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## 2260 - **NONDISCRIMINATION AND ACCESS TO EQUAL EDUCATIONAL OPPORTUNITY**

The Board is committed to providing an equal educational opportunity for all students in the District.

The Board does not discriminate on the basis of race, color, religion, national origin, ancestry, creed, pregnancy, marital status, parental status, sexual orientation, sex (including gender status, change of sex or gender identity), or physical, mental, emotional, or learning disability ("Protected Classes") in any of its student program and activities. This policy is intended to support and promote nondiscriminatory practices in all District and school activities, particularly in the following areas:

- A use of objective bases for admission to any school, class, program, or activity;
- B prohibition of harassment towards students and procedures for the investigation of claims (see Policy 5517);
- C use of disciplinary authority, including suspension and expulsion authority;
- D administration of gifts, bequests, scholarships and other aids, benefits, or services to students from private agencies, organizations, or persons;
- E selection of instructional and library media materials in a nondiscriminatory manner and that reflect the cultural diversity and pluralistic nature of American society;
- F design and implementation of student evaluation practices, materials, and tools, but not at the exclusion of implementing techniques to meet students' individual needs;
- G design and configuration of facilities;
- H opportunity for participation in extra-curricular and co-curricular activities, provided that separate programs for male and female students may be available provided comparable activities are made available to all in terms of type, scope, and District support; and
- I the school lunch program and other school-sponsored food service programs.

The Board is also committed to equal employment opportunity in its employment policies and practices as they relate to students. The Board's policies pertaining to employment practices can be found in Policy 1422, Policy 3122, and Policy 4122 - Nondiscrimination and Equal Employment Opportunity.

If furtherance of the aforesaid goal, the Superintendent shall:

**A Curriculum Content**

- 1 review current and proposed courses of study and textbooks to detect any bias based upon the Protected Classes ascertaining whether or not supplemental materials, singly or taken as a whole, fairly depict the contribution of both genders, various races, ethnic groups, etc. toward the development of human society;
- 2 provide that necessary programs are available for students with limited use of the English language;

**B Staff Training**

develop an ongoing program of staff training and in service training for school personnel designed to identify and solve problems of bias based upon the Protected Classes in all aspects of the program;

**C Student Access**

- 1 review current and proposed programs, activities, facilities, and practices to verify that all students have equal access thereto and are not segregated on the basis of the Protected Classes in any duty, work, play, classroom, or school practice, except as may be permitted under State and Federal laws and regulations;
- 2 verify that facilities are made available in a nondiscriminatory fashion, in accordance with Board Policy 7510 - Use of District Facilities, for non-curricular student activities that are initiated by parents or other members of the community, including but not limited to any group officially affiliated with the Boy Scouts of America or any other youth group listed in Title 36 of the United States Code as a patriotic society;

**D District Support**

verify that like aspects of the District program receive like support as to staff size and compensation, purchase and maintenance of facilities and equipment, access to such facilities and equipment, and related matters;

**E Student Evaluation**

verify that tests, procedures, or guidance and counseling materials, which are designed to evaluate student progress, rate aptitudes, analyze personality, or in any manner establish or tend to establish a category by which a student may be judged, are not differentiated or stereotyped on the basis of the Protected Classes.

**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 discrimination/retaliation, regardless of whether the person files a formal complaint or is pursuing an informal resolution to the alleged discrimination/retaliation.

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

**School District community** means students and Board employees (i.e., administrators, and professional and classified staff), as well as Board members, 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 District 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 District community at school-related events/activities (whether on or off District property).

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

The Superintendent shall appoint and publicize the name of the Compliance Officer(s) who is/are responsible for coordinating the District's efforts to comply with the applicable Federal and State laws and regulations, including the District's duty to address in a prompt and equitable manner any inquiries or complaints regarding discrimination or equal

access. The Compliance Officer(s) also verify that proper notice of nondiscrimination for Title II of the Americans with Disabilities Act (as amended), Title VI and VII of the Civil Rights Act of 1964, Title IX of the Education Amendment Act of 1972, Section 504 of the Rehabilitation Act of 1973 (as amended), is provided to students, their parents, staff members, and the general public.

