ASHEVILLE CITY BOARD OF EDUCATION REGULAR MEETING

Administrative Offices - Board Room

Monday, August 12, 2024 at 5:00 PM

BE IT REMEMBERED: The Asheville City Board of Education met in a regularly called session on Monday, August 12, 2024, at 5:00 PM at the Administrative Offices - Board Room at 85 Mountain Street, Asheville, North Carolina, where and when the following business was transacted.

Page

1. REGULAR MEETING

1.1 CALL TO ORDER - Board Chair, George Sieburg

Equity Statement:*In Asheville City Schools we are committed to equity and anti-racist policies for all students and staff to learn and thrive. We recognize that our positions come with power, responsibility, and public service for the entire ACS community. We will model our commitment to equity through our practices and decisions. During this meeting, we invite a pause if harm has taken place, a moment to name the harm, and space to practice repair.*

1.2 QUORUM DETERMINATION - Board Chair, George Sieburg

1.3 PLEDGE OF ALLEGIANCE - Board Chair, George Sieburg

1.4 APPROVAL OF AGENDA - Board Chair, George Sieburg

Motion to approve the agenda as presented.

Moved by: Amy Ray
Seconded by: Rebecca Strimer

The motion passed

2. GOOD NEWS - Dr. Dechant, Chief of Staff

2.1 **End-of-Year Report Afterschool Programs 2023-2024** , Dogwood Health Trust - Melissa Hedt, Executive Director of Community Partnerships

Ms. Hedt was unable to attend the meeting. She will present at a later meeting.

3. Policies First Read - Dr. Dechant

NCSBA Policy 1725 - CS Revisions (strikethrough version) (8-2024) (00122409xBC088).DOCX

1510_4200_7270_strikeout_7_24.pdf
1710_4020_7230_strikeout_7_24.pdf
1720_4030_7235_strikeout_7_24.pdf

4023_7233_strikeout_7_24 (1).pdf

4329_7311_strikeout_7_24.pdf

Policy1725.new.pdf

Rescinded Policies

1725/4035/7236,

1726/4036/7237

7232

All Title IX policies will go on the September Work Session as the second and final read.

4. PUBLIC COMMENTS - Board Chair, George Sieburg

Public Comment Guidelines

In-person and Virtual Public Comment Guidelines can be found by clicking the link above.

The Board of Education greatly appreciates your interest in the Asheville City Schools (ACS) and we welcome your comments to the Board. Please be mindful of the following guidelines (per policy 2310):

Personnel and student matters are confidential and are therefore not

appropriate for public comment. If you have a concern about an employee or a student matter, please contact or see the superintendent after the meeting.

4.1 In-Person Public Comment

Pepi Acebo

4.2 Virtual Public Comments

The district was unable to offer the virtual public at this meeting. Board Chair, Mr. Sieburg did offer the community to email their concerns to the Board of Education.

5. CONSENT ITEMS - Board Chair, George Sieburg

5.1 Draft Minutes

WORK SESSION - Jun 03 2024 - Minutes - Html

Closed Session Minutes - June 3, 2024

REGULAR MEETING - Jun 10 2024 - Minutes - Html

SPECIAL CALLED OPEN VIRTUAL MEETING with a CLOSED SESSION - Jun 27 2024 - Minutes - Html

Closed Session Minutes - June 27, 2024

5.2 Student Releases to Buncombe County 2024-2025 - Tanya Presha, Director of Enrollment, Student Records & Alumni Relations

5.3 Updated Fees 2024-2025

1. Activity Buses - April Dockery, Chief of Operations
2. Athletic Fees - April Dockery, Chief of Operations
3. School Fees - Dr. Fehrman

5.4 Proposed Hourly Pay Table Revisions - Heidi Kerns, Chief Financial Officer

5.5 **Contracts/MOUs** - Dr. Dechant, Chief of Staff

Consent

Asheville Police Department

Buncombe Co Health & Human Services and MAHEC

TP Howard's Plumbing

5.6 August Personnel Report including potential RIF discussion

Motion to approve the Consent Items as presented.

