

Harassment/Discrimination: Students/Employees

PURPOSE

It is the policy of McDowell County Board of Education to maintain an educational and work environment that is free from all forms of unlawful harassment, discrimination, and violence. The Board prohibits any form of harassment, including disability harassment, or discrimination prohibited by Section 504 of the Rehabilitation Act of 1973, racial harassment or discrimination, sexual harassment or discrimination, or religious/ethnic harassment or discrimination or violence towards students and staff.

Disability Discrimination Prohibited

No otherwise qualified with a disability shall, solely by reason of his/her disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity offered by McDowell County Schools.

This policy applies to any student, staff members, or member of the public during any school-related activity or during any school-sponsored event taking place in a building or other property used or operated by McDowell County Board of Education.

OVERVIEW

Disability Harassment/Discrimination

1.1 Definition

Discrimination and harassing behaviors include, but are not limited to, making comments, name-calling, conduct of a physical nature, or other expressive behavior directed at an individual or group on the basis of an individual's or individuals' actual disability or disabilities or record of disabilities or disabilities or being regarded as having disability or disabilities. Discrimination/Harassment is considered to have occurred when such conduct

- Has the purpose or effect of creating an intimidating, hostile, or offensive academic or work environment;
- Has the purpose or effect of substantially or unreasonably interfering with a student's academic performance or an employee's work performance; or
- Otherwise adversely affects an individual's employment or academic opportunities.

1.2 Prevention and Remediation

School personnel who become aware of disability-related harassment shall act promptly to address the harassment with the goal of preventing it from recurring and, where appropriate, to address the effects on the student/employee who was harassed. Remedial measures will generally include counseling of person(s) who have been harmed by harassment and person(s) who have been responsible for the harassment of others and implementing monitoring programs to follow up on addressed issues of disability harassment.

1.3 Complaint Procedures

Students or parents/legal guardians who believe their student has been subjected to disability harassment by another student, teacher, administrator, or other school personnel should report the incident(s) immediately to a school administrator, teacher, or a counselor.

Complaints may be filed with the County Board of Education's Special Education Director in writing within 180 calendar days from the date of alleged act(s) of disability harassment, unless the time for filing is extended by the county

superintendent for good cause. All inquiries and discrimination complaints filed with the Board of Education are confidential to the extent possible, consistent with the legal obligation to investigate, take appropriate action, and conform to any requirement of the law.

Discrimination under Section Disability Discrimination

Disability discrimination includes any act of an official of McDowell County Schools or person working on behalf of McDowell County Schools that excludes a person from participation in or the benefits of any program or activity offered by McDowell County Schools solely by reason of his/her disability, record of having a disability, or being regarded as having a disability.

Sexual Harassment

2.1 Definitions

- 2.1.1. **Actual Knowledge** – notice of sexual harassment or allegations of sexual harassment to the Title IX Coordinator or any McDowell County Schools employee.
- 2.1.2. **Complainant**- an individual who is alleged to be the victim of conduct that could constitute sexual harassment.
- 2.1.3. **Dating Violence**- violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting party's statement with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
- 2.1.4. **Decision Maker**- McDowell County Schools Superintendent or designee
- 2.1.5. **Deliberate Indifference**- conscious or reckless disregard of the consequences of one's acts or omissions. Deliberate indifference is more than negligence.
- 2.1.6. **Domestic Violence**- felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, or by
- 2.1.7. **Education Program or Activity**- locations, events, or circumstances over which McDowell County Schools exercised substantial control over both the respondent and the context in which the sexual harassment occurs.
- 2.1.8. **Exculpatory Evidence**- evidence that shows a person's non-involvement in an act or evidence that can show innocence.
- 2.1.9. **Formal Complaint**- document filed by a complainant or parent of their behalf or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting an investigation of the allegations of sexual harassment.
- 2.1.10. **Inculpatory Evidence**- evidence that shows a person's involvement in an act or evidence that can show guilt.
- 2.1.11. **Informal Resolution Process**- alternative to a full investigation and adjudication of a formal complaint that can take place with the voluntary consent of both the complainant and respondent where the allegation does not involve an employee sexually harassing a student.
- 2.1.12. **Respondent**- individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
- 2.1.13. **Sex Discrimination**- when a person, because of his or her sex, is denied participation or the benefits or any education program or activity receiving federal financial assistance. Sex discrimination includes, but is not limited to, disparate treatment based on gender, sexual harassment, sexual violence, and sexual assault.
- 2.1.14. **Sexual Assault**- any sexual act directed against another person, without consent of the victim, including instances where the victim is incapable of giving consent. This includes rape, fondling, incest, and statutory rape.