The Superintendent shall attempt annually to identify children with disabilities, ages 3 - 21, who reside in the District but do not receive a public education. In addition, s/he shall establish procedures to identify students who are Limited English Proficient, including immigrant children and youth, to assess their ability to participate in District programs and develop and administer a program that meets the English language and academic needs of these students. This program shall include procedures for student placement, services, evaluation, and exit guidelines and shall be designed to provide students with effective instruction that leads to academic achievement and timely acquisition of proficiency in English. As a part of this program, the District will evaluate the progress of students in achieving English language proficiency in the areas of listening, speaking, reading and writing, on an annual basis. (See West Virginia Board of Education policy 2417 - Programs of Study for Limited English Proficient Students and West Virginia Board of Education policy 2419 - Regulations for the Education of Students with Exceptionalities)

### **Title IX Coordinators/District Compliance Officers**

The Board designates the following individuals as the County's Title IX Coordinators. (The coordinators also serve as Compliance Officers for non-sexual harassment, 504/ADA Compliance Officers.):

Rocky Hall

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Director of Student Services and Attendance  
Title IX Coordinator; Anti-Harassment, 504/ADA Compliance Officer  
Mingo County School District

110 Cinderella Rd  
Williamson, WV 25661  
Phone:  
(304) 235-3333  
Email:  
rahall@k12.wv.us

Leah Wireman

Director of Student Services and Attendance  
Title IX Coordinator; Anti-Harassment, 504/ADA Compliance Officer  
Mingo County School District

110 Cinderella Rd  
Williamson, WV 25661  
Phone:  
(304) 235-3333  
Email:  
lwireman@k12.wv.us

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

- A. in the parent/student and staff handbooks(digital or print).
- B in the District's Annual Report to the public.
- C on each individual school's website.
- D in the District's calendar.
- E posted in all district buildings.\_\_\_\_\_.

A Coordinator will be available during regular school/work hours to discuss concerns related to student discrimination in educational opportunities under this policy.

regulations, including the District's duty to address in a prompt and equitable manner any inquiries or complaints regarding discrimination, retaliation or denial of equal access. The CO's Coordinators shall also verify that proper notice of nondiscrimination for Title II of the Americans with Disabilities Act (as amended), Title VI and VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973 (as amended), and the Age Discrimination Act of 1975 is provided to students, their parents, staff members, and the general public. A copy of each of the Acts and regulations on which this notice is based may be found in the CO's Coordinators office.

The Superintendent shall annually attempt to identify children with disabilities, ages 3-22, who reside in the District but do not receive public education.

The Board is committed to educating (or providing for the education of) each qualified person with a disability with persons who are not disabled to the maximum extent appropriate. Generally, the District will place a person with a disability in the regular educational environment unless it is demonstrated that the education of the person in the regular environment, even with the use of supplementary aids and services cannot be achieved satisfactorily. If the Board operates a separate class or facility that is identifiable as being for persons with disabilities, the facility, program, and activities and services must be comparable to the facilities, programs, and activities and services offered to students without a disability.

In addition, the Superintendent shall establish procedures to identify students who are Limited English Proficient (LEP), including immigrant children and youth, to assess their ability to participate in District programs, and develop and administer a program that meets the English language and academic needs of these students. This program shall include procedures for student placement, services, evaluation, and exit guidelines and shall be designed to provide students with effective instruction that leads to academic achievement and timely acquisition of proficiency in English. As a part of this program, the District will evaluate the progress of students in achieving English language proficiency in the areas of listening, speaking, reading and writing, on an annual basis (see AG 2260F). The Superintendent is responsible for verifying that a concentration of students who are Limited English Proficient (LEP) in one (1) or more programs is not the result of discrimination.

### **Reports and Complaints of Unlawful Discrimination and Retaliation**

Students and Board employees are required, and all other members of the District School community and Third Parties are encouraged to promptly report incidents of unlawful discrimination and/or retaliation to a teacher, administrator, supervisor, or other District official so that the Board may address the conduct. Any teacher, administrator, supervisor, or other District School employee or official who receives such a complaint shall file it with the Coordinator at his/her first opportunity, within two (2) days.

Students who believe they have been denied equal access to District educational opportunities in a manner inconsistent with this policy may initiate a complaint and the investigation process that is set forth below. Initiating a complaint will not adversely affect the complaining individual's participation in educational or extra-curricular programs unless the complaining individual makes the complaint maliciously or with the knowledge that it is false.

