Consolidating Complaints:

If, in the course of an investigation, the County decides to investigate additional allegations of Prohibited Conduct by the respondent toward the complainant that are not included in the original Notice of Allegations or to consolidate charges raised in a different complaint involving the same respondent, the CO will notify the parties of the additional allegations.

Investigation:

The County will provide for an adequate, reliable, and impartial investigation of complaints.

The burden is on the County — not on the parties — to conduct an investigation that gathers sufficient evidence to determine whether Prohibited Conduct occurred.

The CO, or the designated investigator/decisionmaker, will provide an equal opportunity for the parties to present fact witnesses and other inculpatory and exculpatory evidence that are relevant and not otherwise impermissible.

The CO, or the designated investigator/decisionmaker, will review all evidence gathered through the investigation and

determine what evidence is relevant and what evidence is impermissible, regardless of relevance.

Determination of Whether Prohibited Conduct Occurred:

Following an investigation and evaluation of all relevant and not otherwise impermissible evidence, the CO or designated investigator/decisionmaker will:

- A. Use the preponderance of the evidence standard of proof to determine whether Prohibited Conduct occurred. This standard of proof requires the decisionmaker to evaluate relevant and not otherwise impermissible evidence for its persuasiveness. If the decisionmaker, applying the applicable standard, is not persuaded by the relevant and not otherwise impermissible evidence that Prohibited Conduct occurred, regardless of the quantity of the evidence, the decisionmaker will not determine that Prohibited Conduct occurred. **[DRAFTING NOTE: While a board of education could elect to use the "clear and convincing" evidence standard of proof, Neola does not recommend it. If a board does select the "clear and convincing" standard, it should use it in all other comparable proceedings. Neola expects it will be a rare situation when a board chooses to use a clear and convincing standard of proof.]**
- B. Notify the parties, in writing, of the determination whether Prohibited Conduct occurred, including the rationale for such determination (), and the procedures and permissible bases for the complainant and respondent to appeal **[END OF OPTION]**.
- C. Not impose discipline on a respondent for Prohibited Conduct unless there is a determination at the conclusion of the grievance procedures that the respondent engaged in Prohibited Conduct.
- D. If there is a determination that Prohibited Conduct occurred, the CO will, as appropriate:
 1. coordinate the provision and implementation of remedies to a complainant and other people the County identifies as having had equal access to the County's education programs or activities limited or denied by the Prohibited Conduct;
 2. coordinate the imposition of any disciplinary sanctions on a respondent (), including notification to the complainant of any such disciplinary sanctions **[END OF OPTION]**; and
 3. take other appropriate prompt and effective steps to ensure that the Prohibited Conduct does not continue or recur within the County's education programs or activities.
- E. Comply with the grievance procedures before the imposition of any disciplinary sanctions against a respondent.
- F. Not discipline a party, witness, or others participating in the grievance procedures for making a false statement based solely on the determination of whether Prohibited Conduct occurred.

[DRAFTING NOTE: If the CO dismisses a complaint in the Evaluation stage (i.e., prior to commencing an investigation), the complainant may appeal as set forth above. Neola also recommends that the Board include an appeal process related to the Determination.]

[x] [OPTIONAL LANGUAGE - APPEAL OF DETERMINATIONS]

Appeal of Determinations:

If a party disagrees with the decisionmaker's determination as to whether Prohibited Conduct occurred, the party may file an appeal. Appeals must be submitted, in writing, within two (2)_____ **[INSERT # OF DAYS]** days of the appealing party's receipt of the Determination.

A party may appeal a Determination on the following bases:

- A. procedural irregularity that would change the outcome;
- B. new evidence that would change the outcome and that was not reasonably available when the investigation occurred and the Determination was made; and

- C. the CO, or the designated investigator/decisionmaker, had a conflict of interest or bias for or against complainants or respondents generally, or the individual complainant or respondent, that would change the outcome.

[DRAFTING NOTE: The Board may insert additional grounds on which an appeal may be filed. Change period at end of C. to a semi-colon if additional grounds are inserted by the Board.]

- D. ☐ the recommended remedies (including disciplinary sanctions/consequences) are unreasonable in light of the findings of fact (i.e., the nature and severity of the Prohibited Conduct).

- E. ☐ **[OTHER]** _____.

☐ The complainant may not challenge the ultimate disciplinary sanction/consequence that is imposed. **[END OF OPTION]**

[DRAFTING NOTE: The following options are offered in case the Board wants the Superintendent to serve as the appeal decisionmaker or the Board wants to nominally be identified as the appeal decisionmaker but will be delegating the responsibility to a person who is properly trained. Neola does not recommend that the Board itself be named as the appeal decisionmaker because of the preference for the decisionmaker to be trained to render a decision. If the Board wants to serve as the appeal decisionmaker, it should discuss this issue with its Legal Counsel. Select OPTION 1 or OPTION 2 below.]

☐ [OPTION 1]

The CO will designate an appeal decisionmaker, who will be a person who did not conduct the Investigation and render the Determination, and is appropriately trained ☐, as set forth in AG 3122 **[END OF INTERNAL OPTION]**.

The CO has authority ☐, in consultation with ☐ and approval of **[END OF OPTION]** the Superintendent or ☐ Board ☐ Board President (as appropriate), **[END OF OPTION]** to secure an independent third party to serve as the appeal decisionmaker.

☐ In designating an appeal decisionmaker, the CO will work with the Board to identify and appoint an independent third party to serve as the appeal decisionmaker – this individual shall be considered to be the Board's designee and will submit the appeal decision to the Board who will promptly adopt it as written and forward it to the CO who will send it simultaneously to the parties. **[END OF INTERNAL OPTION]**

[END OF OPTION 1]

☒ [OPTION 2]

The Superintendent shall serve as the appeal decisionmaker, provided the Superintendent has not been otherwise involved in the grievance procedures (i.e., did not serve as the investigator/decisionmaker or informal resolution process facilitator) and is appropriately trained. If the Superintendent is not eligible to serve as the appeal decisionmaker, the CO will designate an appeal decisionmaker, who will be a person who did not conduct the Investigation and render the Determination, and is appropriately trained ☐, as set forth in AG 3122 **[END OF INTERNAL OPTION]**.

[END OF OPTION 2]

If a party appeals the Determination, the CO will:

- A. notify the parties of the appeal;
- B. implement appeal procedures equally for the parties;
- C. provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the Determination;
- D. provide the appeal decisionmaker with the relevant and not otherwise impermissible evidence and the Determination; and
- E. notify the parties, in writing, of the result of the appeal and the appeal decisionmaker's rationale for the outcome.

Parties Provided a Reasonable and Equal Opportunity to Make a Statement in Support of, or Challenging, the Dismissal (x) or Determination [END OF OPTION]

When a party files an appeal, the party must set forth the reason(s)/basis/bases for the appeal, and the other party will have two (2)____ **[INSERT # OF DAYS]** days to provide the appeal decisionmaker with a statement in support of their position. Once the decisionmaker receives the statement (or the deadline for filing such a statement expires), the appeal decisionmaker will have ten (10)____ **[INSERT # OF DAYS]** days to issue a decision on the appeal.

[DRAFTING NOTE: Neola suggests any appeals should be filed within five (5) days of the parties receiving written notice of the Determination. Neola further suggests that the timeline for the other party submitting a statement be equivalent to the timeframe in which an appeal has to be filed. Finally, Neola suggests the appeal decisionmaker have ten (10) days from receipt of the statements to issue a decision.]

While a party appealing a Determination may argue the reason/basis for the appeal is that new evidence has been discovered/obtained that would change the outcome and that said new evidence was not reasonably available when the Determination was originally made, the party may not submit the new or additional evidence during the appeal process. Rather, the party appealing should identify/describe, in detail, the evidence, including how and when it was discovered/obtained, and explain why it was not reasonably available during the investigation (i.e., prior to the Determination). If the appeal decisionmaker accepts the proffered explanation, the appeal decisionmaker should remand the case back to the investigator/decisionmaker (i.e., reopen the investigation) so the new evidence may be submitted and considered by the other party and the investigator/decisionmaker.

The appeal decisionmaker shall determine the outcome of the appeal based on the appeal decisionmaker's independent review of the record (i.e., the relevant and not otherwise impermissible evidence and the written determination) and the appeal decisionmaker's application of the law and Board policy to the facts in the record. The appeal decisionmaker must give due deference and due weight to the decisionmaker's factual findings and credibility determinations and should not overturn them unless non-testimonial extrinsic evidence in the record justifies a contrary conclusion or unless the record, read in its entirety, compels a contrary conclusion. Generally, the appeal decisionmaker is expected to uphold the original Determination unless the appeal decisionmaker concludes the original Determination is unlawful, unreasonable, or against the manifest weight of the evidence. Every reasonable presumption must be made in favor of the original Determination.

The appeal decisionmaker shall

[DRAFTING NOTE: The Board must select either OPTION 1 or OPTION 2 unless the Board appointed an independent third party to serve as the Board's appeal decisionmaker, in which case the Board should select OPTION 3.]

() [OPTION 1]

simultaneously notify the parties, in writing, of the result of the appeal and the rationale for the outcome.

[END OF OPTION 1]

[OR]

(x) [OPTION 2]

notify the CO, in writing, of the result of the appeal and the rationale for the outcome. The CO will then simultaneously notify the parties, in writing, of the result of the appeal and the appeal decisionmaker's rationale for the outcome.

[END OF OPTION 2]

[OR]

() [OPTION 3 - APPOINTED THIRD PARTY AS APPEAL DECISIONMAKER]

submit the appeal decision to the Board, who will promptly adopt it as written and forward it to the CO, who will send it simultaneously to the parties. The appeal decision shall set forth the result of the appeal and the appeal decisionmaker's

rationale for the outcome.

[END OF OPTION 3]

The ☒ appeal decisionmaker's ☐ Board's **[END OF OPTION]** decision shall be final.

[END OF OPTIONAL LANGUAGE: APPEAL OF DETERMINATIONS]

Supportive Measures:

The County will offer and coordinate supportive measures as appropriate for the complainant and/or respondent to restore or preserve that person's access to the County's education programs or activities or provide support during the grievance procedures and/or during the informal resolution process. For allegations of Prohibited Conduct other than prohibited harassment or retaliation, the County's provision of support measures does not require the County, Board employees, or any other person authorized to provide aid, benefit, or service on the County's behalf to alter the alleged discriminatory/retaliatory conduct for the purpose of providing a supportive measure.

The CO shall determine appropriate supportive measures on a case-by-case basis. Supportive measures may vary depending on what the CO deems to be reasonably available. Supportive measures may include, but are not limited to, modifications of work schedules, mutual restrictions on contact between the parties; changes in work locations; leaves of absence; increased security and monitoring of certain work settings; training related to Prohibited Conduct; ☒ referral to Employee Assistance Program **[END OF OPTION]**; and other similar measures.

Supportive measures must not unreasonably burden either party and must be designed to protect the safety of the parties and/or the County's educational environment, or to provide support during the Board's grievance procedures or the informal resolution process.

The County will not impose such measures for punitive or disciplinary reasons.

The CO may, as appropriate, modify or terminate supportive measures at the conclusion of the grievance procedures, or at the conclusion of the informal resolution process, or the County may continue them beyond that point.