Moved by: James Carter

Seconded by: Amy Ray

The motion passed

6. ACTION ITEMS - Board Chair, George Sieburg

There are no action items.

7. SUPERINTENDENT'S REPORT

ConsolidationFeasStudyUpdate2.docx - Dr. Dickerson, Assistant Superintendent of Human Resources

NC Legislative Updates - Dr. Dechant

August Board Meeting Superintendent Remarks.pdf.pdf

8. BOARD CHAIR REPORT

Board Report_08122024.pdf

9. ANNOUNCEMENTS/FUTURE MEETINGS - Board Chair, George Sieburg

First Day of School

Monday, August 26, 2024

Work Session Meeting

Monday, September 9, 2024

Administrative Offices - Board Room

Regular Meeting

Monday, September 16, 2024

Administrative Offices - Board Room

Asheville City Board of Education 2024-2025 Meeting Schedule

10. ADJOURNMENT - Board Chair, George Sieburg

Motion to adjourn the meeting.

Moved by: Amy Ray
Seconded by: James Carter

The motion passed

Dr. Maggie Fehrman

Dr. Maggie Fehrman,
Superintendent

George Sieburg

Board Chair, or Designee

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

TITLE IX SEX DISCRIMINATION – PROHIBITED CONDUCT AND GRIEVANCE PROCEDURES

Policy Code: **1725/4035/7236**

The 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. As provided in policy 1720/4030/7235, Title IX Nondiscrimination on the Basis of Sex, the board prohibits sex discrimination, including sex-based harassment, in the education program of the school system. Throughout this policy, references to the "education program" include all operations, services, and activities of the school system.

This policy provides a process for students, employees, and others to report sex discrimination prohibited by Title IX for response by school officials. All incidents of conduct that could constitute sex discrimination under this policy are to be reported and treated in accordance with this policy, even if the incidents may also constitute violations of other board policies or standards of conduct.

Conduct that involves discrimination on the basis of sex but that does not meet the definition of sex discrimination prohibited by this policy may nevertheless violate other board policies or established standards of conduct and will be treated accordingly. See, for example, policy 4329/7311, Bullying and Harassing Behavior Prohibited, policy 1710/4020/7230, Discrimination and Harassment Prohibited by Federal Law, and policy 4040/7310, Staff-Student Relations. Nothing in this policy is intended to limit discipline for violations of other board policies in such circumstances when appropriate and consistent with law.[1] In addition, nothing in this policy is intended to limit reports to law enforcement when warranted.

A. PROHIBITED BEHAVIOR

Students, school system employees, volunteers, and visitors are expected to behave in a civil and respectful manner. The board expressly prohibits sex discrimination, including sex-based harassment and retaliation, by students, employees, board members, volunteers, or visitors in the education program. "Visitors" includes parents and other family members and individuals from the community, as well as vendors, contractors, and other persons doing business with or performing services for the school system.

[1] Before imposing discipline, school officials are encouraged to consult with the board attorney to ensure that disciplining a student will not be considered prohibited retaliation. The Title IX regulations appear to permit school officials to impose discipline for Code of Conduct violations that do not involve sex discrimination, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, provided the discipline is not imposed (1) as a substitute for, or in lieu of, the response required by school officials under this policy or (2) for the purpose of interfering with a person's Title IX rights or because the person participated in Title IX grievance procedures.

1. Sex Discrimination

Sex discrimination occurs when, as a result of any act or failure to act, someone is treated differently and unfavorably on the basis of sex (including on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions,[2] sexual orientation, gender identity, or parental, family, or marital status[3])[4] in the education program. Sex discrimination includes, but is not limited to, sex-based harassment.