Members of the District School community, that includes students or Third Parties, who believe they have been unlawfully discriminated/retaliated against are entitled to utilize the complaint process set forth below. Initiating a complaint, whether formally or informally, will not adversely affect the Complainant's employment or participation in educational or extra-curricular programs. While there are no time limits for initiating complaints under this policy, individuals should make every effort to file a complaint as soon as possible after the conduct occurs while the facts are known and potential witnesses are available.

If, during an investigation of alleged bullying, aggressive behavior and/or harassment in accordance with Policy 5517.01 – Bullying and Other Forms of Aggressive Behavior, the principal believes that the reported misconduct may constitute unlawful discrimination based on a Protected Class, the principal shall report the act to one of the Coordinators-who shall investigate the allegation in accordance with this policy. While the Coordinator investigates the allegation, the principal shall suspend the Policy 5517.01 investigation to await the CO's written report. The Coordinator shall keep the principal informed of the status of the Policy 2260 investigation and provide him/her with a copy of the resulting written report.

The Coordinators will be available during regular school/work hours to discuss concerns related to unlawful discrimination/retaliation. Coordinators shall accept reports of unlawful discrimination/retaliation directly from any member of the District school community or a Third Party, or receive reports that are initially filed with another Board employee. Upon receipt of a report of alleged discrimination/retaliation, the Coordinator will contact the Complainant and begin either an informal or formal complaint process (depending on the Complainant's request and the nature of the alleged discrimination/retaliation), or the Coordinator will designate a specific individual to conduct such a process. The Coordinator will provide a copy of this policy to the Complainant and the Respondent. In the case of a formal complaint, the Coordinator will prepare recommendations for the Superintendent or oversee the preparation of such recommendations by a designee. All members of the District school community must report incidents of discrimination/retaliation that are reported to them to the CO at his/her first opportunity, but no later than two (2) days of learning of the incident/conduct.

Any Board employee who directly observes unlawful discrimination/retaliation of a student is obligated, in accordance with this policy, to report such observations to one of the Coordinator within two (2) business days. Additionally, any Board employee who observes an act of unlawful discrimination/retaliation is expected to intervene to stop the misconduct, unless

circumstances make such an intervention dangerous, in which case the staff member should immediately notify other Board employees and/or local law enforcement officials, as necessary, to stop the misconduct. Thereafter, the Coordinator/designee must contact the Complainant, if age eighteen (18) or older, or the 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.

### **Investigation and Complaint Procedure**

Except for sex discrimination and/or Sexual Harassment that is covered by Policy 2266 - Nondiscrimination on the Basis of Sex in Education Programs or Activities, any student who alleges to have been subjected to unlawful discrimination or retaliation may seek resolution of the complaint through the procedures described below. The formal complaint procedures involve an investigation of the individual's claims of discrimination/retaliation and a process for rendering a decision regarding whether the charges are substantiated.

Due to the sensitivity surrounding complaints of unlawful discrimination or retaliation, timelines are flexible for initiating the complaint process; 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 (ordinarily, within fifteen (15) business days of the complaint being received).

The procedures set forth below are not intended to interfere with the rights of a student to pursue a complaint of unlawful discrimination or retaliation with the United States Department of Education Office for Civil Rights ("OCR").

#### **Informal Complaint Procedure**

The goal of the informal complaint procedure is to promptly stop inappropriate behavior and facilitate resolution through an informal means, if possible. The informal complaint procedure is provided as a less formal option for a student who alleges unlawful discrimination 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 participate in 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 District employee or any other adults when taking this initial step or to intervene on behalf of the individual if requested to do so. A Complainant who is uncomfortable or unwilling to directly approach the Respondent about the inappropriate conduct may file an informal or a formal complaint. In addition, with regard to certain types of unlawful discrimination (e.g., sex discrimination), the Coordinator may advise against the use of the informal complaint process.

As an initial course of action, if a Complainant feels comfortable and safe doing so, the individual should tell or otherwise inform the Respondent that the alleged harassing conduct is unwelcome and must stop. The Complainant should address the allegedly harassing conduct as soon after it occurs as possible. The Coordinators ~~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 Coordinators may advise against the use of the informal complaint process.

A Complainant who alleges unlawful discrimination/retaliation may make an informal complaint, either orally or in writing: 1) to a teacher, other employee, or building administrator in the school the student attends; 2) to the Superintendent or other District-level employee; and/or 3) directly to one of the Coordinators.