A party may seek additional modification or termination of a supportive measure applicable to them if circumstances change materially.

The County will not disclose information about any supportive measures to persons other than the person to whom they apply, including informing one party of supportive measures provided to another party, unless necessary to provide the supportive measure or restore or preserve a party's access to the County's education programs or activities, or as otherwise permitted under existing law and/or policy.

The Superintendent may place an employee respondent on administrative leave from employment responsibilities during the pendency of the Board's grievance procedures.

Disciplinary Sanctions and Remedies:

Following a determination that Prohibited Conduct occurred, the County may impose disciplinary sanctions, which may include:

- A. ☒ oral or written warning;
- B. ☒ written reprimands;
- C. ☐ required counseling;
- D. ☒ required training or education;
- E. ☐ demotion;
- F. ☐ suspension with pay;

[END OF OPTIONS]

G. suspension without pay;

H. termination; and

I. any other sanction authorized by any applicable Board policy, Employee/Administrator Handbook, and/or collective bargaining agreement.

The County may also provide remedies, which may include disciplinary sanctions/consequences. The CO will notify the Superintendent of the recommended remedies so an authorized administrator can consider the recommendation and implement appropriate remedies in compliance with applicable due process procedures, whether statutory or contractual.

[DRAFTING NOTE: The Board should review applicable policy(ies)/administrative guidelines/employee handbooks to determine whether changes are needed to establish timelines associated with imposition of discipline as a result of possible delays caused by the Board implementing the preceding grievance procedures; likewise, the Board may need to discuss with union representatives how implementation of the grievance procedures may impact any disciplinary provisions contained in applicable collective bargaining (e.g., timelines, permitted attendees at investigative interviews, etc.).]

Discipline of an employee will be implemented in accordance with Federal and State law, Board policy, and applicable provisions of any relevant collective bargaining agreement.

Retaliation

Retaliation against a person who makes a report or files a complaint alleging Prohibited Conduct or retaliation, or participates in an investigation, is prohibited. Neither the Board nor any other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the U.S. Constitution, the West Virginia Constitution, Federal or State law, or this policy, or because the individual made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy. Intimidation, threats, coercion, or discrimination, including initiating a disciplinary process against a person for a Code of Conduct violation that does not involve Prohibited Conduct but arises out of the same facts and circumstances as a complaint or information reported about possible Prohibited Conduct, for the purpose of interfering with the exercise of any right or privilege secured by Federal or State law constitutes retaliation. Retaliation against a person for making a complaint or participating in an investigation is a serious violation of this policy that can result in the imposition of disciplinary sanctions/consequences and/or other appropriate remedies.

Complaints alleging retaliation may be filed according to the grievance procedures set forth above. The County shall initiate its grievance procedures upon receiving any complaint alleging retaliation.

The exercise of rights protected under the First Amendment of the United States Constitution does not constitute retaliation prohibited under this policy.

Charging an individual with a Code of Conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy shall not constitute retaliation; provided, however, that a determination that Prohibited Conduct occurred, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

Privacy/Confidentiality

The County will employ all reasonable efforts to protect the rights of the complainant, the respondent(s), and the witnesses as much as possible, consistent with the Board's legal obligations to investigate, take appropriate action, and conform with any discovery or disclosure obligations. The County will keep confidential the identity of any individual who has made a complaint of Prohibited Conduct, any complainant, any individual who has been reported to be the perpetrator of Prohibited Conduct, any respondent, and any witness, except as may be permitted by the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. 1232g, or FERPA regulations, 34 C.F.R. part 99, or as required by law, or to carry out the purposes of relevant Federal or State law or regulations, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder (i.e., the County's obligation to maintain confidentiality shall not impair or otherwise affect the complainant's and respondent's receipt of the information to which they are entitled related to the investigation and determination of whether Prohibited Conduct occurred). All records generated under the terms of this policy shall be

maintained as confidential to the extent permitted by law. Confidentiality, however, cannot be guaranteed. Additionally, the respondent must be provided the complainant's identity.

During an investigation, the CO or designated investigator/decisionmaker will instruct each person who is interviewed about the importance of maintaining confidentiality. Any individual who is interviewed as part of an investigation is expected not to disclose to other members of the School County Community or third parties any information that is learned or provided during the course of the investigation.

Sanctions and Monitoring

The Board shall vigorously enforce its prohibitions against Prohibited Conduct by taking appropriate action reasonably calculated to stop and prevent further misconduct. While observing the principles of due process, a violation of this policy may result in disciplinary action, up to and including the discharge of an employee. All disciplinary action will be taken in accordance with applicable State law and the terms of the relevant collective bargaining agreement(s). When imposing discipline, the Superintendent shall consider the totality of the circumstances involved in the matter. In those cases where Prohibited Conduct is not substantiated, the Board may consider whether the alleged conduct nevertheless warrants discipline in accordance with other Board policies, consistent with the terms of the relevant collective bargaining agreement(s).

Where the Board becomes aware that a prior remedial action has been taken against a member of the School County community, all subsequent sanctions imposed by the Board and/or Superintendent shall be reasonably calculated to end such conduct, prevent its reoccurrence, and remedy its effects.

Application of the First Amendment

The Board will construe and apply this policy consistent with the First Amendment to the U.S. Constitution () and the principles of academic freedom as set forth in the applicable collective bargaining agreement **[END OF OPTION]**. In no case will a respondent be found to have committed Prohibited Conduct based on expressive conduct that is protected by the First Amendment () and/or the principles of academic freedom specified in the Board's collective bargaining agreement with its teachers **[END OF OPTION]**.

Training

All employees, investigators, decisionmakers, facilitators of informal resolution process, the County Compliance Officer(s), and other persons who are responsible for implementing the Board's grievance procedures or have the authority to modify or terminate supportive measures shall receive training related to their duties under applicable Federal and State laws and this policy. () The training shall be provided promptly upon hiring or a change of position that alters their duties under this policy, and annually thereafter. **[END OF OPTION]** The training shall not rely on stereotypes involving Protected Classes.

[] Training materials will be made available for inspection upon request by members of the public. **[END OF OPTION]**

Recordkeeping (Including Retention of Investigatory Records and Materials)

The County Compliance Officer(s) is/are responsible for overseeing the retention of all records that must be maintained pursuant to this policy. All individuals charged with conducting investigations under this policy must retain all information, documents, electronically stored information, and electronic media (as defined in Policy 8315) created and received as part of an investigation. Records and materials associated with the implementation of this policy shall be retained in accordance with Policy 8310, Policy 8315, Policy 8320, and Policy 8330 for the period set forth below, unless required to be maintained for a longer period pursuant to the County's records retention schedule.

[DRAFTING NOTE: For purposes of uniformity, Neola recommends that the Board use the same seven (7) year period for recordkeeping that is required by the 2020 Title IX regulations - see Board Policy 2266; if the Board selects a different timeframe for maintaining the below specified records, it should verify the time period selected is consistent with and/or reflected in its record retention schedule - see AG 8310.]

The County shall maintain, for a period of seven (7) calendar years, the following records:

- A. for each complaint of Prohibited Conduct, records documenting the informal resolution process and/or the grievance procedures followed, and the resulting outcome;

- B. for each notification that the County Compliance Officer receives of information about conduct that reasonably may constitute Prohibited Conduct, records documenting the actions the County took to implement this policy; and
- C. all materials used to provide the training referenced above () and in AG 3122 **[END OF OPTION]**.

The information, documents, ESI, and electronic media (as defined in Policy 8315) retained may include public records and records exempt from disclosure under Federal and/or State law (e.g., student records, medical records).

Outside Appointments, Dual Appointments, and Delegations

The Board retains discretion to appoint suitably qualified persons who are not Board employees to fulfill any function of the Board under this policy including, but not limited to, County Compliance Officer, investigator, decisionmaker, appeal decisionmaker, or facilitator of the informal resolution process.

The Board also retains discretion to appoint two (2) or more persons to jointly fulfill the role of County Compliance Officer, investigator, decisionmaker, appeal decisionmaker, and facilitator of the informal resolution process.

The Superintendent may delegate functions assigned to a specific Board employee under this policy including, but not limited to, the functions assigned to the County Compliance Officer, investigator, decisionmaker, appeal decisionmaker, and facilitator of the informal resolution process to any suitably qualified individual, and such delegation may be rescinded by the Superintendent at any time.

[DRAFTING NOTE: The following option expressly sets forth authority that the Board has regardless of whether it is included in this policy, but is offered for those boards of education that may want to affirmatively communicate to/address these issues for readers of this policy.]

x] Discretion in Application

The Board retains discretion to interpret and apply this policy in a manner that is not clearly unreasonable, even if the Board's interpretation or application differs from the interpretation of any specific complainant and/or respondent.

Despite the Board's reasonable efforts to anticipate all eventualities in drafting this policy, it is possible unanticipated or extraordinary circumstances may not be specifically or reasonably addressed by the express policy language, in which case the Board retains discretion to respond to the unanticipated or extraordinary circumstance in a way that is not clearly unreasonable.

The provisions of this policy are not contractual in nature, whether in their own right or as part of any other express or implied contract. Accordingly, the Board retains discretion to revise this policy at any time and for any reason. The Board may apply policy revisions to an active case, provided that doing so is not clearly unreasonable.

[END OF OPTION]

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Legal	Fourteenth Amendment, U.S. Constitution
	20 U.S.C. 1092(F)(6)(A)(v), 20 U.S.C. 1232g
	20 U.S.C. Section 1681, Title IX of Education Amendment Act
	20 U.S.C. Section 1701 et seq., Equal Educational Opportunities Act of 1974
	20 U.S.C. Section 7905, Boy Scouts of America Equal Access Act
	29 C.F.R. Part 1635
	29 U.S.C. 201 et seq., The Fair Labor Standards Act ("FLSA")
	29 U.S.C. 218d, PUMP for Nursing Mothers Act ("PUMP Act")
	29 U.S.C. 621 et seq., Age Discrimination in Employment Act of 1967
	29 U.S.C. 701 et seq., Rehabilitation Act of 1973, as amended

34 C.F.R. Part 110 (7/27/93)

38 U.S.C. Chapter 43, 4301-4335 (see in particular 4311(a) [prohibits discrimination based on military service] and 4312 [reemployment rights]), Uniformed Services Employment and Reemployment Rights Act ("USERRA")

42 U.S.C. 1983

42 U.S.C. 2000d et seq.

42 U.S.C. 2000e et seq., Civil Rights Act of 1964

42 U.S.C. 2000ff et seq., The Genetic Information Nondiscrimination Act ("GINA")

42 U.S.C. 2000gg, Pregnant Workers Fairness Act ("PWFA")

42 U.S.C. 6101 et seq., Age Discrimination Act of 1975

42 U.S.C. 12101 et seq., The Americans with Disabilities Act of 1990, as amended

WV Code 5-11B

West Virginia Board of Education policy 4373

Book Public Comment Period 4/29/26 thru 5/12/26

Section Vol 17-2 Nondiscrimination-Ready for TAA/Director

Title Rescind Policy - Volume 17, No. 2 - August 2025 - Nondiscrimination -
NONDISCRIMINATION BASED ON GENETIC INFORMATION OF THE EMPLOYEE