2. Sex-Based Harassment[5]

Sex-based harassment, which is a type of sex discrimination, is defined as sexual harassment and other sex-based conduct that is one of the following, as described below: quid pro quo harassment, hostile environment harassment, sexual assault, dating violence, domestic violence, or stalking.

a. Quid Pro Quo Harassment

Quid pro quo harassment occurs when an employee, contractor, or other agent of the school system explicitly or impliedly conditions the provision of an educational service or other aid or benefit of the school system on an individual's participation in unwelcome sexual conduct.

b. Hostile Environment Harassment

Hostile environment harassment is unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the education program (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

1) the degree to which the conduct affected the complainant's ability to access the education program;

---

[2] 34 C.F.R. 106.2 defines "pregnancy or related conditions" as: (1) pregnancy, childbirth, termination of pregnancy, or lactation; (2) medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or (3) recovery from pregnancy, childbirth, termination of pregnancy, lactation, or their related medical conditions.

[3] See 34 C.F.R. 106.40.

[4] See 34 C.F.R. 106.10.

[5] See 34 C.F.R. 106.2.

2) the type, frequency, and duration of the conduct;

3) the parties' ages, roles within the education program, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;

4) the location of the conduct and the context in which the conduct occurred; and

5) other sex-based harassment in the education program.

c. Sexual Assault, Dating or Domestic Violence, Stalking

Sexual assault, dating violence, domestic violence, and stalking are defined as follows:

1) sexual assault means an offense classified as a sex offense under the uniform crime reporting system of the Federal Bureau of Investigation (i.e., rape, fondling, incest, and statutory rape);[6]

2) dating violence means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, with the existence of such a relationship determined based on a consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship;

3) domestic violence means felony or misdemeanor crimes committed by a person who (i) is a current or former spouse or intimate partner of the victim under North Carolina family or domestic violence laws, or a person similarly situated to a spouse of the victim; (ii) is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner; (iii) shares a child in common with the victim; or (iv) commits acts against a youth or adult victim who is protected from those acts under North Carolina family or domestic violence laws; and

4) stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or suffer substantial emotional distress.

Examples of sex-based conduct that would be considered sex-based

[6] See https://le.fbi.gov/file-repository/nibrs-user-manual-063023.pdf/view.

harassment if the conduct satisfies the criteria above include, but are not limited to: unwelcome sexual advances; requests for sexual favors; and other verbal or physical conduct of a sexual nature, such as 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; the display of sexually suggestive drawings, objects, pictures, or written materials; posting sexually suggestive pictures of a person without the person's consent; and forwarding pornographic material depicting a classmate or other member of the school community. Acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex characteristics, sex stereotypes, pregnancy or related conditions, gender identity, or sexual orientation but not involving conduct of a sexual nature may also constitute sex-based harassment. Sex-based harassment may be committed in person or through various mediums including via e-mail, text message, Internet message boards, interactions on social media, or other electronic media.

3. Retaliation

Retaliation, including peer retaliation, will be treated as a type of sex discrimination for purposes of this policy. Retaliation means intimidation, threats, coercion, or discrimination against any person by the board, a student, or an employee or agent of the school system for the purpose of interfering with any right or privilege secured by Title IX or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under Title IX, including in an informal resolution process, in grievance procedures, and in any other actions taken in compliance with the school system's obligations under Title IX.

B. DEFINITIONS

The following additional definitions apply in this policy.

1. Complaint

A complaint is a written or oral request that objectively can be understood as a request for school officials to investigate and make a determination about alleged sex discrimination.

2. Complainant

The complainant is the individual who is alleged in a report or complaint to have been subjected to sex discrimination prohibited by this policy. The complainant may be a student or a school system employee or may be another person who was participating or attempting to participate in the school system's educational program when the alleged sex discrimination occurred.

~~3. Confidential Employee[7]~~

~~A confidential employee is an employee who may have some communications that are privileged or confidential under federal or State law, such as a school counselor or nurse. The employee's confidential status, for purposes of this policy, is only with respect to information received while the employee is functioning within the scope of the employee's duties to which privilege or confidentiality applies and does not impact any requirements to report certain conduct to law enforcement or otherwise as required by policies 4040/7310, Student-Staff Relations, and 4240/7312, Child Abuse and Related Threats to Child Safety.~~

~~The superintendent shall ensure that all students and employees are notified of how to contact school system confidential employees.[8]~~

~~4.~~3. Days

Days are business days unless specified otherwise.

