

## 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.

### **Racial, Sexual, Religious, and Ethic Harassment**

#### **3.1 Definitions**

3.1.1. Sexual Harassment consists of unwelcome/unwanted sexual advances, requests for sexual favors, sexually motivated physical conduct or other verbal or physical conduct or communication of a sexual nature when:

- Submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining or retaining employment, or of obtaining an education; or
- Submission or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's employment or education; or
- That conduct has the purpose or effect of substantially or unreasonably interfering with an individual's employment or education, or creating an intimidating, hostile, or offensive employment or educational environment.

Sexual harassment may include but is not limited to:

- Verbal harassment of a sexual nature or abuse of a sexual nature;
- Unwelcome or inappropriate letters, telephone calls, or materials of a sexual nature;
- Sexual teasing, jokes, remarks, or questions;
- Pressure, subtle or overt, for sexual activity;
- Unwelcome or inappropriate patting, pinching, cornering, or other physical contact;
- Intentional brushing against another's body;
- Attempted or actual rape or sexual assault;
- Requesting or demanding sexual favors accompanied by implied or overt threats concerning an individual's employment or educational status;
- Behavior, verbal or written words or symbols directed at an individual because of gender;

3.1.2 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.

3.1.3 Religious/Ethnic 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 ethnic 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.

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

### **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, Sexual, 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 county Title IX Coordinator 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 Title IX Coordinator who will conduct the investigation. The Title IX Coordinator will prepare a report from the facts gathered from his/her

investigation and present it to the Superintendent for his/her review. Pursuant to WV 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 Title IX coordinator 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. 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 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 Title IX Coordinator 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 Title IX coordinator.

### **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.

**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, RESA executive director, or the state superintendent, as appropriate, or to the West Virginia Human Rights Commission, or to a law enforcement agency.

Adopted: October 17, 2016

Appendix A

Incident report to: \_\_\_\_\_

Date: \_\_\_\_\_

Incident ID Number: \_\_\_\_\_

**McDowell County Public Schools**  
**Discrimination/Harassment/Violence Complaint Form**

Employee/Student/Parent Complaint

Name: \_\_\_\_\_

Age: \_\_\_\_\_ Grade: \_\_\_\_\_ Date: \_\_\_\_\_

School: \_\_\_\_\_

Who was responsible for the harassment? \_\_\_\_\_

Describe the harassment: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Attach additional pages if necessary)

Date(s), time(s), and place(s) the harassment occurred.

\_\_\_\_\_

Were there other individuals involved in the harassment? \_\_\_\_\_

If so, name the individual(s) and their role was. \_\_\_\_\_

\_\_\_\_\_

Did anyone witness the harassment? \_\_\_\_\_ If so, name the witnesses. \_\_\_\_\_

\_\_\_\_\_

What was your reaction to the harassment? \_\_\_\_\_

Describe any prior incidents: \_\_\_\_\_

\_\_\_\_\_

Signature of Complainant or Parents/Legal Guardian: \_\_\_\_\_

Incident report to: \_\_\_\_\_  
Date: \_\_\_\_\_  
Incident ID Number: \_\_\_\_\_

**McDowell County Public Schools  
Administrative Investigation Form**

Date Complaint Filed: \_\_\_\_\_ Date of Investigation: \_\_\_\_\_

Describe the harassment:

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Recommended disciplinary action:

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Date of follow-up conference with complainant.

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Results of conference:

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Other recommended action:

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\_\_\_\_\_  
(Signature of Administrator)

\_\_\_\_\_  
(Received by Human Rights Officer)

\_\_\_\_\_  
(Date)