Code po3122.02

Status

Adopted May 26, 2015

Rescind Policy - Volume 17, No. 2 - August 2025 - Nondiscrimination

~~3122.02—NONDISCRIMINATION BASED ON GENETIC INFORMATION OF THE EMPLOYEE~~

~~The Board of Education prohibits discrimination on the basis of genetic information in all aspects of employment, including hiring, firing, compensation, job assignments, promotions, layoffs, training, fringe benefits, or any other terms, conditions, or privileges of employment. The Board also does not limit, segregate, or classify employees in any way that would deprive or tend to deprive them of employment opportunities or otherwise adversely affect the status of an employee as an employee, based on genetic information. Harassment of a person because of his/her genetic information is also prohibited. Likewise, retaliation against an applicant or employee for engaging in protected activity is prohibited.~~

~~The Board shall not discriminate against any employee or applicant because such employee or applicant has opposed any act or practice prohibited by this policy or because such employee or applicant made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this policy.~~

~~In accordance with the Genetic Information Nondiscrimination Act (GINA), the Board shall not request, require or purchase genetic information of employees, their family members or applicants for employment. Further, in compliance with this Act, employees are directed not to provide any genetic information, including the individual's family medical history, in response to necessary requests for medical information, with the exception that family medical history may be acquired as part of the certification process for FMLA leave, when an employee is asking for leave to care for an immediate family member with a serious health condition. Applicants for employment are directed not to provide any genetic information, including the individual's family medical history, in response to requests for medical information as part of the District's application process.~~

~~[] The District recognizes that genetic information may be acquired through commercially and publicly available documents like newspapers, books, magazines, periodicals, television shows or the Internet. The District prohibits, however, its employees from searching such sources with the intent of finding or obtaining genetic information, or accessing sources from which they are likely to acquire genetic information.~~

~~"Genetic information," as defined by GINA, means information about: (a) an individual's genetic tests; (b) the genetic tests of that individual's family members; (c) the manifestation of disease or disorder in family members of the individual (i.e., family medical history); (d) an individual's request for, or receipt of, genetic services, or the participation in clinical research that includes genetic services by the individual or a family member of the individual; or (e) the genetic information of a fetus carried by an individual or a pregnant woman who is a family member of the individual and the genetic information of an embryo legally held by an individual or family member using assistive reproductive technology.~~

~~If the District either legally and/or inadvertently receives genetic information about an employee or applicant for employment from the employee, applicant for employment or a medical provider it shall be treated as a confidential medical record in accordance with law.~~

~~The Superintendent shall appoint a compliance officer who shall be responsible for overseeing the District's compliance with Federal regulations and promptly dealing with any inquiries or complaints. S/He shall also verify that proper notice of nondiscrimination for Title II of the Genetic Information Nondiscrimination Act of 2008 is provided to staff members, and~~

that all District requests for health-related information (e.g., to support an employee's request for reasonable accommodation under the ADA or a request for sick leave) is accompanied by a written warning that directs the employee or health care provider not to collect or provide genetic information. The warning shall read as follows:

~~The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II, including the Board of Education, from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by law. To comply with this law, do not provide any genetic information when responding to this request for medical information (unless the request pertains to a request for FMLA leave for purposes of caring for an immediate family member with a serious health condition). "Genetic information," as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic test, the fact that an individual or an individual's family member sought or received genetic services or participated in clinical research that includes genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.~~

~~[] The District offers health services, () including a wellness program. Participation in the services/program is voluntary. Genetic information (such as family medical history) may be obtained as part of an individual's participation in the service/program. If that occurs, individual genetic information may be provided to the individual receiving the services and to his/her health services providers, but only genetic information in aggregate form will be provided to the Board.~~

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Legal

42 U.S.C. 2000ff et seq., The Genetic Information Nondiscrimination Act
29 C.F.R. Part 1635

Book	Public Comment Period 4/29/26 thru 5/12/26
Section	Vol 17-2 Nondiscrimination-Ready for TAA/Director
Title	Volume 17, No. 2 - August 2025 - Nondiscrimination - SECTION 504/ADA PROHIBITION AGAINST DISABILITY DISCRIMINATION IN EMPLOYMENT
Code	po3123
Status	
Adopted	May 26, 2015
Last Revised	February 8, 2022

Volume 17, No. 2 - August 2025 - Nondiscrimination

3123 - SECTION 504/ADA PROHIBITION AGAINST DISABILITY DISCRIMINATION IN EMPLOYMENT

The Board of Education prohibits discrimination against any employee or applicant based upon ~~his/her~~ the employee's/applicant's disability. As such, the Board will not engage in employment practices or adopt policies that discriminate on the basis of disability, or otherwise discriminate against qualified individuals with disabilities in regard to job application procedures, the hiring, advancement or discharge of employees, employee compensation, job training, or other terms, conditions and privileges of employment. The Board further will not limit, segregate or classify applicants or employees in any way that adversely affects their opportunities or status because of disability. Additionally, the Board will not participate in any contractual or other relationships that have the effect of subjecting qualified individuals with disabilities who are applicants or employees to discrimination on the basis of disability.

"An individual with a disability" means a person who has, had a record of, or is regarded as having, a physical or mental impairment that substantially limits one or more major life activities. Major life activities are functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, eating, sleeping, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, sitting, reaching, interacting with others, and working.

Major life activities also include the operation of a major bodily function, including, but not limited to, functions of the immune system, special sense organs and skin, normal cell growth, and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, hemic, lymphatic, musculoskeletal and reproductive functions. The operation of a major bodily function includes the operation of an individual organ within a body system.

An impairment that is episodic in nature or in remission is considered a disability if it would substantially limit a major life activity when active.

The determination of whether an impairment substantially limits a major life activity must be made without regard to the ameliorative effects of mitigating measures such as medication, medical supplies, equipment or appliances, low-vision devices (defined as devices that magnify, enhance, or otherwise augment a visual image, but not including ordinary eyeglasses or contact lenses), prosthetics (including limbs and devices), hearing aid(s) and cochlear implant(s) or other implantable hearing devices, mobility devices, oxygen therapy equipment or supplies, use of assistive technology, reasonable accommodations or "auxiliary aids or services," learned behavioral or adaptive neurological modifications, psychotherapy, behavioral therapy, or physical therapy.

A qualified person with a disability means the individual satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires and, with or without reasonable accommodation, can perform the essential functions of the job in question.

The Board will provide a reasonable accommodation to a qualified individual who has an actual disability or who has a record of a disability, unless the accommodation would impose an undue hardship on the operation of the ~~District's~~ County's program and/or activities. A reasonable accommodation is not required for an individual who is merely regarded as having a disability.

~~District~~County Compliance Officer(s)

The Board designates the following individual(s) to serve as the District's 504 Compliance Officer(s)/ADA Coordinator(s) (hereinafter referred to as the "CO(s)").

DRAFTING NOTE: Neola suggests the Board appoint both a male and a female CO in order to provide complainants with the option to report their concerns to an individual of the gender with which they feel most comfortable. Additionally, by appointing two (2) COs, there should always be a CO available to investigate a claim that pertains to the other CO.]

Director of ~~K-8~~High Schools

Wayne County Board of Education

212 North Court Street

Wayne, WV 25570

304-272-5116

Director of Special Education

Wayne County Board of Education

212 North Court Street

Wayne, WV 25570

304-272-5116

The name(s), title(s), and contact information of this/these individual(s) will be published annually on the District's website () and:

- A. () in the staff handbooks.
- B. () in the District Annual Report to the public.
- C. () on each individual school's website.
- D. () in the District's calendar.
- E. () [Other] _____.

The CO(s) () is (x) are **[END OF OPTIONS]** responsible for coordinating the ~~District's~~ County's efforts to comply with and fulfill its responsibilities under Section 504 and Title II of the Americans with Disabilities Act, as amended ("ADA"). A copy of Section 504 and the ADA, including copies of their implementing regulations, may be obtained from the CO.

The CO(s) will oversee the investigation of any complaints of discrimination based on disability, which may be filed pursuant to the Board's adopted internal complaint procedure, and will attempt to resolve such complaints. The Board will provide for the prompt and equitable resolution of complaints alleging violations of Section 504/ADA. (See complaint procedure below.)

Training

The CO(s) will also oversee the training of employees in the ~~District~~ County so that all employees understand their rights and responsibilities under Section 504 and the ADA, and are informed of the Board's policies, administrative guidelines and practices with respect to fully implementing and complying with the requirements of Section 504/ADA.

The Board will provide in-service training and consultation to staff responsible for the education of persons with disabilities, as necessary and appropriate.

Facilities

No qualified person with a disability will, because the ~~District's~~ County's facilities are inaccessible to or unusable by persons with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which Section 504/ADA applies.

For facilities constructed or altered after June 3, 1977, the ~~District~~County will comply with applicable accessibility standards. For those existing facilities constructed prior to June 3, 1977, the ~~District~~County is committed to operating its programs and activities so that they are readily accessible to persons with disabilities.

Notice

Notice of the Board's policy on nondiscrimination in employment practices and the identity of the CO(s) will be published on the ~~District's~~County's website, and posted throughout the ~~District~~County, and included in the ~~District's~~County's recruitment statements or general information publications.

Complaint Procedures

If a person believes that ~~s/he has~~ they have been discriminated against on the basis of ~~his/her~~ their disability, the person may utilize the following complaint procedure as a means of reaching, at the lowest possible administrative level, a prompt and equitable resolution of the matter.

In accordance with Section 504 of the Rehabilitation Act of 1973 and its implementing regulations ("Section 504"), employees will be notified of their right to file an internal complaint regarding an alleged violation, misinterpretation or misapplication of Section 504. In addition, employees will be notified of their right to file a complaint with the U.S. Department of Education's Office for Civil Rights.

Internal complaints must be put in writing and must identify the specific circumstances or areas of dispute that have given rise to the complaint, and offer possible solutions to the dispute. The complaint must be filed with a CO within the time limits specified below. The CO is available to assist individuals in filing a complaint.

Unless expressly stated otherwise, the term "day" or "days" as used in this policy means business day (s) (i.e., a day(s) that the Board office is open for normal operating hours, Monday - Friday, excluding State-recognized holidays).

Internal Complaint Procedure

The following internal complaint procedure is available to employees for the prompt and equitable resolution of complaints alleging discrimination based upon disability. This complaint procedure is not available to unsuccessful applicants. Use of the internal complaint procedure is not a prerequisite to the pursuit of other remedies, including the filing of a complaint with the U.S. Department of Education's Office for Civil Rights.