~~5.~~4. Parent

The term parent refers to a parent, guardian, or other authorized legal representative with the legal right to act on behalf of a student or other minor.

~~6.~~5. Party

Party means a complainant or respondent.

~~7.~~6. Report

A report is an oral or written notification of alleged sex discrimination.

~~[7] See 34 C.F.R. 106.2. The regulations also permit a school system to designate employees as confidential for the purpose of providing services related to sex discrimination. In such cases, if the employee also has duties not associated with providing those services, the employee's confidential status is only with respect to information received about sex discrimination in providing those services.~~

~~[8] See 34 C.F.R. 106.44(d)(1).~~

~~8.~~7. Respondent

The respondent is the person who is alleged in a report or complaint to have engaged in sex discrimination prohibited by this policy.

When a complaint alleges that a board policy or practice discriminates based on sex in violation of this policy, the board is not considered to be a respondent and the requirements in this policy related to a respondent do not apply.

C. REPORTS OF SEX DISCRIMINATION

1. Reporting Suspected Sex Discrimination

Any person who believes he or she has been subject to sex discrimination in the school system's education program in violation of this policy or who has information about conduct that reasonably may constitute sex discrimination prohibited by this policy is encouraged to report the matter to the Title IX coordinator. Reports may also be made to a principal, teacher, counselor, assistant principal, teacher assistant, or any other school employee. Reports may be made anonymously, including through the anonymous tip line, but school officials may be limited in their ability to respond if the report does not identify the complainant.[9]

2. Mandatory Reporting by School Employees and Board Members

Any school system employee or board member who has information about conduct that reasonably may constitute sex discrimination prohibited by this policy must immediately notify the Title IX coordinator.[10] Employees and board members should provide as much detail about the alleged sex discrimination as is known. Any doubt about whether conduct may reasonably constitute sex discrimination must be resolved in favor of reporting the conduct. An employee who does not promptly report conduct as required by this subsection, or who knowingly provides false information about the incident, will be subject to disciplinary action, up to and including dismissal.

~~Confidential employees are exempt from the requirement that employees must report to the Title IX coordinator. However, confidential employees must explain to any person who informs the confidential employee of~~

[9] G.S. 115C-105.51(a) requires the board of each secondary school, defined as a school serving grades six or higher, to develop and operate an anonymous tip line, in coordination with local law enforcement and social services agencies, to receive anonymous information on internal or external risks to the school population, school buildings, and school-related activities.

[10] See 34 C.F.R. 106.44(c)(1).

~~conduct that reasonably may constitute sex discrimination: (1) of the employee's status as confidential for these purposes, including the circumstances in which the employee is not required to notify the Title IX coordinator about conduct that reasonably may constitute sex discrimination; (2) how to contact the Title IX coordinator and how to make a complaint of sex discrimination; and (3) that the Title IX coordinator may be able to offer and coordinate supportive measures, as well as initiate an informal resolution process or an investigation under the grievance procedures.~~

The mandatory reporting required by this subsection is in addition to required reporting under policies 4040/7310, Student-Staff Relations, and 4240/7312, Child Abuse and Related Threats to Child Safety, where the conduct at issue requires a report under either of those policies.

3. Time Period for Making a Report

Reports by students and third parties can be made at any time. During non-business hours, reports can be made by using the contact information for the Title IX coordinator provided on the school system's website and in policy 1720/4030/7235, Title IX Nondiscrimination on the Basis of Sex. A report should be made as soon as possible after disclosure or discovery of the facts giving rise to the report.[11] Delays in reporting may impair the ability of school officials to investigate and respond to any subsequent complaint.

School employees and board members with knowledge of conduct that reasonably may constitute sex discrimination must report that information immediately, as provided in subsection C.2 above.

