

DISCRIMINATION, HARASSMENT, AND BULLYING COMPLAINT PROCEDURE

Policy Code: 1720/4015/7225

The board takes seriously all complaints of unlawful discrimination, harassment, and bullying. The process provided in this policy is designed for those individuals who believe that they may have been discriminated against, bullied, or harassed in violation of policy 1710/4021/7230, Prohibition Against Discrimination, Harassment, and Bullying, or policy 1730/4022/7231, Nondiscrimination on the Basis of Disabilities. Individuals who have witnessed or who have reliable information that another person has been subject to unlawful discrimination, harassment, or bullying also should use the process provided in this policy to report such violations to one of the school system officials listed in subsection C.1. In addition, the process in this policy should be used to report a violation of policy 4040/7310, Staff-Student Relations.

Any report made through the process established in this policy may be made anonymously, except mandatory employee reports. The school system will ensure that institutional interests do not interfere with the impartiality of the process for investigating and resolving complaints established in this policy.

The process set forth in this policy does not apply to allegations regarding or related to the identification, evaluation, educational placement, or free appropriate public education of a student under Section 504 or the IDEA. Such allegations may be raised through the procedures established under policy 1730/4022/7231, Nondiscrimination on the Basis of Disabilities (for Section 504 complaints), or in accordance with the procedures described in the *Parents Rights Handbook* published by the NC Department of Public Instruction (for IDEA complaints).

A. DEFINITIONS

1. Alleged Perpetrator

The alleged perpetrator is the individual alleged to have discriminated against, harassed, or bullied the complainant.

2. Complaint

A complaint is an oral or written notification made by a person who believes he or she is the victim of unlawful discrimination, harassment, or bullying.

3. Complainant

The complainant is the individual complaining of being discriminated against, harassed, or bullied.

4. Days

Days are the working days, exclusive of Saturdays, Sundays, vacation days, or

holidays, as set forth in the school calendar. In counting days, the first day will be the first full working day following receipt of the complaint. When a complaint is submitted on or after May 1, time limits will consist of all weekdays (Monday – Friday) so that the matter may be resolved before the close of the school term or as soon thereafter as possible.

5. Investigative Report

The investigative report is a written account of the findings of the investigation conducted in response to a complaint.

6. Investigator

The investigator is the school official responsible for investigating and responding to the complaint. The investigator must be a person free of actual or reasonably perceived conflicts of interest and biases for or against any party.

7. Report

A report is an oral or written notification that an individual, other than the reporter, is a suspected perpetrator or victim of unlawful discrimination, harassment, or bullying.

B. REPORTING BY EMPLOYEES OR OTHER THIRD PARTIES

1. Mandatory Reporting by School Employees

Any employee who witnessed or who has reliable information or reason to believe that a student or other individual may have been discriminated against, harassed, or bullied in violation of policy 1710/4021/7230 or policy 1730/4022/7231 must report the offense immediately to an appropriate individual designated in subsection C.1, below. Suspected violations of policy 4040/7310, Staff-Student Relations, should be reported directly to the superintendent or designee. An employee who does not promptly report possible discrimination, harassment, or bullying or violations of policy 4040/7310 shall be subject to disciplinary action.

2. Reporting by Other Third Parties

All members of the school community including students, parents, volunteers, and visitors are also strongly encouraged to report any act that may constitute an incident of discrimination, harassment, or bullying.

3. Anonymous Reporting

Reports of discrimination, harassment, or bullying may be made anonymously (except mandatory reports by school employees) but formal disciplinary action

may not be taken solely on the basis of an anonymous report.

4. Investigation of Reports

School officials shall sufficiently investigate all reports of discrimination, harassment, or bullying, even if the alleged victim does not file a complaint or seek action by school officials, to understand what occurred and to determine whether further action under this policy or otherwise is necessary. School officials shall take such action as appropriate under the circumstances, regardless of the alleged victim's willingness to cooperate. At the option of the alleged victim, the report may be treated as a complaint by the alleged victim under this policy.