- A. An employee with a complaint based on alleged discrimination on the basis of disability may first discuss the problem with ~~the a~~ CO.
- B. If the informal discussion does not resolve the matter, or if the employee skips Step A, the individual may file a formal written complaint with ~~the a~~ CO. The written complaint must contain the name and address of the individual or representative filing the complaint, be signed by the complainant or someone authorized to sign for the complainant, describe the alleged discriminatory action in sufficient detail to inform the CO of the nature and date of the alleged violation, and propose a resolution. The complaint must be filed within thirty (30) calendar days of the circumstances or event that gives rise to the complaint, unless the time for filing is extended by the CO for good cause.
- C. The CO will conduct an independent investigation of the matter (which may or may not include a hearing). This complaint procedure contemplates ~~informal, informal~~ but thorough investigations, affording all interested persons and their representatives, if any, an opportunity to present witnesses and other evidence relevant to the complaint. The CO will provide the complainant with a written disposition of the complaint within ten (10) days. If no decision is

rendered within ten (10) days, or the decision is unsatisfactory in the opinion of the complainant, the employee may file, in writing, an appeal with the Superintendent. The CO shall maintain the District's files and records relating to the complaint.

- D. The Superintendent will, within ten (10) days of receiving the written appeal, conduct a hearing with all parties involved in an attempt to resolve the complaint.

The Superintendent will render ~~his/her~~ a decision within ten (10) days of the hearing.

- E. The employee may be represented, at ~~his/her~~ the employee's own cost, at any of the above-described meetings/hearings.

- F. The right of a person to a prompt and equitable resolution of the complaint shall not be impaired by the person's pursuit of other remedies such as the filing of a complaint with the Office for Civil Rights or the filing of a court case. Use of this internal complaint procedure is not a prerequisite to the pursuit of other remedies.

If it is determined that the complainant was subjected to unlawful discrimination, the CO must identify what corrective action will be taken to stop, remedy, and prevent the recurrence of the discrimination/retaliation. The corrective action should be reasonable, timely, age-appropriate and effective, and tailored to the specific situation.

OCR Complaint

At any time, if an employee believes that ~~s/he has~~ they have been subjected to discrimination based upon his/her disability in violation of Section 504 or the ADA, the individual may file a complaint with the U.S. Department of Education's Office for Civil Rights ("OCR"). The OCR can be reached at:

U.S. Department of Education
Office for Civil Rights
Lyndon Baines Johnson Department of Education Building
400 Maryland Ave., SW
Washington, DC 20202-1100

Telephone: (800) 421-3481
FAX: (202) 453-6012
TDD: 800-877-8339
E-mail: OCR@ed.gov
Web: <http://www.ed.gov/ocr>

~~U.S. Department of Education
The Wanamaker Building
Philadelphia Office
100 Penn Square East, Suite 515
Philadelphia, PA 19107-3323
Main Line: (215) 656-8541
Fax: (215) 656-8605
TDD: (800) 537-7697
email: ocr.Philadelphia@ed.gov~~

Retaliation

Retaliation against a person who makes a report or files a complaint alleging unlawful harassment/retaliation or participates as a witness in an investigation is prohibited. Neither the Board nor any other person may intimidate, threaten, coerce or interfere with any individual because the person opposed any act or practice made unlawful by any Federal or State civil rights law, or because that individual made a report, formal complaint, testified, assisted or participated or refused to participate in any manner in an investigation, proceeding, or hearing under those laws and/or this policy, or because that individual exercised, enjoyed, aided or encouraged any other person in the exercise or enjoyment of any right granted or protected by those laws and/or this policy.

Retaliation against a person for making a report of discrimination, filing a formal complaint, or participating in an investigation or meeting is a serious violation of this policy that can result in imposition of disciplinary sanctions/consequences and/or other appropriate remedies.

Formal complaints alleging retaliation may be filed according to the internal complaint process set forth above.

The exercise of rights protected under the First Amendment of the United States Constitution does not constitute retaliation prohibited under this policy.

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Legal

29 C.F.R. Part 1630

29 U.S.C. 794, Section 504 Rehabilitation Act of 1973, as amended

34 C.F.R. Part 104

42 U.S.C. 12101 et seq., Americans with Disabilities Act of 1990, as amended

Book	Public Comment Period 4/29/26 thru 5/12/26
Section	Vol 17-1 Ready for TAA/Director
Title	Revised Policy - Vol. 17, No. 1 - April 2025 - TUBERCULOSIS EXAMINATION
Code	po3160.01
Status	
Adopted	May 26, 2015
Last Revised	March 15, 2016

Revised Policy - Vol. 17, No. 1 - April 2025**3160.01 - TUBERCULOSIS EXAMINATION**

School ~~personnel found~~ employees determined or suspected to have active tuberculosis shall have their employment suspended until the local health officer, in consultation with the Commissioner of the Bureau for Public Health ~~in the Department of Health and Human Resources~~, approves ~~a~~ the employee to return to work.

The commissioner may require selective testing of school ~~personnel~~ employees for tuberculosis when there is reason to believe that they may have been exposed to the tuberculosis organism or ~~they have~~ are exhibiting signs and/or experiencing symptoms indicative of the disease. School nurses shall identify and refer any school ~~personnel~~ employee to the local health department ~~in instances where they have reason to~~ when they suspect that the individual has been exposed to tuberculosis or ~~has~~ they are exhibiting signs and/or experiencing symptoms indicative of the disease.

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Legal	WV Code 16-3D-3
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Book	Public Comment Period 4/29/26 thru 5/12/26
Section	Volume 17-2 Ready for TAA/Director
Title	New Policy - Volume 17, No. 2 - August 2025 - MANDATORY STAFF TRAINING - INDIVIDUALIZED EDUCATION PROGRAM (IEP)
Code	po3242.05
Status	

New Policy - Volume 17, No. 2 - August 2025

3242.05 - MANDATORY STAFF TRAINING - INDIVIDUALIZED EDUCATION PROGRAM (IEP)

Training.

Principals who are employed in public schools, appropriate central office personnel, Superintendent, and County Board of Education members shall receive in-person training on the Individuals with Disability Education Act (IDEA), federal regulations and West Virginia State Board of Education (WVBE) Policy 2419 "Regulations for the Education of Students with Exceptionalities". Specifically, this training must include the understanding of a students' Least Restrictive Environment (LRE), student discipline procedures and requirements, and parental rights and due process safeguards.

This training shall also include the following information:

- A. Maximum class size for instructional periods by programmatic level and level of service needs for students with disabilities;
- B. Extenuating circumstances for submitting a waiver request when student numbers exceed staffing ratios;
- C. Teacher's rights for advocating for students, procedural rights documentation, and all protections set forth under WV Code 18-20-1c;
- D. Classroom teachers' rights and protections that they may not be reprimanded for advocating for their student(s); and
- E. Information related to local advocacy agencies and local United States Department of Education funded advocacy agencies.

Time period.

This training shall be conducted for Principal, appropriate central office personnel, Superintendents, and County Board of Education members before December 31, 2025, and following subsequent revisions to IDEA, federal regulations and/or WVBE Policy 2419 "Regulations for the Education of Students with Exceptionalities". Newly employed personnel and elected or appointed County Board of Education members shall receive this training within thirty (30) days thereof.

Teacher protections and rights.

Each Principal and County Board Members shall inform teachers, in person, of their rights; including but not limited to:

- A. The documentation process within a 45-day grading period for teachers;
- B. The rights of teachers when it comes to informing parents of local advocates who can come to the Individualized Education Program ("IEP") meetings;
- C. Protection methods in place for teachers who advocate for student placement; and

D. All teacher protections and rights set forth under WV Code 18-20-1c.

Individualized Education Program meeting format.

In every Individualized Education Program meeting, a representative of the school shall explain to the guardian of the child, verbally, the process for identifying a student, the parents' or guardians' due process rights, teacher protections and procedural rights as set forth under WV Code 18-20-1c and local advocacy centers information and points of contact.

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Legal	WV Code 18A-3-13 (a), (b), (c).
	WV Code 18-20-1c

Book Public Comment Period 4/29/26 thru 5/12/26

Section Vol 16-2/Vol 17-2 Nondiscrimination - Ready for TAA/Director

Title Rescind Policy - Volume 17, No. 2 - August 2025 - Nondiscrimination - ANTI-HARASSMENT AND VIOLENCE

Code po3362

Status

Adopted May 26, 2015

Last Revised July 23, 2024

Rescind Policy - Volume 17, No. 2 - August 2025 - Nondiscrimination

~~3362~~ ANTI-HARASSMENT AND VIOLENCE

General Statement

Racial, sexual, and religious/ethnic harassment is a form of discrimination that violates Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, et seq., Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, et seq., and WV Code 5-11-1, et seq., the West Virginia Human Rights Act.

~~It is the policy of the Board of Education to maintain an education and work environment that is free from all forms of unlawful harassment and violence.~~

~~This policy applies to any student, staff member or member of the public during any school related activity or during any education sponsored event whether in a building or other property used or operated by the Board of Education or in any other facility being used by the Board.~~

~~The Board shall vigorously enforce its prohibition against harassment based on race, color, national origin, sex (including gender status, change of sex, or gender identity), disability, age, blindness, creed or religion, ancestry, socioeconomic status, physical appearance, sexual orientation, mental/physical/developmental/sensory disability, or genetic information (collectively, "Protected Classes") that are protected by Federal civil rights laws (hereinafter referred to as "unlawful harassment"), and encourages those within the County community, as well as Third Parties, who feel aggrieved to seek assistance to rectify such problems. The Board shall investigate all allegations of harassment and in those cases where unlawful harassment is substantiated, the Board shall take immediate steps to end the harassment, prevent its recurrence, and remedy its effects. Individuals who are found to have engaged in unlawful harassment will be subject to appropriate disciplinary action. (See West Virginia State Board of Education policy 4373)~~

~~[] The County shall offer counseling services to any person found to have been subjected to unlawful harassment, and, where appropriate, the person(s) who committed the unlawful harassment.~~

~~The Board shall act promptly and confidentially to investigate all harassment and violence complaints, formal or informal, verbal or written, and shall take appropriate disciplinary action based upon the results of the investigation.~~

Other Violations of the Anti-Harassment Policy

~~The Board shall also take immediate steps to impose disciplinary action on individuals engaging in any of the following prohibited acts:~~

- ~~A. Retaliating against a person who has made a report or filed a complaint alleging unlawful harassment, or who has participated as a witness in a harassment investigation.~~

- B. ~~Filing a malicious or knowingly false report or complaint of unlawful harassment.~~
- C. ~~Disregarding, failing to investigate adequately, or delaying investigation of allegations of harassment, when responsibility for reporting and/or investigating unlawful harassment charges comprises part of one's supervisory duties.~~

Furthermore, the Board is committed to providing an educational setting that is safe, secure, and free from harassment and bullying for all of its students and school employees. Policy 5517.01—Bullying addresses those instances of bullying and harassment 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 communication or transmission that shall 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.

Definitions

Words used in this policy shall have those meanings defined herein; words not defined herein shall be construed according to their plain and ordinary meanings.

Complainant is the individual who alleges, or is alleged, to have been subjected to unlawful harassment, regardless of whether the person files a formal complaint or is pursuing an informal resolution to the alleged harassment.

Respondent is the individual who has been alleged to have engaged in unlawful harassment, regardless of whether the Reporting Party files a formal complaint or is seeking an informal resolution to the alleged harassment.

School County community means students and Board employees (i.e., administrators, and professional and classified staff), as well as agents, volunteers, contractors, or other persons subject to the control and supervision of the Board.

Third Parties include, but are not limited to, guests and/or visitors on School County 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 School County community at school-related events/activities (whether on or off County property).