2.1.15. **Sexual Harassment-** conduct on the basis of sex that can be defined as following:

2.1.15.1. “Quid Pro Quo” harassment – an employee of McDowell County Schools conditioning the provision of an aid, benefit, or service of the recipient on an individual’s participation in unwelcome sexual conduct.

2.1.15.2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to an education program or activity; or

2.1.15.3. Sexual assault, dating violence, domestic violence, or stalking as defined in law and this policy.

2.1.16. **Stalking-** engaging in a course of conduct directed at a specific person that would cause a reasonable person to (1) fear for the person’s safety or the safety of others; or (2) suffer substantial emotional distress.

2.1.17. **Supportive Measures-** non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve access to the education programs or activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the educational environment, or deter sexual harassment.

2.1.18. **Title IX Team-** team consisting of the district-designated Title IX Coordinator, school-based and county-based investigators, and Superintendent/designee who is a decision-maker.

2.2. Employee Expectations and Duties

Each employee will be responsible for maintaining learning and working environment free from all forms of unlawful discrimination and harassment and for reporting all incidents of unlawful discrimination or harassment promptly in a manner that is not deliberately indifferent, which he or she observes or is informed about to the building principal or the county Title IX coordinator.

Employees are strictly prohibited from dating, attempting to cultivate a romantic relationship, or becoming involved in an inappropriate relationship with students, regardless of the student’s age or consent. This prohibition shall be in force as long as the student is considered a student within a school system, including during summer breaks, holidays, and other times away from school, and will also apply to all graduated students for 12 months after the student’s graduation (Sections 18A-2-8 and 18A-3-6 of the West Virginia Code).

2.3. Title IX Coordinator Expectations and Duties

The Title IX Coordinator shall publish and disseminate a notice of this policy and complaint procedure at least annually to students, parents/guardians, employees, and the public, together with either a copy of this policy or a statement how to obtain a copy of this policy. A copy of this policy will be referenced or included in all student and employee handbooks and posted on the McDowell County Schools website.

The Title IX Coordinator, together with other appropriate district officials, is responsible to help monitor the implementation of nondiscrimination procedures in the following areas:

- Training- provision of training for students and staff to identify and alleviate problems of discrimination and unlawful harassment. Provision of training to all building principals and central office personnel designated as investigators for complaints under this policy.
- Student access- review of programs, activities, and practices to ensure that all students have equal access and are not segregated except when permissible by law or regulation.
- District Support- providing assurances that like aspects of the school program receive like support as to staffing and compensation, facilities, equipment, and related matters.
- Employment relations- development of position qualifications, job descriptions, and essential job functions; recruitment materials and practices, procedures for screening, interviewing, and hiring.

The Title IX Coordinator is responsible for administration of the reporting and complaint procedures provided in this policy. The Coordinator is responsible for providing notices to all parties, as required, during the Formal Complaint process. These notices shall include:

- Details of the allegations, parties involved, location of alleged conduct, and that the Respondent is not presumed responsible until a determination regarding responsibility is made at the conclusion of the grievance process.
- That the recipient of the notice may have an advisor if they choose during this process.
- A request for a meeting with the parties and advisors, if they have one, to discuss the allegations.
- Date, time, location, participants, and purpose with sufficient time to prepare to participate.
- Information about the Informal Resolution Process, including the requirements of the process, records kept and shared, consequences resulting from participating in the process, including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations after the resolution is agreed to, and the right to withdraw from the process and resume the grievance process.