All informal complaints must be reported to one of the ~~Co~~Coordinators who will either facilitate an informal resolution as described below, or appoint another individual to facilitate an informal resolution.

The School District's informal complaint procedure is designed to provide the Complainant with a range of options aimed at bringing about a prompt resolution of their concerns. Depending upon the nature of the complaint and the Complainant's wishes, informal resolution may involve, but not be limited to, one or more of the following:

- A. Advising the Complainant about how to communicate concerns to the Respondent.
- B. Distributing a copy of Policy 2260 - Non-Discrimination and Access to Equal Educational Opportunity to the individuals in the school building or office where the Respondent works or attends.
- C. If both parties agree, the ~~Co~~Coordinators 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 ~~CO~~Coordinator or 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 requested that the informal complaint process be terminated to move to the formal complaint process, or if the Complainant, from the outset, elects to file a formal complaint, or the ~~Coordinator~~ 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, or other District official at the student's school, the Coordinator, Superintendent, or another District official who works at another school or at the School District level. Due to the sensitivity surrounding complaints of unlawful discrimination, timelines are flexible for initiating the complaint process; however, individuals should make every effort to file a formal complaint within thirty (30) days after the conduct occurs. If a Complainant informs a teacher, principal, or other District official at the student's school, Superintendent, or other District 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 should 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 Coordinator shall ask for such details in an oral interview. Thereafter, the Coordinator will prepare a written summary of the oral interview, and the Complainant will be asked to verify the accuracy of the reported charge by signing the document. Neither the unwillingness of a Complainant to provide a written statement or to verify the accuracy of a reported charge or the request of a Complainant to forgo further pursuit of a reported charge shall serve as a basis to refrain from the investigation of a reported charge.

Upon receiving a formal complaint, the Coordinator will consider whether any action should 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. In making such a determination, the Coordinator should 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.

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

If a change in work assignment or schedule is deemed necessary, consideration shall first be given to a change in the work assignment or schedule of the person alleged to have engaged in the misconduct. In making such a determination, the Coordinator should consult the Complainant to assess his/her agreement to the proposed action. If the Complainant is unwilling to consent to the proposed change, the CO may still take whatever actions s/he deem appropriate in consultation with the Superintendent.

Within two (2) business days of receiving the complaint, the Coordinator will initiate a formal investigation to determine whether the Complainant has been subjected to unlawful discrimination/retaliation. The principal will not conduct an investigation unless directed to do so by the ~~CO~~Coordinator, but will follow the protocols established in West Virginia State Board of Education policy 4373 to require that the investigation will be completed as soon as practicable but no later than ten (10) school days following the reported violation.

Simultaneously, the Coordinator will 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 2260 - Nondiscrimination and Access to Equal Educational Opportunity. The Respondent must also be informed of the opportunity to submit a written response to the complaint within five (5) business days.

The Coordinator will 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 will 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.

Pursuant to West Virginia State Board of Education policy 4373 at the conclusion of the investigation, the Coordinator shall provide the principal with a written report that summarizes the evidence gathered during the investigation and 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 Respondent has engaged in unlawful discrimination/retaliation of the Complainant. The Coordinator's recommendations must be based upon the totality of the circumstances, including the ages and maturity levels of those involved. In determining if unlawful discrimination or retaliation occurred, a preponderance of evidence standard will be used. The Coordinator may consult with the Board's legal counsel before finalizing the report to the principal.

Further, at the conclusion of the investigation, the Coordinator shall deliver the report provided to the principal to the Superintendent that summarizes the evidence gathered during the investigation and the recommendations given to the principal that were 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.

Absent extenuating circumstances, within five (5) business days of receiving the report of the Coordinator or 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 will be delivered to both the Complainant and the Respondent. The Superintendent may redact information from the decision in the event the release of information raises concerns regarding the integrity of the complaint or investigation process. The Board authorizes the Superintendent to consult with legal counsel to determine the extent to which information in an investigation report must be provided to either the Complainant or 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) days. At the conclusion of the additional investigation, the Superintendent shall issue a final written decision as described above.

If the Superintendent determines the Respondent engaged in unlawful discrimination/retaliation toward the Complainant, the Superintendent 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.