Day(s): Unless expressly stated otherwise, the term "day" or "days" as used in this policy means business day(s) (i.e., a day(s) that the Board office is open for normal operating hours, Monday—Friday, excluding State-recognized holidays).

Bullying

Bullying rises to the level of unlawful harassment when one or more persons systematically and chronically inflict physical hurt or psychological distress on one (1) or more students or employees and that bullying is based upon one (1) or more Protected Classes, that is, characteristics that are protected by Federal civil rights laws. It is defined as any unwanted and repeated written, verbal, or physical behavior, including any threatening, insulting, or dehumanizing gesture, by an adult or student, that is severe or pervasive enough to create an intimidating, hostile, or offensive educational or work environment; cause discomfort or humiliation; or unreasonably interfere with the individual's school or work performance or participation; and may involve:

- A. teasing;
- B. threats;
- C. intimidation;
- D. stalking;
- E. cyberstalking;
- F. cyberbullying;

- G. physical violence;
- H. theft;
- I. sexual, religious, or racial harassment;
- J. public humiliation; or
- K. destruction of property.

Harassment means any threatening, insulting, or dehumanizing gesture, use of technology, or written, verbal or physical conduct directed against a student or school employee that:

- A. places a student or school employee in reasonable fear of harm to his/her person or damage to his/her property;
- B. has the effect of substantially interfering with a student's educational performance, opportunities, or benefits, or an employee's work performance; or
- C. has the effect of substantially disrupting the orderly operation of a school.

Sexual harassment—Sexual harassment consists of sexual advances, requests for sexual favors, sexually motivated physical conduct, or other verbal or physical conduct or communication of a sexual nature when:

- A. submission to the conduct or communication is made a term or condition either explicitly or implicitly of obtaining or retaining employment, or of obtaining an education; or
- B. submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's employment or education; or
- C. creating an intimidating, hostile or offensive educational environment.

Sexual harassment may involve the behavior of a person of any gender against a person of the same or another gender.

Sexual Harassment covered by Policy 2266—Nondiscrimination on the Basis of Sex in Education Programs or Activities is not included in this policy. Allegations of such conduct shall be addressed solely by Policy 2266.

Prohibited acts that constitute sexual harassment under this policy may take a variety of forms. Examples of the kinds of conduct that may constitute sexual harassment include, but are not limited to:

- A. Unwelcome sexual propositions, invitations, solicitations, and flirtations.
- B. Unwanted physical and/or sexual contact.
- C. Threats or insinuations that a person's employment, wages, academic grade, promotion, classroom work or assignments, academic status, participation in athletics or extra-curricular programs, activities, or events, or other conditions of employment or education may be adversely affected by not submitting to sexual advances.
- D. Unwelcome verbal expressions of a sexual nature, including graphic sexual commentaries about a person's body, dress, appearance, or sexual activities; the unwelcome use of sexually degrading language, profanity, jokes or innuendoes; unwelcome suggestive or insulting sounds or whistles; obscene telephone calls.
- E. Sexually suggestive objects, pictures, graffiti, videotapes, posters, audio recordings or literature, placed in the work or educational environment, that may reasonably embarrass or offend individuals.
- F. Unwelcome and inappropriate touching, patting, or pinching; () obscene gestures.
- G. Asking about, or telling about, sexual fantasies, sexual preferences, or sexual activities.
- H. Speculations about a person's sexual activities or sexual history, or remarks about one's own sexual activities or sexual history.

- ~~I. Giving unwelcome personal gifts such as lingerie that suggest the desire for a romantic relationship;~~
- ~~J. Leering or staring at someone in a sexual way, such as staring at a person's breasts, buttocks, or groin;~~
- ~~K. A pattern of conduct, which can be subtle in nature, that has sexual overtones and is intended to create or has the effect of creating discomfort and/or humiliation to another;~~
- ~~L. Remarks speculating about a person's sexual activities or sexual history, or remarks about one's own sexual activities or sexual history;~~
- ~~M. In the context of employees, consensual sexual relationships where such relationship leads to favoritism of a subordinate employee with whom the superior is sexually involved and where such favoritism adversely affects other employees or otherwise creates a hostile work environment;~~
- ~~N. Inappropriate boundary invasions by a County employee or other adult member of the School County community into a student's personal space and personal life;~~
- ~~O. Verbal, nonverbal or physical aggression, intimidation, or hostility based on sex or sex stereotyping that does not involve conduct of a sexual nature;~~

Not all behavior with sexual connotations constitutes unlawful sexual harassment. Sex based or gender based conduct must be sufficiently severe, pervasive, and persistent such that it adversely affects, limits, or denies an individual's employment or education, or such that it creates a hostile or abusive employment or educational environment.

It is the responsibility of all students and employees to promote and to maintain an environment free of all types of sexual harassment. Any sexual harassment, as defined, when perpetrated on any student, volunteer, third party or employee by any student, volunteer, third party or employee shall be treated as sexual harassment under this policy.

NOTE: Sexual conduct/relationships with students by County employees or any other adult member of the County community is prohibited, and any teacher, administrator, counselor, coach, or other school employee or volunteer who engages in sexual conduct with a student may also be guilty of the criminal charge of "sexual abuse or sexual assault as set forth in Article 8B, Chapter 61 of the West Virginia Code. The issue of consent may be irrelevant in regard to such criminal charge. In addition, under certain circumstances, sexual harassment may constitute child and/or sexual abuse under Chapter 49 of the West Virginia Code. In such situations, the Board shall comply with the provisions of law for reporting such abuse.

Racial Harassment—Racial harassment consists of physical, verbal, or written conduct relating to an individual's race when the conduct:

- ~~A. has the purpose or effect of creating an intimidating, hostile or offensive working or academic environment;~~
- ~~B. has the purpose or effect of substantially or unreasonably interfering with an individual's work or academic performance;~~
- ~~C. otherwise adversely affects an individual's employment or academic opportunities;~~
- ~~D. racial harassment includes racially degrading word(s) or actions used to intimidate, describe an individual or to refer to some aspect of the individual's behavior, appearance, attitude, or conduct;~~
- ~~E. the display, use, or dissemination of racially motivated gestures, objects, pictures, and/or jokes by any means, including, but not limited to, printed materials displayed by electronic means;~~
- ~~F. race based labeling or stereotyping with respect to mental, physical, or other abilities, talents, occupational or life goals, etc.;~~
- ~~G. unwelcome behavior, verbal or written words or symbols, directed at an individual because of race;~~
- ~~H. conduct, including word(s) or actions, directed toward a person because of their race that tends to distract or otherwise make it more difficult to perform their job and/or achieve an education.~~

It is the responsibility of all students and employees to promote and to maintain an environment free of all types of racial harassment. Any racial harassment, as defined, when perpetrated on any student, volunteer, third party or employee by any student, volunteer, third party or employee shall be treated as racial harassment under this policy.

Religious/Ethnic Harassment—Religious/ethnic harassment consists of physical, verbal or written conduct which is related to an individual's religion or ethnic background when the conduct:

- A. has the purpose or effect of creating an intimidating, hostile or offensive working or academic environment;
- B. has the purpose or effect of substantially or unreasonably interfering with an individual's work or academic performance;
- C. otherwise adversely affects an individual's employment or academic opportunities;
- D. religious/ethnic degrading word(s) or actions used to intimidate, describe an individual or refer to some aspect of the individual's behavior, appearance, attitude or conduct;
- E. the display, use or dissemination of degrading religious/ethnic suggestive gestures, objects, pictures, and/or jokes by any means including, but not limited to, printed materials and materials displayed by electronic means;
- F. religious/ethnic based labeling or stereotyping with respect to mental, physical or other abilities, talents, occupational or life goals, etc.;
- G. conduct, including word(s) or actions, directed toward a person because of their religion or ethnicity that tends to distract or otherwise make it more difficult to perform their job and/or achieve an education.

It is the responsibility of all students and employees to promote and to maintain an environment free of all types of religious/ethnic harassment. Any religious/ethnic harassment, as defined, when perpetrated on any student, volunteer, third party or employee by any student, volunteer, third party or employee shall be treated as religious/ethnic harassment under this policy.

National Origin/Ancestry Harassment

Prohibited national origin/ancestry harassment occurs when unwelcome physical, verbal, or nonverbal conduct is based upon an individual's national origin or ancestry and when the conduct has the purpose or effect of interfering with the individual's work or educational performance; or creating an intimidating, hostile, or offensive working and/or learning environment; or of 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 national origin or ancestry, such as negative comments regarding customs, manner of speaking, language, surnames, or ethnic slurs.

Sexual Violence—Sexual violence is a physical act of aggression or force or the threat thereof which involves the touching of another's intimate parts or forcing a person to touch any person's intimate parts. Intimate parts include the primary genital area, groin, inner thigh, buttocks, or breast, as well as the clothing covering these areas.

Sexual violence may include, but is not limited to:

- A. touching, patting, grabbing or pinching another person's intimate parts, whether that person is of the same sex or the opposite sex;
- B. coercing, forcing or attempting to coerce or force the touching of anyone's intimate parts;
- C. coercing, forcing or attempting to coerce or force sexual intercourse or a sexual act on another;
- D. threatening to force or coerce sexual acts, including the touching of intimate parts or intercourse, on another;
- E. threatening or forcing exposure of intimate apparel or body parts by removal of clothing.

Racial Violence—Racial violence is a physical act of aggression or assault upon another because of, or in a manner reasonably related to, race.

Religious/Ethnic Violence—Religious/ethnic violence is a physical act of aggression or assault upon another because of, or in a manner reasonably related to, religion or ethnicity.

Assault—Assault is defined as an act done with intent to cause fear in another of immediate bodily harm or death; or the threat to do bodily harm to another with present ability to carry out the threat.

Disability Harassment

Prohibited disability harassment occurs when unwelcome physical, verbal, or nonverbal conduct is based upon an individual's disability and when the conduct has the purpose or effect of interfering with the individual's work or educational performance; of creating an intimidating, hostile, or offensive working and/or learning environment; or of 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 disability, such as negative comments about speech patterns, movement, physical impairments or defects/appearances, or the like. Such harassment may further occur where conduct is directed at or pertains to a person's genetic information.

Anti-Harassment Compliance Officers

The Board designates the following individuals to serve as "Anti-Harassment Compliance Officers" for the County. They are hereinafter referred to as the "COs".

~~[DRAFTING NOTE: Counties are advised to appoint both a male and a female CO in order to provide Complainants with the option to report their concerns to an individual of the gender with which they feel most comfortable. The COs may also serve as the County's Section 504 and Title IX Coordinators.]~~

(Name)

(County Title)

(Office Address)

(Telephone Number)

(E-mail Address)

(Name)

(County Title)

(Office Address)

(Telephone Number)

(E-mail Address)

The names, titles, and contact information of these individuals shall be published annually on the County's website () and:

- A. ~~()~~ in the parent and staff handbooks.
- B. ~~()~~ in the County's Annual Report to the public.
- C. ~~()~~ on each individual school's website.
- D. ~~()~~ in the County's calendar.
- E. ~~()~~ _____.

The Compliance Officer(s) ~~()~~ is ~~()~~ are **[END OF OPTION]** responsible for coordinating the County's efforts to comply with applicable Federal and State laws and regulations, including the County's duty to address in a prompt and equitable manner any inquiries or complaints regarding harassment.