C. COMPLAINTS BROUGHT BY ALLEGED VICTIMS OF DISCRIMINATION, HARASSMENT, OR BULLYING

1. Filing a Complaint

Any individual who believes that he or she has been discriminated against, harassed, or bullied is strongly encouraged to file a complaint orally or in writing to any of the following individuals:

- a. the principal or assistant principal of the school at which either the alleged perpetrator or alleged victim attends or is employed;
- b. an immediate supervisor if the individual making the complaint is an employee;
- c. the director of human resources if the alleged perpetrator or alleged victim is an employee of the school system (or the superintendent if the director of human resources is the alleged perpetrator);
- d. the Title IX coordinator for claims of sex discrimination or sexual harassment (see policy 1710/4021/7230 for contact information);
- e. the Section 504 coordinator or the ADA coordinator for claims of discrimination on the basis of a disability (see policy 1710/4021/7230 for contact information); or
- f. for claims of other forms of prohibited discrimination, the applicable civil rights coordinator as established in policy 1710/4021/7230.

2. Time Period for Filing a Complaint

A complaint should be filed as soon as possible but no later than 30 days after disclosure or discovery of the facts giving rise to the complaint. Complaints

submitted after the 30-day period may be investigated; however, individuals should recognize that delays in reporting may significantly impair the ability of school officials to investigate and respond to such complaints.

3. Informal Resolution

The board acknowledges that many complaints may be addressed informally without a full investigation and/or hearing, through such methods as conferences or mediation. The board encourages the use of informal procedures such as mediation to the extent possible in appropriate cases and when all parties voluntarily agree after receiving a full disclosure of the allegations and the option for formal resolution; however, mediation or other informal procedures will not be used to resolve complaints alleging sexual assault or sexual violence, complaints by a student of sexual harassment perpetrated by an employee, or when otherwise deemed inappropriate by the investigator or applicable civil rights coordinator.

If an informal process is used, the principal or other designated personnel must (1) notify the complainant that he or she has the option to end the informal process and begin formal procedures at any time and (2) make a copy of this policy and other relevant policies available to the complainant. Any informal process should be completed within a reasonable period of time, not to exceed 30 days unless special circumstances necessitate more time. If informal procedures fail to resolve the matter in a reasonable period of time or are inappropriate, or if the complainant requests formal procedures, the complaints will be investigated promptly, impartially, and thoroughly according to the procedures outlined in the remainder of this policy.

4. Other Resources

Individuals may also contact the Office for Civil Rights at the U.S. Department of Education:

4000 Maryland Ave, SW
Washington, DC 20202-1475
Telephone: 202-453-6020 TDD: 800-877-8339
FAX: 202-453-6021 Email: OCR.DC@ed.gov

D. PROCESS FOR ADDRESSING COMPLAINTS OF ALLEGED INCIDENTS OF DISCRIMINATION, HARASSMENT, OR BULLYING

1. Initiating the Investigation

a. Whoever receives a complaint of discrimination, harassment, or bullying pursuant to subsection C.1 shall immediately notify the appropriate investigator who shall respond to the complaint and investigate. The

investigator of a complaint is ordinarily determined as follows; however, the superintendent may determine that individual circumstances warrant the assignment of a different investigator.

- 1) If the alleged incident occurred under the jurisdiction of the principal, the investigator is the principal or designee, unless the alleged perpetrator is the principal, the director of human resources, the superintendent, or a member of the board. If the alleged perpetrator is any other employee, the principal or designee shall conduct the investigation in consultation with the director of human resources or designee.
 - 2) If the alleged perpetrator is the principal, the director of human resources or designee is the investigator.
 - 3) If the alleged incident occurred outside of the jurisdiction of a principal (for example, at the central office), the director of human resources or designee is the investigator unless the alleged perpetrator is the director of human resources, the superintendent, or a member of the board.
 - 4) If the alleged perpetrator is the director of human resources, the superintendent or designee is the investigator.
 - 5) If the alleged perpetrator is the superintendent, the board attorney is the investigator. (In such cases, whoever receives a complaint of discrimination, harassment, or bullying shall immediately notify the director of human resources who shall immediately notify the board chair. The board chair shall direct the board attorney to respond to the complaint and investigate.)
 - 6) If the alleged perpetrator is a member of the board, the board attorney is the investigator. (In such cases, whoever receives a complaint of discrimination, harassment, or bullying shall immediately notify the superintendent who shall direct the board attorney to respond to the complaint and investigate. Unless the board chair is the alleged perpetrator, the superintendent shall also notify the board chair of the complaint.)
- b. As applicable, the investigator shall immediately notify the Title IX, Section 504, ADA, or other relevant coordinator of the complaint, and, as appropriate, may designate the coordinator to conduct or assist with the investigation.
 - c. The applicable coordinator and the investigator shall jointly assess the need for interim measures of support for either party and, as necessary,

shall implement appropriate measures in a timely manner and monitor the effectiveness of the measures during the pendency of the investigation. Interim measures that restrict the ability of either party to discuss the investigation (“gag orders”) may not be used, except as required to preserve the school environment and protect the rights of parties.