The Title IX Coordinator must treat Complainants and Respondents equitably by offering supportive measures to a Complainant, and by following a grievance process before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a Respondent.

2.4. Title IX Procedures for Reporting Violations and Complaints

Any school employee who suspects or is notified that a student has been subject to conduct that constitutes unlawful sex discrimination, including sexual harassment, shall report the incident to the building principal as soon as possible, but not later than 24 hours, unless extenuating circumstances justify a reasonable extension of that deadline. If it is not possible to contact the building principal in a timely manner, the school employee shall report the incident to the Title IX Coordinator or another administrator at the central office as soon as possible.

If a school employee is the subject of the complaint of sexual harassment, the conduct is to be reported directly to the building principal and Title IX Coordinator. If the Title IX Coordinator is also a subject of the complaint or otherwise not impartial, the report shall be made to the Superintendent or designee.

All complaints of sexual harassment should be made in writing on the appropriate form provided by the Title IX Coordinator. If the incident was initially reported orally, then the Title IX Coordinator shall inform the Complainant of the right to file a formal complaint and promptly provide all necessary forms and assistance to enable the complainant to file an appropriate written complaint if they choose to do so.

Any McDowell County Schools employee with actual knowledge of sexual harassment in an education program or activity must report the sexual harassment to the building principal who will then convey the complaint to the Title IX Coordinator.

The Title IX Coordinator shall promptly contact the alleged victim of the sexual harassment and discuss the following:

- Supportive measures available to immediately relieve any ongoing issues and the alleged victim's wishes with respect supportive measures;
- The availability of supportive measures with or without the filing of a formal complaint; and
- The process of filing the formal complaint.

The Title IX Coordinator shall document the conversation and the allegations on the complaint form and inform the Complainant's parent or guardian (if applicable) of the possible complaint.

Based on the allegation, the Title IX Coordinator handling the complaint will determine if there was a possible instance of sexual harassment, at which point the Complainant/Complainant's parents or guardians may decide to pursue a formal investigation. The Title IX Coordinator can also decide to pursue a formal complaint regardless of Complainant/Complainant's parent or guardian consent if the circumstances are such that it would not be unreasonable to pursue without consent.

If after talking to the Complainant and filling out a complaint form, the Title IX Coordinator handling the complaint determines there was not a possible instance of sexual harassment as defined, the complaint may be handled by applying other McDowell County Schools policy violations, such as Student or Employee Code of Conduct violation. The Title IX Coordinator shall report to the principal the non-sexual harassment complaint for the principal to handle from a disciplinary aspect.

2.5. Procedures for the Formal Complaint Process

2.5.1. Filing the Formal Complaint

At the outset of filing the Formal Complaint, the Title IX Coordinator shall contact the Complainant's parent and/or guardian and inform them of the Complaint. The Complainant, parents, and/or guardians shall be told that they may be accompanied by an advisor during all steps of the complaint procedure. If the Complainant is not a minor, then parent and guardian contact will be at the option of the Complainant provided that the non-minor Complainant has capacity.

If the complaint meets the definition of sexual harassment, and either the student, student's parent or guardian, or the Title IX Coordinator wants to file a formal complaint, the district's Possible Sexual Harassment Complaint form must be signed.

The Title IX Coordinator will inform the designated Investigator to start investigating under the formal complaint process.

2.5.2. Dismissal of a Formal Complaint

The formal complaint must be dismissed if:

- The conduct does not constitute sexual harassment as defined;
- It did not occur during education program or activity; or
- The conduct did not occur in the United States.

The formal complaint may be dismissed if:

- Title IX Coordinator is notified in writing by the complainant that they would like to withdraw the complaint/allegations;
- Respondent is no longer enrolled or employed by district; or
- If there are specific circumstances that prevent the district from gathering evidence sufficient to reach a determination.

Once the Formal Complaint is dismissed, notice detailing dismissal shall be sent to all parties.

