

NOTE: Footnotes are for reference only. They should be eliminated from an individual board's policy.

PROHIBITION AGAINST DISCRIMINATION, HARASSMENT, AND BULLYING

Policy Code: 1710/4021/7230

¹The board acknowledges the dignity and worth of all students and employees and strives to create a safe, orderly, caring, and inviting school environment to facilitate student learning and achievement. The board prohibits discrimination on the basis of race, color, national origin, sex, disability, or age² and will provide equal access to the Boy Scouts and other designated youth groups as required by law.³ The board will not tolerate any form of unlawful discrimination, harassment, or bullying in any of its educational or employment activities or programs.

A. PROHIBITED BEHAVIORS AND CONSEQUENCES

1. Discrimination, Harassment, and Bullying

Students, school system employees, volunteers, and visitors are expected to behave in a civil and respectful manner. The board expressly prohibits unlawful discrimination, harassment, and bullying.

Students are expected to comply with the behavior standards established by board policy and the Code of Student Conduct. Employees are expected to comply with board policy and school system regulations. Volunteers and visitors on school property also are expected to comply with board policy and established school rules and procedures.

Any violation of this policy is serious and school officials shall promptly take appropriate action. Students will be disciplined in accordance with the school's student behavior management plan (see policy 4302, School Plan for Management of Student Behavior). Based on the nature and severity of the offense and the circumstances surrounding the incident, the student will be subject to appropriate consequences and remedial actions ranging from positive behavioral interventions up to, and including, expulsion.

Employees who violate this policy will be subject to disciplinary action, up to, and including, dismissal. Volunteers and visitors who violate this policy will be directed to leave school property and/or reported to law enforcement, as appropriate, in accordance with policy 5020, Visitors to the Schools.

¹ This policy is necessary to fulfill federal and state legal requirements.

² This provision meets the minimum notice requirements of federal non-discrimination laws and regulations enforced by the Office for Civil Rights.

³ This provision meets the minimum notice requirements of the Boy Scouts Act regulations set forth in 34 C.F.R. § 108.9. "Youth group" is defined as "any group or organization intended to serve young people under the age of 21" and listed in Title 36 of the U.S. Code as a patriotic society.

When considering if a response beyond the individual level is appropriate, school administrators should consider the nature and severity of the misconduct to determine whether a classroom, school-wide, or school system-wide response is necessary. Such classroom, school-wide, or school system-wide responses may include staff training, harassment and bullying prevention programs, and other measures deemed appropriate by the superintendent to address the behavior.

2. Retaliation

The board prohibits reprisal or retaliation against any person for reporting or intending to report violations of this policy, supporting someone for reporting or intending to report a violation of this policy, or participating in the investigation of reported violations of this policy.

After consideration of the nature and circumstances of the reprisal or retaliation and in accordance with applicable federal, state or local laws, policies, and regulations, the superintendent or designee shall determine the consequences and remedial action for a person found to have engaged in reprisal or retaliation.

B. APPLICATION OF POLICY

This policy prohibits unlawful discrimination, harassment, and bullying by students, employees, volunteers, and visitors. “Visitors” includes persons, agencies, vendors, contractors, and organizations doing business with or performing services for the school system.⁴

This policy applies to behavior that takes place:

1. in any school building or on any school premises before, during or after school hours;
2. on any bus or other vehicle as part of any school activity;
3. at any bus stop;
4. during any school-sponsored activity or extracurricular activity;
5. at any time or place when the individual is subject to the authority of school personnel; and
6. at any time or place when the behavior has a direct and immediate effect on maintaining order and discipline in the schools.

⁴ The school system may be held liable for harassment by independent contractors or visitors.

C. DEFINITIONS

For purposes of this policy, the following definitions apply:

1. Discrimination

Discrimination means any act or failure to act that unreasonably and unfavorably differentiates treatment of others based solely on their membership in a socially distinct group or category, such as race, ethnicity, sex, pregnancy, religion, age, or disability. Discrimination may be intentional or unintentional.