- d. The investigator shall explain the process of the investigation to the complainant and inquire as to whether the complainant would like to suggest a course of corrective action.
- e. Written documentation of all reports and complaints, as well as the school system’s response, must be maintained in accordance with policy 1710/4021/7230.
- f. Failure to investigate and/or address claims of discrimination, harassment, or bullying shall result in disciplinary action.

2. Conducting the Investigation

The investigator is responsible for determining whether the alleged act(s) constitutes a violation of policy 1710/4021/7230, policy 1730/4022/7231, or policy 4040/7310. In so doing, the investigator shall impartially, promptly, and thoroughly investigate the complaint. In complaints alleging sexual misconduct between students, each party will receive notice and access to information consistent with guidance from the U.S. Department of Education, Office for Civil Rights.

- a. The investigator shall interview all individuals who may have relevant information, including (1) the complainant; (2) the alleged perpetrator(s); (3) individuals identified as witnesses by the complainant or alleged perpetrator(s); and (4) any other individuals, including other possible victims, who may have relevant information. The investigation will include a review of all evidence presented by the complainant or alleged perpetrator.
- b. If the investigator, after receipt of the complaint, an interview with the complainant, and consultation with the board attorney, determines that the allegations submitted, even if factual, do not constitute discrimination, harassment, or bullying as defined in policy 1710/4021/7230 or policy 1730/4022/7231, school officials will address the matter outside the scope of this policy. Information regarding the investigator’s determination and the process for addressing the complaint will be provided to the complainant.
- c. The complaint and investigation will be kept confidential to the extent possible. Information may be shared only with individuals who need the

information in order to investigate and address the complaint appropriately and those with a legal right to access the information. Any requests by the complainant for further confidentiality will be evaluated within the context of the legal responsibilities of the school system. Any complaints withdrawn to protect confidentiality must be recorded in accordance with policy 1710/4021/7230.

- d. The investigator shall review the factual information gathered through the investigation to determine whether, based on a preponderance of the evidence, the alleged conduct constitutes discrimination, harassment, or bullying, giving consideration to all factual information, the context in which the alleged incidents occurred, the age, and maturity of the complainant and alleged perpetrator(s), and any other relevant circumstances. The investigator shall submit a written investigative report to the superintendent and, as applicable, to the Title IX, Section 504, ADA, or other coordinator.

3. Notice to Complainant and Alleged Perpetrator

- a. The investigator shall provide written notification to the complainant of the results of the investigation within 15 days of receiving the complaint, unless additional time is necessary to conduct an impartial, thorough investigation. The investigator shall specify whether the complaint was substantiated and, if so, shall also specify:
 - 1) reasonable, timely, age-appropriate, corrective action intended to end the discrimination, harassment, or bullying, and prevent it from recurring;
 - 2) as needed, reasonable steps to address the effects of the discrimination, harassment, or bullying on the complainant; and
 - 3) as needed, reasonable steps to protect the complainant from retaliation as a result of communicating the complaint.
- b. If required by federal law, information regarding specific disciplinary action imposed on the alleged perpetrator(s) will be given to the complainant, such as when the information relates directly to the complainant (e.g., an order requiring the perpetrator not to have contact with the complainant). School officials are encouraged to consult with the superintendent and board attorney before releasing such information, however.
- c. If the investigator determines that the complaint was substantiated, the perpetrator(s) shall be subject to discipline or other corrective steps, as described in policy 1710/4021/7230. If the corrective steps involve

actions outside the scope of the investigator's authority, the superintendent will be notified so that responsibility for taking the corrective steps may be delegated to the appropriate individual.

- d. Each alleged perpetrator will be provided with a written summary of the results of the investigation in regard to whether the complaint was substantiated, whether the alleged perpetrator violated relevant law or board policies by his or her actions, and what, if any, disciplinary actions or consequences will be imposed upon the perpetrator in accordance with board policy. The perpetrator may appeal any disciplinary action or consequence in accordance with board policy and law. However, an appeal by the perpetrator of disciplinary action does not preclude school officials from taking appropriate action to address the discrimination, harassment, or bullying.