2.6. Informal Resolution Procedures

An Informal Resolution Process may be facilitated at any time after the Formal Complaint is filed and prior to the determination regarding responsibility. This process takes the form of an informal mediation and does not involve a full investigation and adjudication. An impartial mediator, designated by the Superintendent, shall be the mediator for this process and shall not be anyone who was involved in the formal complaint process.

An informal resolution process is available to any Complainant who has filed a formal complaint, provided that the Respondent voluntarily agrees to the process with written consent.

The informal resolution process is not available to resolve allegations that an employee of McDowell County Schools sexually harassed a student.

Informal resolutions may not be required as a condition of enrollment or employment.

3.1 Racial, Religious, and Ethic Harassment

3.1.1 **Racial Harassment** consists of physical, verbal or written conduct relating to an individual's race when

- It has the purpose of creating an intimidating, hostile, or offensive working or academic environment
- It has the purpose or effect of substantially or unreasonably interfering with an individual's work or academic performance; or
- Otherwise adversely affects an individual's employment or academic opportunities.

3.1.2 **Religious/Ethic Harassment** consists of physical, verbal or written conduct relating to an individual's religious or ethnic background when:

- It has the purpose of creating an intimidating, hostile, or offensive working or academic environment
- It has the purpose or effect of substantially or unreasonably interfering with an individual's work or academic performance; or
- Otherwise adversely affects an individual's employment or academic opportunities.

3.2 Complaint Procedures

Any person who believes he or she has been the victim of racial, ~~sexual~~, religious, or ethic harassment by a student or an employee of the school district is strongly encouraged to report the alleged acts immediately to an appropriate district official as designated by this policy using the report forms in Appendix A or online at <http://boe.mcdo.k12.wv.us>. All employees are required to report any knowledge or any reasonable suspicion they have that an employee or a student has violated this policy.

Reports can be also made in the following ways:

- By mail: 30 Central Avenue, Welch, WV 24801
- By phone: 304-436-8441, ext. 220
- Or to any school administrator

The building principal or the assistant principal is the person responsible for receiving oral or written reports of racial, sexual, religious, or ethic harassment at the building level. On the district level, racial, ~~sexual~~, religious, or ethic harassment complaints are received by the Board-designated investigator.

INVESTIGATION AND RECOMMENDATION

Disability Harassment/Discrimination

- Upon receipt of a report or complaint alleging disability harassment/discrimination, the office of special education shall immediately undertake or authorize an investigation. The investigation may be conducted by school administrators or by a third-party investigator, as determined by the office of special education. Investigations shall be adequate, reliable, and impartial, including opportunity to present witnesses and other evidence.
- The investigation will, at a minimum, consist of personal interviews with the complainant, the individual(s) against whom the complaint is filed, and others who may have knowledge of the alleged incident(s) or circumstances giving rise to the complaint. The investigation may also consist of any other methods and review of circumstances deemed pertinent by the investigator.
- The investigation will be completed, absent exceptional circumstances, within ten (10) school days. The investigator shall make a written report to the office of special education with a copy to the superintendent upon completion of the investigation. The report shall include the investigator's conclusion as to whether the allegations have been substantiated as factual and whether they appear to be violations of this policy.
- The county superintendent upon receipt of the investigator's report shall make the final determination as to whether the alleged conduct constitutes a violation of this policy. Whether a particular action or incident constitutes a violation of this policy requires a determination based on all the facts and surrounding circumstances.

Upon a finding that disability harassment has occurred, an appropriate response shall be put in place by the appropriate administrator. Building principals addressing violations of this policy by students and the county superintendent addressing the violations of this policy by employees and/or students should 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 incidents occurred. All investigators shall use the preponderance of the evidence standard in determining whether a student or employee or other individual has violated this policy.

- Steps should be taken by the appropriate administrator to protect the complainant, students, teachers, administrators, or other personnel pending completion of an investigation of alleged disability harassment/discrimination.
- The results of the investigation of each complaint filed under these procedures will be reported in writing to the complainant or his/her legal guardian by the office of the superintendent. However, if necessary to comply with state and federal privacy laws, a copy of the investigator's report shall not be provided to any party.