2. Harassment and Bullying

a. Harassment or bullying behavior is any pattern of gestures or written, electronic, or verbal communications, or any physical act or any threatening communication that:

- 1) places a student or school employee in actual and reasonable fear of harm to his or her person or damage to his or her property; or
- 2) creates or is certain to create a hostile environment by substantially interfering with or impairing a student's educational performance, opportunities, or benefits or by adversely altering the conditions of an employee's employment.⁵

“Hostile environment” means that the victim subjectively views the conduct as harassment or bullying and that the conduct is objectively severe or pervasive enough that a reasonable person would agree that it is harassment or bullying. A hostile environment may be created through pervasive or persistent misbehavior or a single incident, if sufficiently severe.

Harassment and bullying include, but are not limited to, behavior described above that is reasonably perceived as being motivated by any actual or perceived differentiating characteristic or motivated by an individual's association with a person who has or is perceived to have a differentiating characteristic, such as race, color, religion, ancestry,

⁵ A policy prohibiting harassment and bullying is required by G.S. 115C-407.16. This policy adopts a broader definition of harassment and bullying than is required by G.S. 115C-407.15, which does not include conduct that creates a hostile environment by adversely altering the conditions of an employee's employment. See G.S. 115C 407.16(c). The definition here has been expanded to meet the requirements of federal anti-discrimination laws. See, e.g. *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986) (establishing standards for judging claims of sexual harassment that results in a hostile work environment in violation of Title VII of the Civil Rights Act of 1964, which prohibits sex discrimination by employers. To violate Title VII, harassment must be “sufficiently severe or pervasive ‘to alter the conditions of [the victim’s] employment and create an abusive working environment.’”).

national origin, gender, socioeconomic status, academic status, gender identity, physical appearance, sexual orientation, or mental, physical, developmental, or sensory disability.⁶ Examples of behavior that may constitute bullying or harassment include, but are not limited to, verbal taunts, name-calling and put-downs, epithets, derogatory comments or slurs, lewd propositions, exclusion from peer groups, extortion of money or possessions, implied or stated threats, assault, impeding or blocking movement, offensive touching, or any physical interference with normal work or movement, and visual insults, such as derogatory posters or cartoons. Legitimate age-appropriate pedagogical techniques are not considered harassment or bullying.

Harassment, including sexual or gender-based harassment, is not limited to specific situations or relationships. It may occur between fellow students or co-workers, between supervisors and subordinates, between employees and students, or between non-employees, including visitors, and employees or students. Harassment may occur between members of the opposite sex or the same sex.⁷

- b. Sexual harassment is one type of harassment. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:
- 1) submission to the conduct is made, either explicitly or implicitly, a term or condition of an individual's employment, academic progress, or completion of a school-related activity;
 - 2) submission to or rejection of such conduct is used as the basis for employment decisions affecting the individual, or in the case of a student, submission to or rejection of such conduct is used in evaluating the student's performance within a course of study or other school-related activity; or
 - 3) such conduct is sufficiently severe, persistent, or pervasive that it has the purpose or effect of unreasonably interfering with an employee's work or performance or a student's educational performance, limiting a student's ability to participate in or benefit

⁶ The characteristics in this list are mandated by G.S. 115C-407.15(a). In addition, federal anti-discrimination laws protect students from harassment based on race, color, national origin, sex, or disability. The Office for Civil Rights enforces the statutes that prohibit harassment based on these characteristics. See *Dear Colleague Letter*, Office for Civil Rights, (October 26, 2010), which explains schools' obligations to consider whether misbehavior that falls under a school's anti-bullying policy also constitutes discriminatory harassment under federal law. The *Letter* is available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>.

⁷ The U.S. Supreme Court held in *Oncale v. Sundowner Offshore Services, Inc.* that same-sex sexual harassment is actionable under Title VII.

from an educational program or environment, or creating an abusive, intimidating, hostile, or offensive work or educational environment.