The Compliance Officer(s) shall be available during regular school/work hours to discuss concerns related to unlawful harassment, to assist students, other members of the County community, and third parties who seek support or advice when informing another individual about "unwelcome" conduct, or to intercede informally on behalf of the individual in those instances where concerns have not resulted in the filing of a formal complaint and where all parties are in agreement to participate in an informal process.

Compliance Officers shall accept reports of unlawful harassment directly from any member of the School County community or a Third Party or receive reports that are initially filed with an administrator, supervisor, or other County level official. Upon receipt of a report of alleged harassment, the Compliance Officer(s) shall contact the Complainant and begin either an informal or formal complaint process (depending on the request of the Complainant or the nature of the alleged harassment), or the Compliance Officer(s) shall designate a specific individual to conduct such a process. The Compliance Officer(s) shall provide a copy of this policy to the Complainant and Respondent. In the case of a formal complaint, the Compliance Officer(s) shall prepare recommendations for the Superintendent or shall oversee the preparation of such recommendations by a designee. All Board employees must report incidents of harassment that are reported to them to the Compliance Officer within two (2) days of learning of the incident.

Any Board employee who directly observes unlawful harassment is obligated, in accordance with this policy, to report such observations to the Compliance Officer(s) within two (2) days. Additionally, any Board employee who observes an act of unlawful harassment is expected to intervene to stop the harassment, unless circumstances make such an intervention dangerous, in which case the staff member shall immediately notify other Board employees and/or local law enforcement officials, as necessary, to stop the harassment. Thereafter, the Compliance Officer(s) or designee must contact the Complainant, if age eighteen (18) or older, or Complainant's parents/guardians if the Complainant is under the age eighteen (18), within two (2) days to advise of the Board's intent to investigate the alleged wrongdoing.

Reports and Complaints of Harassing Conduct

Members of the County community along with Third Parties are encouraged to promptly report incidents of harassing conduct to an administrator, supervisor or other County official so that the Board may address the conduct before it becomes severe, pervasive, or persistent. Any administrator, supervisor, or other County official who receives such a report shall file it with the Compliance Officer within two (2) days of receiving the report of harassment.

Members of the County community and Third Parties who believe they have been unlawfully harassed by another member of the County community or a Third Party are entitled to utilize the Board's complaint process that is set forth below. Initiating a complaint, whether formally or informally, shall not adversely affect the Complainant's employment unless the complaining individual makes the complaint maliciously or with knowledge that it is false.

If, during an investigation of alleged bullying, aggressive behavior and/or harassment in accordance with Policy 5517.01—Bullying, the principal believes that the reported misconduct may have created a hostile work environment and may have constituted unlawful discriminatory harassment based on a Protected Class, the principal shall report the act of bullying, aggressive behavior and/or harassment to the Compliance Officer(s) who shall investigate the allegation in accordance with this policy. If the alleged harassment involves Sexual Harassment as defined by Policy 2266, the matter shall be handled in accordance with the grievance process and procedures outlined in Policy 2266. While the Compliance Officer investigates the allegation, or the matter is being addressed pursuant to Policy 2266, the principal shall suspend the Policy 5517.01 investigation to await the Compliance Officer's written report or the determination of responsibility pursuant to Policy 2266.

The Compliance Officer shall keep the principal informed of the status of the Policy 3362 investigation and provide the Principal with a copy of the resulting written report. Likewise, the Title IX Coordinator shall provide the Principal with the determination of responsibility that results from the Policy 2266 grievance process.

Reporting procedures are as follows:

- A. Any employee who believes s/he has been the victim of harassment prohibited under this policy is encouraged to report the alleged harassment to the appropriate school official as identified in D below.
- B. Teachers, administrators, and other school officials who have or receive notice that an employee has or may have been the victim of harassment prohibited under this policy shall immediately report the alleged harassment to the appropriate school official as defined in D below.
- C. Any other person with knowledge or belief that an employee has or may have been the victim of harassment prohibited by this policy shall be encouraged to immediately report the alleged acts to an appropriate school official as identified in D below.
- D. Appropriate school officials are as follows:
 1. Any complaint under this policy shall be reported to the County's Compliance Officer unless the complaint is regarding the Compliance Officer. In such cases, the complaints shall be reported to the Superintendent, who shall assume the role of the County Compliance Officer for such complaints.
 2. Any complaint under this policy regarding the Superintendent or Board Member that is received by the County Compliance Officer shall be referred to the School Board's legal counsel, who shall assume the role of the County Compliance Officer for such complaints.
 3. Any complaint under this policy regarding the principal, who serves as the Building Compliance Officer, shall be reported to the County's Compliance Officer, and the County Compliance Officer shall conduct the investigation.
- E. The reporting party or complainant shall be encouraged to use a report form available from the principal of each building or available from the County office, but oral reports shall be considered complaints as well. Use of formal reporting forms shall not be mandated. However, all oral complaints shall be reduced to writing. Further, nothing in this policy shall prevent any person from reporting harassment directly to the Superintendent.
- F. To provide individuals with options for reporting harassment to an individual of the gender with which they feel most comfortable, the County shall designate both a male and a female County Compliance Officer.
- G. The investigation shall be conducted by the CO or by the Superintendent within ten (10) school days of receiving the complaint, the investigating party shall provide a written status report to the Superintendent.
- H. The investigation may be conducted by school officials or by a third party designated by the school officials if necessary.

In Each School Building. The building principal is the person responsible for receiving oral or written reports of racial, sexual or religious/ethnic harassment or violence at the building level. Upon receipt of a report of student conduct, the principal must notify the CO promptly, and shall commence investigation of the complaint. No later than ten (10) school days of receiving the complaint, a written report shall be forwarded to the CO and to the Superintendent. **[DRAFTING NOTE: 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 racial, sexual or religious/ethnic 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".]**

The name of the CO, 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.

The CO(s) shall be available during regular school/work hours to discuss concerns related to unlawful harassment, to assist students, other members of the County community, and third parties who seek support or advice when informing another individual about "unwelcome" conduct, or to intercede informally on behalf of the individual in those instances where concerns have not resulted in the filing of a formal complaint and where all parties are in agreement to participate in an informal process.

COs shall accept complaints of unlawful harassment directly from any member of the County community or a visitor to the County, or receive complaints that are initially filed with a school building administrator. Upon receipt of a complaint either directly or through a school building administrator, a CO shall begin either an informal or formal process (depending on the request of the person alleging the harassment or the nature of the alleged harassment), or the CO shall designate a specific individual to conduct such a process. In the case of a complaint, the CO will prepare recommendations for the Superintendent or shall oversee the preparation of such recommendations by a designee. All members of the County community must report incidents of harassment that are reported to them to the CO at his/her first opportunity, but no later than two (2) business days of learning of the incident.

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 County's Anti Harassment Compliance Officer within twenty four (24) hours of observing the incident. Additionally, any Board employee who observes an act of unlawful harassment is expected to intervene to stop the harassment, unless circumstances make such an intervention dangerous, in which case the staff member shall immediately notify other Board employees and/or local law enforcement officials, as necessary, to stop the harassment.

Thereafter, the CO, or designee must contact the student, if age eighteen (18) or older, or the student's parents if under the age eighteen (18), within two (2) business days to advise s/he/them of the Board's intent to investigate the alleged misconduct, including the obligation of the CO or designee to conduct an investigation following all the procedures outlined for a formal complaint.

The Board's investigation of racial, sexual or religious/ethnic harassment or violence complaints shall 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, Complaint Procedure and Recommendation

Except for Sexual Harassment that is covered by Policy 2266—Nondiscrimination on the Basis of Sex in Education Programs or Activities, any individual who believes they have been subjected to harassment and/or violence (hereinafter referred to as the "Complainant"), may file a complaint through the procedures described below. The formal complaint process involves an investigation of the Complainant's claims of harassment or retaliation and a process for rendering a decision regarding whether the charges are substantiated.

Due to the sensitivity surrounding complaints of unlawful discrimination and retaliation, timelines are flexible for initiating the complaint process; however, individuals shall make every effort to file a complaint within thirty (30) days after the conduct occurs. If a Complainant informs a principal, Superintendent, or other County level employee, either orally or in writing, about any complaint of discrimination/retaliation, that employee must report such information to the CO at his/her first opportunity, but no later than two (2) business days.

Throughout the course of the process, the CO shall keep the parties reasonably informed of the status of the investigation and the decision making process.

All complaints must include the following information to the extent known: the identity of the individual believed to have engaged in, or be engaging in, the discriminatory/retaliatory conduct; a detailed description of the facts upon which the complaint is based (i.e., when, where, and what occurred); a list of potential witnesses; and the resolution sought by the Complainant.

If the Complainant is unwilling or unable to provide a written statement including the information set forth above, the CO shall ask for such details in an oral interview. Thereafter, the CO will prepare a written summary of the oral interview, and the Complainant shall be asked to verify the accuracy of the reported charge by signing the document.

Upon receiving a formal complaint, the CO shall consider whether any action shall be taken in the investigatory phase to protect the Complainant from further discrimination or retaliation, including, but not limited to, a change of work assignment or schedule for the Complainant and/or the Respondent.

Pursuant to West Virginia Board of Education policy 4373, upon receiving a complaint, the CO, in consultation with the Superintendent, shall take reasonable steps to protect the Complainant, students, teachers, administrators, or other personnel in any manner throughout the pending investigation.

In making such a determination, the CO shall consult the Complainant to assess whether the individual agrees with the proposed action. If the Complainant is unwilling to consent to the proposed change, the CO may still take whatever actions deemed appropriate in consultation with the Superintendent.

Within two (2) business days of receiving the complaint, the CO/designee shall initiate a formal investigation to determine whether the Complainant has been subjected to unlawful discrimination/retaliation. The Principal shall not conduct an investigation unless directed to do so by the Compliance Officer.

Simultaneously, the CO shall inform the Respondent that a formal complaint has been received. The Respondent will be informed about the nature of the allegations and provided with a copy of any relevant policies and/or administrative guidelines, including Policy 3122—Nondiscrimination and Equal Employment Opportunity. The Respondent must also be informed of the opportunity to submit a written response to the complaint within five (5) business days.

Although certain cases may require additional time, the CO/designee shall complete an investigation into the allegations of discrimination/retaliation as soon as practical, but no later than ten (10) business days of receiving the formal complaint. The investigation, at a minimum, must include:

- A. interviews with the Complainant;
- B. interviews with the Respondent;
- C. interviews with any other witnesses who may reasonably be expected to have any information relevant to the allegations;
- D. consideration of any documentation or other information presented by the Complainant, Respondent, or any other witness that is reasonably believed to be relevant to the allegations.

In determining whether alleged conduct constitutes racial, sexual, or religious/ethnic 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.

At the conclusion of the investigation, the CO shall prepare and deliver a written report to the Superintendent that summarizes the evidence gathered during the investigation and provides recommendations based on the evidence and the definition of unlawful discrimination/retaliation as provided in Board policy and State and Federal law as to whether the Complainant has been subjected to unlawful discrimination/retaliation. The CO's recommendations must be based upon the totality of the circumstances. In determining if discrimination or retaliation occurred, a preponderance of evidence standard shall be used. () The CO may consult with the Board's legal counsel before finalizing the report to the Superintendent.