Grievance Procedure

The availability and use of this grievance procedure does not prevent a person from filing a complaint of discrimination on the basis of disability with the U.S. Department of Education-Office of Civil Rights.

Level 1: Section 504/ADA Director. The Level 1 grievance must be filed with the Director within 120 calendar days of the event or incident complained of, or within 120 calendar days of the date the grievant became aware of such event of incident. Director will conduct an adequate, reliable, and impartial investigation as follows:

- Within ten (10) days of receipt of the written grievance, the Director will notify the grievant in writing of the receipt of the grievance and will request the grievant to submit any additional information relevant to the investigation, including submission of documents and other evidence, such as names of relevant witnesses. School employees directly involved in the alleged incident or event will be informed in writing of the grievance and will be requested to submit relevant documents and other evidence, including the names of relevant witnesses. Parties will be given twenty (20) days to submit the documentation.
- The Director will conduct an investigation, which will consist of a review of all documentation submitted and interviews of individuals having information relevant to the investigation, including the witnesses named by the parties.
- The Director will issue a report within 90 calendar days of receipt of the written grievance. A copy of the report will be provided to the grievant, a school principal in the affected school, and the Superintendent's office.

Level 2: Superintendent: A party not satisfied with the conclusions of the report from Level 1 may make a written appeal to the county superintendent within thirty (30) calendar days of the issuance of the Director's report. Within ten (10) working days of receipt of the request for a review of the Director's report, the county superintendent or designee shall notify all parties of the appeal and of their right to submit additional relevant information for consideration. The county Superintendent or designee shall review the Director's report, review any additional information submitted, and issue a written decision within forty-five (45) calendar days of receipt of the request for a review of the Director's report.

Nothing herein prevents a person from filing a complaint with a court of competent jurisdiction.

Racial, Religious, and Ethic Harassment

- If the complaint is filed against a student enrolled in the school, the principal will investigate the complaint and determine if the accused party has violated this policy. If the principal determines that the accused party has violated this policy, the principal will take disciplinary action. The principal will notify the Superintendent or designee in writing of the outcome of his/her investigation of allegations of racial, sexual, religious, or ethic harassment by a student.
- If the complaint is filed against an employee, the principal will notify the Superintendent or designee who will conduct the investigation. The designated investigator will prepare a report from the facts gathered from his/her investigation and present it to the Superintendent for his/her review. Pursuant to W.Va Code 18A-2-8, the Superintendent is solely responsible for determining what disciplinary action, if any, to recommend to the Board where it is determined that an employee has violated this policy.
- Upon receipt of a complaint, the building principal or Superintendent or designee shall immediately undertake or authorize an investigation.
- The investigation will, at a minimum, consist of personal interviews with the complainant, the individual(s) against whom the complaint is filed, and others who may have knowledge of the alleged incident(s) or circumstances giving rise to the complaint. The investigation may also consist of any other methods and review of circumstances deemed pertinent by the investigator.
- Steps should be taken by the appropriate administrator to protect the complainant, students, teachers, administrators, or other personnel pending completion of an investigation of alleged disability harassment/discrimination.
- The investigation will be completed, absent exceptional circumstances, within ten (10) school days. The written report with the results of an investigation involving allegations against a student will be provided to the Superintendent within 24 hours after the completion of the investigation. The final written report with the

results of the investigation involving allegations against an employee will be provided to the Superintendent within 24 hours after the completion of the investigation.

- The results of the investigation of each complaint filed under these procedures will be reported in writing to the complainant or his/her legal guardian by the principal or the Superintendent or designee.

ACTION and REPORTING

Upon completion of the investigation, the investigator shall state whether or not, in his/her opinion, the allegations have been substantiated as factual and whether they appear to be violations of this policy.