Sexually harassing conduct includes, but is not limited to, deliberate, unwelcome touching that has sexual connotations or is of a sexual nature, suggestions or demands for sexual involvement accompanied by implied or overt promises of preferential treatment or threats, pressure for sexual activity, continued or repeated offensive sexual flirtations, advances or propositions, continued or repeated verbal remarks about an individual's body, sexually degrading words used toward an individual or to describe an individual, sexual assault, sexual violence,⁸ or the display of sexually suggestive drawings, objects, pictures or written materials. Acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex, but not involving sexual activity or language, may be combined with incidents of sexually harassing conduct to determine if the incidents of sexually harassing conduct are sufficiently serious to create a sexually hostile environment.

- c. Gender-based harassment is also a type of harassment. Gender-based harassment may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping but not involving conduct of a sexual nature.

D. REPORTING AND INVESTIGATING COMPLAINTS OF DISCRIMINATION, HARASSMENT, OR BULLYING

Employees are required to report any actual or suspected violations of this policy. Students, parents, volunteers, visitors, or others are also strongly encouraged to report any actual or suspected incidents of discrimination, harassment, or bullying. All reports should be made in accordance with policy 1720/4015/7225, Discrimination, Harassment, and Bullying Complaint Procedure, and reported to one of the school officials identified in that policy.⁹ Reports may be made anonymously, and all reports shall be investigated in accordance with that policy.

E. TRAINING AND PROGRAMS

⁸ See *Dear Colleague Letter*, Office for Civil Rights (April 4, 2011) which explains the federal enforcement agency's interpretation of sexual harassment as including sexual violence, defined as physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to the victim's disability or use of drugs or alcohol. The *Letter* is available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>.

⁹ This policy may reference other complaint procedures, such as the student and employee grievance procedures, as long as those procedures sufficiently address claims of a sensitive nature, such as those involving sexual harassment. Alternatively, a separate complaint procedure for discrimination, harassment, or bullying may be included in this policy.

The board directs the superintendent to establish training and other programs that are designed to help eliminate unlawful discrimination, harassment, and bullying and to foster an environment of understanding and respect for all members of the school community. Information about this policy and the related complaint procedure must be included in the training plan.

As funds are available, the board will provide additional training for students, employees, and volunteers who have significant contact with students regarding the board's efforts to address discrimination, harassment, and bullying and will create programs to address these issues. The training or programs should (1) provide examples of behavior that constitutes discrimination, harassment, or bullying; (2) teach employees to identify groups that may be the target of discrimination, harassment, or bullying; and (3) train school employees to be alert to locations where such behavior may occur, including locations within school buildings, at school bus stops, on cell phones, and on the Internet.

F. NOTICE

The superintendent is responsible for providing effective notice to students, parents, and employees of this policy and of the procedures for reporting and investigating complaints of discrimination, harassment, and bullying established in policy 1720/4015/7225, Discrimination, Harassment, and Bullying Complaint Procedure. The superintendent must ensure that each school principal provides a copy of this policy and policy 1720/4015/7225 to students, employees, and parents or other responsible care givers at the beginning of each school year.¹⁰ In addition, both policies must be posted on the school system website, and copies of the policies must be readily available in the principal's office, the media center at each school, and the superintendent's office.¹¹ Notice of the policies must appear in all student and employee handbooks and in any school or school system publication that sets forth the comprehensive rules, procedures, and standards of conduct for students and employees.¹²

G. COORDINATORS¹³

The superintendent has appointed the following individuals¹⁴ to coordinate the school

¹⁰ See G.S. 115C-407.16(d).

¹¹ G.S. 115C-407.16(b)(8) requires that this policy include a statement of how the policy is to be disseminated and publicized.

¹² See G.S. 115C-407.16(d).

¹³ Technically, the Title IX, Section 504, ADA, and Age Discrimination Act regulations are the only federal regulations that specifically require schools to designate and give notice of at least one employee as a coordinator to handle all claims and ensure compliance. However, the Office for Civil Rights recommends the practice of designating one or more employees to handle *all* discrimination claims.