Absent extenuating circumstances, within five (5) business days of receiving the report of the CO/designee, the Superintendent must either issue a written decision regarding whether the charges have been substantiated or request further investigation. A copy of the Superintendent's final decision shall be delivered to both the Complainant and the Respondent.

If the Superintendent requests additional investigation, the Superintendent must specify the additional information that is to be gathered, and such additional investigation must be completed within five (5) business days. At the conclusion of the additional investigation, the Superintendent must issue a written decision as described above.

If the Superintendent determines the Complainant was subjected to unlawful discrimination/retaliation, s/he must identify what corrective action shall be taken to stop, remedy, and prevent the recurrence of the discrimination/retaliation. The corrective action shall be reasonable, timely, age appropriate and effective, and tailored to the specific situation.

A Complainant or Respondent who is dissatisfied with the final decision of the Superintendent may appeal through a signed written statement to the Board within five (5) business days of the party's receipt of the Superintendent's decision. The written statement of appeal must be submitted to the Treasurer/CFO.

In an attempt to resolve the complaint, the Board shall meet with the concerned parties and their representatives within twenty (20) business days of the receipt of such an appeal. A copy of the Board's disposition of the appeal shall be sent to each concerned party within ten (10) business days of this meeting. The decision of the Board shall be final. (See Policy 9130—Public Complaints and West Virginia State Board of Education policy 7211—Appeals Procedure for Citizens.)

The Board reserves the right to investigate and resolve a complaint or report of unlawful discrimination/retaliation regardless of whether the member of the School County community or Third Party alleging the unlawful discrimination/retaliation pursues the complaint. The Board also reserves the right to have the formal complaint investigation conducted by an external person in accordance with this policy or in such other manner as deemed appropriate by the Board or its designee.

The parties may be represented, at their own cost, at any of the above described meetings/hearings.

The right of a person to a prompt and equitable resolution of the complaint shall not be impaired by the person's pursuit of other remedies such as the filing of a complaint with the Office for Civil Rights, the filing of charges with local law enforcement, or the filing of a civil action in court. Use of this internal complaint process is not a prerequisite to the pursuit of other remedies.

Informal Complaint Procedure

The goal of the informal complaint procedure is promptly to stop inappropriate behavior and to facilitate resolution through an informal means, if possible. The informal complaint procedure is provided as a less formal option for a student, other member of the School County community, or Third Party who alleges unlawful harassment or retaliation. This informal procedure is not required as a precursor to the filing of a formal complaint. The informal process is only available in those circumstances where the Complainant and the Respondent mutually agree to participate in it.

The Complainant may proceed immediately to the formal complaint process and individuals who seek resolution through the informal procedure may request that the informal process be terminated at any time to move to the formal complaint process.

All complaints involving a County employee, any other adult member of the School County community, or a Third Party and a student shall be formally investigated.

As an initial course of action, if a Complainant feels comfortable and safe in doing so, the individual shall tell or otherwise inform the Respondent that the alleged harassing conduct is unwelcome and must stop. The Complainant shall address the allegedly harassing conduct as soon after it occurs as possible. The Compliance Officers are available to support and counsel individuals when taking this initial step or to intervene on behalf of the Complainant if requested to do so. A Complainant who is uncomfortable or unwilling to directly approach the Respondent about the alleged inappropriate conduct may file an informal or a formal complaint. In addition, with regard to certain types of unlawful harassment, such as sexual harassment, the Compliance Officer may advise against the use of the informal complaint process.

A Complainant may make an informal complaint, either orally or in writing: 1) to a teacher, other employee, or building administrator; 2) directly to one of the Compliance Officers; and/or 3) to the Superintendent or other County level employee.

All informal complaints must be reported to one of the Compliance Officers who shall either facilitate an informal resolution as described below, or appoint another individual to facilitate an informal resolution.

The Board's informal complaint procedure is designed to provide employees, other members of the School County community, or third parties who believe they are being unlawfully harassed with a range of options designed to bring about a resolution of their concerns. Depending upon the nature of the complaint and the wishes of the Complainant, informal resolution may involve, but not be limited to, one or more of the following:

- A. Advising the Complainant about how to communicate the unwelcome nature of the behavior to the Respondent.

- B. Distributing a copy of this policy as a reminder to the individuals in the school building or office where the Respondent works or attends.
- C. If both parties agree, the Compliance Officer may arrange and facilitate a meeting or mediation between the Complainant and the Respondent to work out a mutual resolution.

While there are no set time limits within which an informal complaint must be resolved, the Compliance Officer/designee is directed to attempt to resolve all informal complaints within fifteen (15) business days of receiving the informal complaint. If the Complainant is dissatisfied with the informal complaint process, the Complainant may proceed to file a formal complaint. And, as stated above, either party may request that the informal process be terminated at any time to move to the formal complaint process.

Formal Complaint Procedure

If a complaint is not resolved through the informal complaint process, if one of the parties has requested that the informal complaint process be terminated to move to the formal complaint process, or the Complainant, from the outset, elects to file a formal complaint, or the CO determines the allegations are not appropriate for resolution through the informal process, the formal complaint process shall be implemented.

The Complainant may file a formal complaint, either orally or in writing, with a teacher, Principal, Compliance Officer, Superintendent, or other County official. Due to the sensitivity surrounding complaints of unlawful harassment and retaliation, timelines are flexible for initiating the complaint process; however, individuals shall make every effort to file a formal complaint within thirty (30) days after the conduct occurs while the facts are known and potential witnesses are available. If a Complainant informs a teacher, Principal, Superintendent, or other County official, either orally or in writing, about any complaint of harassment or retaliation, that employee must report such information to the Compliance Officer within two (2) business days.

Throughout the course of the process, the Compliance Officer shall keep the parties reasonably informed of the status of the investigation and the decision-making process.

All formal complaints must include the following information to the extent known: the identity of the Respondent; a detailed description of the facts upon which the complaint is based (i.e., when, where, and what occurred); a list of potential witnesses; and the resolution sought by the Complainant.

If the Complainant is unwilling or unable to provide a written statement including the information set forth above, the Compliance Officer shall ask for such details in an oral interview. Thereafter, the Compliance Officer will prepare a written summary of the oral interview, and the Complainant shall be asked to verify the accuracy of the reported charge by signing the document.

Upon receiving a formal complaint, the Compliance Officer shall consider whether any action shall be taken in the investigatory phase to protect the Complainant from further harassment or retaliation, including, but not limited to, a change of work assignment or schedule for the Complainant and/or the Respondent. In making such a determination, the Compliance Officer shall consult the Complainant to assess whether the individual agrees with the proposed action. If the Complainant is unwilling to consent to the proposed change, the Compliance Officer may still take whatever actions deemed appropriate in consultation with the Superintendent.

Within two (2) business days of receiving the complaint, the Compliance Officer/designee shall initiate a formal investigation to determine whether the Complainant has been subjected to offensive conduct/harassment/retaliation. The Principal shall not conduct an investigation unless directed to do so by the Compliance Officer.

Simultaneously, the Compliance Officer shall inform the Respondent that a formal complaint has been received. The Respondent shall be informed about the nature of the allegations and provided with a copy of any relevant policies and/or administrative guidelines, including the Board's Anti Harassment policy. The Respondent must also be informed of the opportunity to submit a written response to the complaint within five (5) business days.

Although certain cases may require additional time, the Compliance Officer/designee shall attempt to complete an investigation into the allegations of harassment/retaliation within fifteen (15) business days of receiving the formal complaint. The investigation shall include:

- A. interviews with the Complainant;
- B. interviews with the Respondent;
- C. interviews with any other witnesses who may reasonably be expected to have any information relevant to the allegations;
- D. consideration of any documentation or other information presented by the Complainant, Respondent, or any other witness that is reasonably believed to be relevant to the allegations.

At the conclusion of the investigation, the Compliance Officer or the designee shall prepare and deliver a written report to the Superintendent that summarizes the evidence gathered during the investigation and provides recommendations based on the evidence and the definition of unlawful harassment as provided in Board policy and State and Federal law as to whether the Complainant has been subjected to unlawful harassment. The Compliance Officer's recommendations must be based upon the totality of the circumstances, including the ages and maturity levels of those involved. In determining if discriminatory harassment or retaliation occurred, a preponderance of evidence standard shall be used. The Compliance Officer may consult with the Board's legal counsel before finalizing the report to the Superintendent.

Absent extenuating circumstances, within five (5) business days of receiving the report of the Compliance Officer/designee, the Superintendent must either issue a written decision regarding whether the complaint of harassment has been substantiated or request further investigation. A copy of the Superintendent's final decision shall be delivered to both the Complainant and the Respondent.

If the Superintendent requests additional investigation, the Superintendent must specify the additional information that is to be gathered, and such additional investigation must be completed within five (5) business days. At the conclusion of the additional investigation, the Superintendent must issue a written decision as described above.

[] The decision of the Superintendent shall be final.

{OR}

[] A Complainant or Respondent who is dissatisfied with the final decision of the Superintendent may appeal through a signed written statement to the Board within five (5) business days of the party's receipt of the Superintendent's decision. The written statement of appeal must be submitted to the Treasurer/CFO.

In an attempt to resolve the complaint, the Board shall meet with the concerned parties and their representatives within twenty (20) business days of the receipt of such an appeal. A copy of the Board's disposition of the appeal shall be sent to each party within ten (10) business days of this meeting. The decision of the Board shall be final.

{END OF OPTIONS}

The Board reserves the right to investigate and resolve a complaint or report of unlawful harassment/retaliation regardless of whether the member of the School County community or Third Party alleging the unlawful harassment/retaliation pursues the complaint. The Board also reserves the right to have the formal complaint investigation conducted by an external person in accordance with this policy or in such other manner as deemed appropriate by the Board or its designee.

The parties may be represented, at their own cost, at any of the above described meetings/hearings.

The right of a person to a prompt and equitable resolution of the complaint shall not be impaired by the person's pursuit of other remedies such as the filing of a complaint with the Office for Civil Rights, the filing of charges with local law enforcement, or the filing of a civil action in court. Use of this internal complaint process is not a prerequisite to the pursuit of other remedies.

Privacy/Confidentiality

Confidentiality of the filing of complaints, the identity of subjects 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.

The County shall employ all reasonable efforts to protect the rights of the Complainant, the Respondent, and the witnesses as much as possible, consistent with the Board's legal obligations to investigate, to take appropriate action, and to conform with any discovery or disclosure obligations. All records generated under the terms of this policy shall be maintained as confidential to the extent permitted by law. Confidentiality, however, cannot be guaranteed. Additionally, the Respondent must be provided the Complainant's identity.

During the course of a formal investigation, the CO/designee shall instruct each person who is interviewed about the importance of maintaining confidentiality. Any individual who is interviewed as part of an investigation is expected not to disclose to third parties any information that is learned or provided during the course of the investigation.

All public records created as a part of an investigation of a complaint of discrimination/retaliation shall be maintained by the CO in accordance with the School Board's records retention policy.