In order to comply with 20 USC 1232g (Family Educational Rights and Privacy Act, commonly referred to as FERPA) and West Virginia Board of Education Policy 4350 Collection, Maintenance, and Disclosure of Student Data, in cases where the alleged perpetrator is another student, the written shall contain only one of the following statements:

An investigation was conducted and the allegations made by _____ have been substantiated as factual by sufficient evidence. Appropriate disciplinary action will be taken. Federal and state law prohibit the school system from sharing any further information with you about the student perpetrator.

OR

An investigation was conducted and the allegations made by _____ could not be substantiated as factual by sufficient evidence. Although this incident may have occurred as reported, there is not sufficient evidence to prove that the incident occurred. Federal and state law prohibit the school system from sharing any further information with you about the student perpetrator.

In cases where the alleged perpetrator is an employee of the Board, the investigator may include in this written statement whatever information is deemed reasonable and appropriate under the circumstances. The investigator shall consult with the office of superintendent before sending this written statement to the complainant and/or his/her legal guardian.

Sexual Harassment Investigation and Decision Process

Sexual Harassment Investigation Process The Title IX Coordinator will complete the “Formal Complaint for Sexual Harassment” form and will review all forms to verify that the complaint falls under the definition of Sexual Harassment. The Title IX Coordinator will offer any additional supportive measures to the Complainant and Respondent, if needed. The Coordinator will then send a notice that a formal complaint was filed to the Complainant, Respondent, and any identified witnesses.

If the Superintendent believes there is reasonable evidence indicating the accused employee violated this policy at the outset of the formal complaint process, the Superintendent may remove the accused from the school setting and place them on administrative leave during the pendency of any investigation and any disciplinary hearing. The accused may also be given an alternative assignment at an alternative site which does not involve direct instruction or supervision of students. The investigative process for employees will follow the procedures outlined below except without the ability to formally respond to the report. Responses to the investigative report can be sent directly to the assigned Investigator at any time or in the disciplinary hearing for the incident.

In the instance of the allegations against school employee, regardless of whether the student is hesitant about continuing the investigation, or the accused retires or resigns during the investigation, the investigation shall continue until concluded and report submitted. After the review of the investigation report and while the employee is still on the administrative leave, the Superintendent will determine if further investigation or a disciplinary hearing is necessary.

The Title IX Coordinator will inform the county-designated investigator to start the investigation of the Complaint. The Investigator will meet with the Complainant, Respondent, and any witnesses to investigate the Complaint. The Investigator will provide opportunity for all parties to present witnesses and any evidence related to the Complaint.

If needed, the Investigator will ask for written consent to access medical or counseling records.

After initial investigation, the Investigator will forward all the gathered evidence that is not protected under any other law or regulation, to the parties electronically or in hard copy, even if not used to make a determination regarding responsibility. The parties will have 10 calendar days to respond with a written response which the Investigator will consider prior to completing the investigative report.

The Investigator will then create an investigative report that summarizes relevant evidence and will send that report to all parties, including advisors, in electronic or hard copy format. Parties may review and provide any written responses they may have within 10 calendar days of receiving the investigative report.

After the parties have had access to the investigative report for at least 10 calendar days, the Investigator will take all gathered evidence, the investigative report, and all responses to the report, to the decision maker, as defined, to reach a determination regarding responsibility.

Throughout this process, McDowell County Schools cannot restrict the ability of either party to discuss the allegations or to gather/present relevant evidence. The District will also operate under a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the entire process.

For all, process timelines may be delayed for good cause.

Formal Complaint Decision Process

After the investigative report has been sent to all parties, and before reaching a determination regarding responsibility, the Decision Maker will afford each party the opportunity to submit written and relevant questions that a party wants to ask of any other party or witness involved in the allegations. The timeline for returning the questions to the Decision Maker will be determined by the Decision Maker and communicated in writing to the parties involved. The questions will be provided to the relevant party or witness to answer in writing. The timeline for returning the answers to the Decision Maker will be determined by the Decision Maker and communicated in writing to the parties at the time of receiving the questions. Each party will be provided with the answers to all written questions. The Decision Maker will then allow for additional limited follow-up questions and answers from each party, as appropriate.