4. Title IX Coordinator Response to Alleged Sex Discrimination

[12]The Title IX coordinator, whenever notified of conduct that he or she reasonably determines may constitute sex discrimination prohibited under Title IX and this policy, must promptly take the following actions:

a. treat the complainant and respondent equitably;

b. offer and coordinate supportive measures as described in Section I of this policy, as appropriate, for the complainant;

c. notify the complainant and, if the complainant is a student, the

[11] All timeframes in this policy may be modified. The intent is to balance the need for an expeditious process with the need to provide the school system with sufficient time to investigate and respond.

[12] See 34 C.F.R. 106.44(f).

complainant's parent,[13] of the grievance procedures and, if appropriate, the informal resolution process as described in Section H of this policy;

d. if the complainant is unknown, notify the individual who reported the conduct of the grievance procedures and, if appropriate, the informal resolution process;

e. notify the principal of the report and, if an employee is the complainant or respondent, the senior human resources official or designee;[14] and

f. take any other appropriate prompt and effective steps to end any sex discrimination, prevent its recurrence, and remedy its effects.

In addition, if the complainant or respondent is a student with a disability, the Title IX coordinator shall comply with the requirements of Section K, below.

D. COMPLAINTS OF SEX DISCRIMINATION

1. Submitting Complaints of Sex Discrimination

A request for school officials to investigate an allegation of sex discrimination prohibited by this policy may be made by submitting an oral or written complaint to the Title IX coordinator.

Complaints of sex discrimination, including sex-based harassment, may be submitted by the complainant or the parent of a student complainant. In addition, for complaints of sex discrimination other than sex-based harassment, any student or employee or any other person who was participating or attempting to participate in the school system's education program at the time of the alleged sex discrimination may submit the complaint.

2. Complaints Initiated by the Title IX Coordinator

If no complaint is submitted within five days of the Title IX coordinator

[13] The regulations do not explicitly require the Title IX coordinator to notify the parent. However, state law may require notification. See G.S. 115C-76.45(a)(4). Further, the Title IX regulations should not be read to deprive parents of any legal right to act on behalf of their child. 34 C.F.R. 106.6(g). The board may want to consult the board attorney for more definitive guidance on when a student's parent should be informed of a report of sex discrimination.

[14] These officials may need to know of the report in order to ensure safety of students or employees or to otherwise assist in responding to the report. Other school officials may be designated if knowledge of the confidential report is necessary for them to perform their job responsibilities.

receiving notice of conduct that he or she reasonably determines may constitute sex discrimination or if any or all of the allegations in a complaint are withdrawn, and an informal resolution process is not underway, the Title IX coordinator must determine whether to initiate a complaint. In making the determination, the Title IX coordinator, in consultation with the board attorney if necessary, shall consider all the factors described in 34 C.F.R. 106.44(f)(1)(v)(A)[15] and any other relevant factors. If the Title IX coordinator determines that the conduct as alleged presents an imminent and serious threat to the health or safety of the complainant or other person or that the conduct as alleged prevents the school system from ensuring equal access on the basis of sex to its education program, the Title IX coordinator shall initiate a complaint after notifying the complainant and, if the complainant is a student, the complainant's parent of the intent to initiate the complaint and shall appropriately address reasonable concerns about the complainant's safety or the safety of others, including by providing supportive measures consistent with Section I of this policy.

A decision by the Title IX coordinator to initiate a complaint is not to be construed as (1) supportive of the complainant or in opposition to the respondent; (2) an indication of whether the allegations are credible or have merit; or (3) an indication of whether there is evidence sufficient to determine responsibility. Initiating a complaint does not make the Title IX coordinator a complainant or party to the complaint nor relieve the Title IX coordinator from any responsibilities under this policy.

The Title IX coordinator shall document the decision of whether to initiate a complaint and the reasons for that decision.