Sanctions and Monitoring

The Board shall vigorously enforce its prohibitions against unlawful harassment/retaliation by taking appropriate action reasonably calculated to stop the harassment and prevent further such harassment. While observing the principles of due process, a violation of this policy may result in disciplinary action up to and including the discharge of an employee or the suspension/expulsion of a student. All disciplinary action shall be taken in accordance with applicable State law. When imposing discipline, the Superintendent shall consider the totality of the circumstances involved in the matter, including the ages and maturity levels of those involved. In those cases where unlawful harassment is not substantiated, the Board may consider whether the alleged conduct nevertheless warrants discipline in accordance with other Board policies, consistent with the terms of the relevant collective bargaining agreement(s).

Where the Board becomes aware that a prior remedial action has been taken against a member of the School County community, all subsequent sanctions imposed by the Board and/or Superintendent shall be reasonably calculated to end such conduct, prevent its recurrence, and remedy its effect.

Results of the Investigation

The result of the investigation of each complaint filed under these procedures shall 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 appropriate school official 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.

Upon receipt of a finding that the complaint is substantiated, the appropriate school official shall take action appropriate to the status of the offender (student, staff, or public guest). Such action for students may include all options listed in West Virginia State Board of Education policy 4373 and Policy 5600—Student Discipline. Actions for staff may include but not be limited to warning, suspension, termination, revocation of licensure, notification of law enforcement, and/or human services. Actions for public guests may include but not be limited to removal from school property and school-sponsored functions, notification of law enforcement, and/or human services.

The appropriate school official 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.

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.

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.

Retaliation

Retaliation against a person who makes a report or files a complaint alleging unlawful harassment/retaliation or participates as a witness in an investigation is prohibited. Neither the Board nor any other person may intimidate, threaten, coerce or interfere with any individual because the person opposed any act or practice made unlawful by any Federal or State civil right law, or because that individual made a report, formal complaint testified, assisted or participated or refused to participate in any manner in an investigation, proceeding, or hearing under those laws and/or the policy, or because that individual exercised, enjoyed, aided or encouraged any other person in the exercise or enjoyment of any right granted or protected by those laws and/or this policy.

Retaliation against a person for making a report of discrimination, filing a formal complaint, or participating in an investigation or meeting is a serious violation of this policy that can result in imposition of disciplinary sanctions/consequences and/or other appropriate remedies.

Formal complaints alleging retaliation may be filed according to the internal complaint process set forth above.

The exercise of rights protected under the First Amendment of the United States Constitution does not constitute retaliation prohibited under this policy.

Student-Employee Relationships Prohibited

Amorous relationships between employees of the Board and students are prohibited, and staff members found to have violated this prohibition shall be subject to the penalties and disciplinary action defined herein.

Non-Harassment

The Board recognizes that not every advance, conduct, or interaction of a racial, sexual or religious/ethnic or violent nature constitutes harassment. Whether a particular act, conduct, interaction, or incident is a personal, consensual, welcome interaction or social relationship without discriminatory motivation or effect on employment or education status shall be determined based upon consideration of all facts and surrounding circumstances.

The Board recognizes that not all reports of allegations of sexual, racial, and/or religious/ethnic harassment shall 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 shall 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 State 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.

Sexual Harassment as Abuse

Under certain circumstances, sexual harassment may constitute child and/or sexual abuse under Chapter 49 of the West Virginia Code. In such situations, the County and its employees shall comply with the provisions of law for reporting such abuse.

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 West Virginia State Board of Education policy.

Groups and persons 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 shall result in the immediate forfeiture of the group's use of the school properties.

Implementation and Education

The CO shall develop a program designed to raise the awareness of the different types of harassment, how it manifests itself, and its emotional, educational and legal consequences. Multi-cultural education programs must be established to foster an attitude of understanding and acceptance of individuals from a variety of cultural, ethnic, racial and religious backgrounds.

The CO 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 CO as appropriate, and such presentation must be age appropriate for students K-4, 5-8, and 9-12.

Per State law, all public school employees must complete training focused on skills, knowledge, and capabilities related to preventing child sexual abuse and recognizing and responding to suspected abuse and neglect. Employees must also complete training regarding the County Board policy against harassment, intimidation, or bullying, and training about multicultural education. Such training shall be completed upon employment and renewed every three (3) years thereafter.

Allegations Constituting Criminal Conduct: Child Abuse/Sexual Misconduct

State law requires any school teacher or school employee who knows or suspects that a child with a disability under the age of twenty-one (21) or that a child under the age of eighteen (18) has suffered or faces a threat of suffering a physical or mental wound, disability or condition of a nature that reasonably indicates abuse or neglect of a child to immediately report that knowledge or suspicion to the county children's services agency. If, during the course of a harassment investigation, the Compliance Officer or a designee has reason to believe or suspect that the alleged conduct reasonably indicates abuse or neglect of the Complainant, a report of such knowledge must be made in accordance with State law and Board Policy.

State law defines certain contact between a teacher and a student as "sexual battery." If the Compliance Officer or a designee has reason to believe that the Complainant has been the victim of criminal conduct as defined in West Virginia's Code, such knowledge shall be immediately reported to local law enforcement.

Any reports made to a county children's services agency or to local law enforcement shall not terminate the Compliance Officer or a designee's obligation and responsibility to continue to investigate a complaint of harassment. While the Compliance Officer or a designee may work cooperatively with outside agencies to conduct concurrent investigations, in no event shall the harassment investigation be inhibited by the involvement of outside agencies without good cause after consultation with the Superintendent.

Allegations Involving Conduct Unbecoming the Teaching Profession/Suspension

The Superintendent will, in accordance with West Virginia Code 18A-2-8 and Policy 3141, take appropriate action to suspend or terminate the employment of any employee charged with or convicted of offenses for which such action is appropriate in accordance with West Virginia law. Upon the recommendation of the Superintendent, pursuant to Policy 3141, the Board may take necessary steps to suspend or dismiss any person in its employment at any time the health, safety, and care of students has been jeopardized or the learning environment of other students has been impacted.

Education and Training

In support of this Anti-Harassment Policy, the Board promotes preventative educational measures to create greater awareness of unlawful discriminatory practices. The Superintendent shall provide appropriate information to all members of the School-County community related to the implementation of this policy and shall provide training for County students and staff where appropriate. All training, as well as all information provided regarding the Board's policy and harassment in general, shall be age and content appropriate.

Retention of Investigatory Records and Materials

The Compliance Officer(s) is responsible for overseeing retention of all records that must be maintained pursuant to this policy. All individuals charged with conducting investigations under this policy shall retain all documents, electronically stored information ("ESI"), and electronic media (as defined in Policy 8315) created and/or received as part of an investigation, which may include but not be limited to:

- A. all written reports/allegations/complaints/grievances/statements/responses pertaining to an alleged violation of this policy;
- B. any narratives that memorialize oral reports/allegations/complaints/grievances/statements/responses pertaining to an alleged violation of this policy;
- C. any documentation that memorializes the actions taken by County personnel or individuals contracted or appointed by the Board to fulfill its responsibilities related to the investigation and/or the County's response to the alleged violation of this policy;
- D. written witness statements;
- E. narratives, notes from, or audio, video, or digital recordings of witness interviews/statements;
- F. e-mails, texts, or social media posts that directly relate to or constitute evidence pertaining to an alleged violation of this policy (i.e., not after the fact commentary about or media coverage of the incident);
- G. notes or summaries prepared contemporaneously by the investigator in whatever form made (e.g., handwritten, keyed into a computer or tablet, etc.), but not including transitory notes whose content is otherwise memorialized in other documents;
- H. written disciplinary sanctions issued to students or employees and other documentation that memorializes oral disciplinary sanctions issued to students or employees for violations of this policy;
- I. dated written determinations/reports (including summaries of relevant exculpatory and inculpatory evidence) and other documentation that memorializes oral notifications to the parties concerning the outcome of the investigation, including any consequences imposed as a result of a violation of this policy;
- J. documentation of any supportive measures offered and/or provided to the Complainant and/or the Respondent, including no contact orders issued to both parties, the dates the no contact orders were issued, and the dates the parties acknowledged receipt of the no contact orders;
- K. documentation of all actions taken, both individual and systemic, to stop the discrimination or harassment, prevent its recurrence, eliminate any hostile environment, and remedy its discriminatory effects;
- L. copies of the Board policy and/or procedures/guidelines used by the County to conduct the investigation, and any documents used by the County at the time of the alleged violation to communicate the Board's expectations to students and staff with respect to the subject of this policy (e.g., Student Code of Conduct and/or Employee Handbooks);
- M. copies of any documentation that memorializes any formal or informal resolutions to the alleged discrimination or harassment;

[DRAFTING NOTE: The following options should be selected if the county concludes that the following items are not adequately encompassed in the preceding paragraphs:]

- N. () documentation of any training provided to County personnel related to this policy, including but not limited to, notification of the prohibitions and expectations of staff set forth in this policy and the role and responsibility of all County personnel involved in enforcing this policy, including their duty to report alleged violations of this policy and/or conducting an investigation of an alleged violation of this policy; **[REMINDER: Documentation of training should be maintained regardless of whether there is an investigation of an alleged violation of this policy. It is best practice to maintain a log of all staff members who participate in a training, along with the date, time and location of the training, and a copy of the materials reviewed and/or presented**

~~during the training.]~~

- O. ~~() documentation that any rights or opportunities that the County made available to one party during the investigation were made available to the other party on equal terms;~~
- P. ~~() copies of any notices sent to the alleged perpetrator/responding party of the allegations constituting a potential violation of this policy;~~
- Q. ~~() copies of any notices sent to the Complainant and the Respondent in advance of any interview, meeting, or hearing;~~
- R. ~~copies of any documentation or evidence used during informal and formal disciplinary meetings and hearings, including the investigation report, and any written responses submitted by the Complainant or the Respondent.~~

~~The documents, ESI, and electronic media (as defined in Policy 8315) retained may include public records and records exempt from disclosure under Federal (e.g., FERPA, ADA) and/or State law — e.g., student records and confidential medical records.~~

~~The documents, ESI, and electronic media (as defined in Policy 8315) created or received as part of an investigation shall be retained in accordance with Policy 8310, Policy 8315, Policy 8320, and Policy 8330 for not less than three (3) years, but longer if required by the County's records retention schedule.~~

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Legal

West Virginia Board of Education policy 4373
 WV Code 18-2-7b, 49-6A-2
 29 C.F.R. Part 1635
 20 U.S.C. 1681 et seq.
 29 U.S.C. 621 et seq.
 29 U.S.C. 794
 42 U.S.C. 12101 et seq.
 42 U.S.C. 2000d et seq.
 42 U.S.C. 2000e et seq.
 42 U.S.C. 2000ff et seq., The Genetic Information and Nondiscrimination Act
 42 U.S.C. 1983
 National School Boards Association Inquiry and Analysis - May 2008

Cross References

po2266 - NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES
 po3141 - TERMINATION
 po3122 - NONDISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY
 po5517.01 - BULLYING
 po8310 - PUBLIC RECORDS
 po8315 - INFORMATION MANAGEMENT
 po8320 - PERSONNEL FILES
 po8330 - STUDENT RECORDS