¹⁴ Fill in the names, office addresses, and phone numbers of the compliance coordinators in the spaces below. The board may choose to omit the names of the coordinators and only reference the positions by title. This policy designates separate coordinators, but instead one individual may be appointed to coordinate all civil rights

system's efforts to comply with and carry out its responsibilities under federal non-discrimination laws. These responsibilities include investigating any complaints communicated to school officials alleging noncompliance with Title VI or Title IX of the Civil Rights Act, Section 504 of the Rehabilitation Act, the Americans with Disabilities Act (ADA), the Age Discrimination Act, and/or the Boy Scouts Act, or alleging actions which would be prohibited by those laws.¹⁵

1. Title IX Coordinator
Name:
Office Address:
Phone Number:

2. Section 504 Coordinator
Name:
Office Address:
Phone Number:

3. ADA Coordinator
Name:
Office Address:
Phone Number:

4. Age Discrimination Coordinator
Name:
Office Address:
Phone Number:

5. Coordinator for Other Non-discrimination Laws
Name:
Office Address:
Phone Number:

H. RECORDS AND REPORTING

The superintendent or designee shall maintain confidential records of complaints or reports of discrimination, harassment, or bullying. The records must identify the names of all individuals accused of such offenses and the resolution of such complaints or reports.¹⁶ The superintendent also shall maintain records of training conducted and corrective action(s) or other steps taken by the school system to provide an environment

compliance.

¹⁵ This section may describe the specific duties of these coordinators. The intent is to make the coordinator's role a meaningful protective measure rather than an administrative hurdle. This section may also be modified to omit the actual titles of the pertinent laws.

¹⁶ Even unsubstantiated complaints or reports should be maintained in case a pattern of complaints of unlawful discrimination, harassment, or bullying develops.

free of discrimination, harassment, and bullying.¹⁷

The superintendent shall report to the State Board of Education all verified cases of discrimination, harassment, or bullying. The report must be made through the Discipline Data Collection Report or through other means required by the State Board.

I. EVALUATION

The superintendent shall evaluate the effectiveness of efforts to correct or prevent discrimination, harassment, and bullying and shall share these evaluations periodically with the board.

Legal References: Age Discrimination in Employment Act of 1967, 29 U.S.C. 621 *et seq.*, 34 C.F.R. pt. 110; Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.*, 28 C.F.R. pt. 35; Rehabilitation Act of 1973, 29 U.S.C. 705(20), 794, 34 C.F.R. pt. 104; Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.*, 34 C.F.R. pt. 100; Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.*, 29 C.F.R. pt. 1604; Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.*, 34 C.F.R. pt. 106; Boy Scouts of America Equal Access Act, 20 U.S.C. 7905, 34 C.F.R. pt. 108; *Racial Incidents and Harassment Against Students at Educational Institutions; Investigative Guidance*, U.S. Department of Education, Office for Civil Rights (1994); *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties*, U.S. Department of Education, Office for Civil Rights (2001); *Notice of Non-Discrimination*, U.S. Department of Education, Office for Civil Rights (2010); *Dear Colleague Letter*, U.S. Department of Education, Office for Civil Rights, (October 26, 2010), available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>; *Dear Colleague Letter*, U.S. Department of Education, Office for Civil Rights, (April 4, 2011) available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>; *Oncale v. Sundowner Offshore Services*, 523 U.S. 75 (1998); G.S. 115C-335.5, -407.15 through -407.18; 126-16; State Board of Education Policy HRS-A-000

Cross References: Discrimination, Harassment, and Bullying Complaint Procedure (policy 1720/4015/7225), Nondiscrimination on the Basis of Disabilities (policy 1730/4022/7231), Prohibition Against Retaliation (policy 1760/7280), Equal Educational Opportunities (policy 4001), School Plan for Management of Student Behavior (policy 4302), Visitors to the Schools (policy 5020), Community Use of Facilities (policy 5030), Recruitment and Selection of Personnel (policy 7100), Professional Employees: Demotion and Dismissal (policy 7930), Classified Personnel: Suspension and Dismissal (policy 7940)

Issued:

Revised: September 24, 1999; November 29, 2004; June 30, 2008; October 30, 2009; March 31, 2011; January 27, 2012; September 13, 2013; September 30, 2014; September 30, 2015

¹⁷ Such documentation will be necessary to substantiate the efforts that have been made by the school system to prevent or address incidents of discrimination, harassment, and bullying.