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 will be final. (See Policy 9130 – Public Complaints and West Virginia State Board of Education policy 7211 – Appeals Procedure for Citizens) Any person, including the Respondent in a complaint, who is subject to disciplinary action up to and including termination as a result of a complaint may choose to file a Grievance utilizing the District's grievance procedure as outlined in Policy 3340 or Policy 4340.

The Board reserves the right to investigate and resolve a complaint or report of unlawful discrimination/retaliation regardless of whether the student 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.

#### **Additional School District Action**

If the evidence suggests that any conduct at issue violates any other policies of the Board, is a crime, or requires mandatory reporting under the Children's Code (WV Code 49-2-803) (Policy 8462) or threats of violence, the Coordinator or Superintendent shall take such additional actions as necessary and appropriate under the circumstances, which may include a report to the appropriate social service and/or law enforcement agency charged with the responsibility for handling such investigations.

### **Privacy/Confidentiality**

The District will employ all reasonable efforts to protect the rights of the Complainant, the Respondent(s) individual(s), 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 Coordinator or designee 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 third parties any information that is learned or provided during the course of the investigation.

All records created as a part of an investigation of a complaint of discrimination/retaliation will be maintained by the Coordinator in accordance with the Board's records retention policy. Any records that are considered student education records in accordance with the Family Educational Rights and Privacy Act or under student records law will be maintained in a manner consistent with the provisions of the Federal and State law.

### **Sanctions and Monitoring**

The Board shall vigorously enforce its prohibitions against unlawful discrimination/retaliation 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 or the suspension/expulsion of a student. 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, including the ages and maturity levels of those involved. In those cases where unlawful discrimination/retaliation 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 District School 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.

### **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.

### **Education and Training**

In support of this 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 District school community related to the implementation of this policy and shall provide training for District students and staff where appropriate. All training, as well as all information, provided regarding the Board's policy and discrimination in general, will be age and content appropriate.

### **Retention of Investigatory Records and Materials**



The Title IX Coordinator 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 information, documents, electronically stored information ("ESI"), and electronic media (as defined in Policy 8315) created and received as part of an investigation, including, but not limited to:

- A all written reports/allegations/complaints/statements;
- B narratives of all verbal reports, allegations, complaints, and statements collected;
- C a narrative of all actions taken by District personnel or individuals contracted or appointed by the Board to fulfill its responsibilities;
- D any written documentation of actions taken by District personnel;
- E narratives of, notes from, or audio, video, or digital recordings of witness statements;
- F all documentary evidence;
- G e-mails, texts, or social media posts pertaining to the investigation;
- H contemporaneous notes in whatever form made (e.g., handwritten, keyed into a computer or tablet, etc.) pertaining to the investigation;
- I written disciplinary sanctions issued to students or employees and a narrative of verbal disciplinary sanctions issued to students or employees for violations of the policies and procedures prohibiting discrimination or harassment;
- J dated written determinations to the parties;
- K dated written descriptions of verbal notifications to the parties;
- L written 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 issued, and the dates the parties acknowledged receipt;
- M 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;
- N copies of the Board policy and/or procedures/guidelines used by the District to conduct the investigation, and any documents used by the District 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);
- O copies of any documentation that memorializes any formal or informal resolutions to the alleged discrimination or harassment;
- P documentation of any training provided to District 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 District 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;
- Q documentation that any rights or opportunities that the District made available to one party during the investigation were made available to the other party on equal terms;
- R copies of any notices sent to the alleged perpetrator/responding party of the allegations constituting a potential violation of this policy;
- S copies of any notices sent to the Complainant and the Respondent in advance of any interview, meeting, or hearing;
- T 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 information, 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 District's records retention schedule.

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T.C. 12/9/20  
T.C. 8/1/22

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Legal

Fourteenth Amendment, U.S. Constitution

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

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

42 U.S.C. Section 2000ff et seq., The Genetic Information Nondiscrimination Act

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

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

29 C.F.R. Part 1635

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

Vocational Education Program Guidelines for Eliminating Discrimination and Denial of Services, Department of Education, Office of Civil Rights, March 1979

Title III of the No Child Left Behind Act of 2001

WV Code 18-20-1 et seq.

Individuals with Disabilities Education Act Amendments of 1997 (IDEA 97)

West Virginia State Board of Education policy 2419

West Virginia State Board of Education policy 4373