The Decision Maker shall not consider the Complainant's prior sexual predisposition or sexual behavior unless such evidence is being offered to prove someone other than the Respondent committed the alleged conduct or help to prove consent.

After all questions and answers are received, the Decision Maker must issue a written determination regarding responsibility and must include in that determination the following;

- Identifications of the allegations constituting sexual harassment and McDowell County Schools Policy violation;
- Description of procedural steps taken;
- Finding of facts supporting the determination;
- Conclusions regarding the application of McDowell County Schools' Student or Staff Code of Conduct to the facts and the determination regarding the Respondent's responsibility based on the preponderance of the evidence;
- Disciplinary sanctions possible per the Code of Conduct to be imposed on the Respondent, and if any additional supportive measures will be provided by the McDowell County Schools to the Complainant for any policy violation; and
- The district's procedures and bases for any party to appeal.

The written determination shall be provided to the parties simultaneously, becoming final either on the date that the district provides the parties with the written determination of the result of an appeal, if there is an appeal filed; or if an appeal is not filed, on the date the appeal would no longer be timely.

Appeals from the Formal Complaint Process

Both parties have a right to appeal a determination regarding responsibility, the dismissal of a formal complaint, or any allegations in the formal complaint on the basis of the following:

- Procedural irregularity;
- New evidence;
- Bias or conflict of interest against the Complainant or Respondent on the part of the Title IX Coordinator or the Decision Maker that affected the outcome of the matter; and/or
- Any other reasonable basis for an appeal.

The appeal must be in writing and sent to the Superintendent of McDowell County Schools. Upon the notice of the appeal from the Superintendent, the Title IX Coordinator must notify the other party in writing of the appeal and ensure the Decision Maker for the appeal is not the same person that reached determination regarding responsibility or dismissal. The Title IX Coordinator will also ensure that all documentation related to the Complaint is provided to the Appeal Decision Maker.

The Appeal Decision Maker will give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging the outcome of the written determination and will issue a written decision describing the result of the appeal and rationale for result simultaneously to both parties.

Title IX Recordkeeping

McDowell County Schools shall maintain all records of investigation under Title IX part of this policy for a period of seven years. The district will also maintain all materials used to train Title IX Coordinator, Investigator(s), and Decision Maker(s) and make the materials available on the website and upon request.

DISCIPLINARY CONSEQUENCES

Any individual who violates this policy by engaging in conduct defined throughout this policy that directly or indirectly causes intimidation, harassment, or physical harm to another student or employee will be subject to appropriate disciplinary action.

RETALIATION

No person will suffer retaliation or intimidation for participating in the complaint process. Retaliation means some type of adversarial or punitive action taken against an individual or individuals as a result of filing a complaint or participating in the complaint investigation process. Retaliation against any person seeking assistance at their school, filing a complaint, or participating in the investigative process is grounds for appropriate discipline.

CONFIDENTIALITY

McDowell County Board of Education will respect the privacy of the complainant, the individual(s) against whom the complaint is filed, and the witnesses as much as possible, consistent with its legal obligation to investigate, take appropriate action, and conform to any requirement of law.

TRAINING and NOTICE OF POLICY

McDowell County Board of Education will post this policy or a summary throughout each county facility in areas accessible to all students and staff including, but not limited to, classrooms, offices and common areas. All staff shall be trained yearly on the regulations and procedures outlined within this policy.

LEGAL COMPLIANCE

By adopting this policy and making it available on-line, McDowell County Schools intends thereby to notify members of the community, beneficiaries of its programs and services, students, job applicants, and employees, that McDowell County Schools does not discriminate on the bases of disability. McDowell County Schools does not discriminate in admission or access, or treatment or employment in, its programs or activities.

McDowell County Board of Education has the responsibility to monitor the compliance of state and federal laws and regulations as well as District policies and procedures related to any form of harassment. Nothing in this policy shall prevent any person from reporting harassment or violence directly to the county superintendent, or the state superintendent, as appropriate, or to the West Virginia Human Rights Commission, or to a law enforcement agency.

Adopted: October 17, 2016

Revised: September 8, 2020