4. Appeal

- a. If the complainant is dissatisfied with the results of the investigation, he or she may appeal the decision to the superintendent (unless the alleged perpetrator is the director of human resources or the superintendent, in which cases the complainant may appeal directly to the board in accordance with the procedure described in subsection D.4.b below). The appeal must be submitted in writing within five days of receiving the notice of the results of the investigation. The superintendent may review the documents, conduct any further investigation necessary, or take any other steps the superintendent determines to be appropriate in order to respond to the complaint. The superintendent shall provide a written response within 10 days after receiving the appeal, unless further investigation is needed.
- b. If the complainant is dissatisfied with the superintendent's response, he or she may appeal the decision to the board within five days of receiving the superintendent's response. The board will review the documents, direct that further investigation be conducted if necessary, and take any other steps that the board determines to be appropriate in order to respond to the complaint. Upon request of the complainant, the board will hold a hearing pursuant to policy 2500, Hearings Before the Board. The board will provide a written response within 30 days after receiving the appeal, unless further investigation is necessary or the hearing necessitates that more time be taken to respond.

E. TIMELINESS OF PROCESS

The school system will make a good faith effort to conduct a fair, impartial investigation in a timely manner designed to provide all parties with a prompt and equitable resolution. The number of days indicated at each step of the process should be considered a

maximum. Every effort should be made to expedite the process. The school system reserves the right to extend any deadline contained in this policy for good cause with written notice to the parties of the delay and the reason for the delay.

If any school official charged with investigating the complaint or reviewing the investigation fails at any step in the process to communicate a decision within the specified time limit, the complainant will be entitled to appeal the complaint to the next step unless the official has notified the complainant of the delay and the reason for the delay, such as the complexity of the investigation, review, or report. The school official shall make reasonable efforts to keep the complainant apprised of progress being made during any period of delay. Delays that interfere with the exercise of any legal rights are not permitted.

Failure by the complainant at any step in the process to appeal a complaint to the next step within the specified time limit will be considered acceptance of the decision at that step, unless the complainant has notified the investigator of a delay and the reason for the delay and the investigator has consented in writing to the delay.

F. GENERAL REQUIREMENTS

1. No reprisals or retaliation of any kind will be taken by the board or by an employee of the school system against the complainant or other individual on account of his or her filing a complaint or report or participating in an investigation of a complaint or report filed and decided pursuant to this policy, unless the person knew or had reason to believe that the complaint or report was false or knowingly provided false information.
2. All meetings and hearings conducted pursuant to this policy will be private.
3. The board and school system officials will consider requests to hear complaints from a group, but the board and officials have the discretion to hear and respond to complainants individually.
4. The complainant may be represented by an advocate, such as an attorney, at any meeting with school system officials. Should the complainant choose to be represented by an attorney, the complainant should notify school officials in advance so that an attorney for the school system may also be present.
5. Should, in the judgment of the superintendent or designee, the investigation or processing of a complaint require that an employee be absent from regular work assignments, such absences shall be excused without loss of pay or benefits. This shall not prevent the superintendent or designee from suspending the alleged perpetrator without pay during the course of the investigation.

G. RECORDS

Records will be maintained as required by policy 1710/4021/7230.

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; Family Educational Rights and Privacy Act, 20 U.S.C. 1232g; 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 (Bullying)*, U.S. Department of Education, Office for Civil Rights (2010), available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>; *Dear Colleague Letter (Sexual Harassment)*, U.S. Department of Education, Office for Civil Rights (2006), available at <https://www2.ed.gov/about/offices/list/ocr/letters/sexhar-2006.html>; *Q&A on Campus Sexual Misconduct*, U.S. Department of Education, Office for Civil Rights (2017), available at <https://www2.ed.gov/about/offices/list/ocr/docs/qa-title-ix-201709.pdf>; *Gebser v. Lago Vista Independent School District*, 524 U.S. 274 (1998); *Davis v. Monroe County Board of Education*, 526 U.S. 629 (1999); G.S. 115C-407.15 through -407.18

Cross References: Prohibition Against Discrimination, Harassment, and Bullying (policy 1710/4021/7230), Nondiscrimination on the Basis of Disabilities (policy 1730/4022/7231), Student and Parent Grievance Procedure (policy 1740/4010), Hearings Before the Board (policy 2500), Staff-Student Relations (policy 4040/7310), Assaults, Threats, and Harassment (policy 4331)

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