3. Consolidation of Complaints[16]

Complaints against more than one respondent, or by more than one complainant against one or more respondents, or by one party against another party, may be consolidated and investigated as one complaint when the allegations of sex discrimination arise out of the same facts or

[15] The factors that must be considered include, at a minimum: (1) the complainant's request not to proceed with initiating a complaint; (2) the complainant's reasonable safety concerns regarding initiating a complaint; (3) the risk that additional sex discrimination would occur if a complaint is not initiated; (4) the severity of the alleged sex discrimination, including whether the discrimination, if established, would require the removal of the respondent from school or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence; (5) the age and relationship of the parties, including whether the respondent is an employee; (6) the scope of the alleged sex discrimination, including information suggesting a pattern, ongoing sex discrimination, or sex discrimination alleged to have impacted multiple individuals; (7) the availability of evidence to assist the decisionmaker in determining whether sex discrimination occurred; and (8) whether school officials could end the alleged sex discrimination and prevent its recurrence without initiating the grievance procedures.

[16] For consolidation of complaints of sex discrimination, see 34 C.F.R. 106.45(e).

circumstances, unless consolidation would violate the Family Educational Rights and Privacy Act. When more than one complainant or more than one respondent is involved, references in this policy include the plural, as applicable.

E. TEMPORARY REMOVAL OF RESPONDENT FROM SCHOOL OR EMPLOYMENT[17]

Any respondent is subject to removal from the education program, or any part of the program, on an emergency basis if a school-based threat assessment team conducts an individualized safety and risk analysis and determines that removal is justified because the person poses an imminent and serious health or safety threat to any person arising from the allegations of sex discrimination. A removal under this subsection includes a transfer of a student to an alternative education program consistent with policy 3470/4305, Alternative Learning Programs/Schools. A schedule change and/or removing a student from an extracurricular activity is also considered a removal under this subsection where such action would not otherwise constitute a supportive measure.

Any such removal must be consistent with federal and state law, including any applicable law protecting the rights of individuals with disabilities. The respondent shall receive notice of the removal and an opportunity to challenge the decision in an informal hearing with the superintendent or designee immediately following the removal.

An employee respondent may be placed on administrative leave during the pendency of the grievance procedures if consistent with applicable state and federal laws.[18]

F. GRIEVANCE PROCEDURES FOR COMPLAINTS OF SEX DISCRIMINATION[19]

The board provides these grievance procedures for the resolution of complaints of sex discrimination submitted or initiated in accordance with Section D, above.

1. General Principles

   a. Equitable Treatment

      During the pendency of the grievance procedures, the school system

[17] We strongly recommend consultation with the board attorney before removing a student or employee under this provision to ensure the removal is consistent with state and federal law. The Title IX emergency removal requirements are found at 34 C.F.R. 106.44(h).

[18] Administrative leave is authorized at 34 C.F.R. 106.44(i).

[19] The Title IX regulations require that any steps or provisions added to the grievance procedures beyond what is required under Title IX apply equally to the parties.

will treat complainants and respondents equitably.[20] No person with a conflict of interest or bias for or against the complainant or respondent individually or generally may act as the Title IX coordinator, investigator, or decisionmaker.[21]

b. Presumption of Non-Responsibility/Innocence

The respondent will be presumed not responsible for the alleged sex discrimination until a determination is made at the conclusion of the grievance procedures.[22] No disciplinary consequence or other action that is not a supportive measure may be imposed for a violation of this policy unless the respondent agrees to a specific disciplinary consequence or action in an informal resolution[23] or has been determined to be responsible for the sex discrimination at the conclusion of the grievance procedures.[24] Notwithstanding the limitation just described, respondents are subject to temporary removal as described above in Section E.

c. Privacy

School officials involved in the grievance procedures shall take reasonable steps to protect the privacy of the parties and witnesses throughout the grievance procedures, including requiring the parties and witnesses to maintain the confidentiality of information and evidence obtained solely through the grievance proceedings. However, no steps will be imposed that restrict the ability of the parties to (1) obtain and present evidence, including by speaking to witnesses; (2) consult with their family members, confidential resources, or advisors; or (3) otherwise prepare for or participate in the grievance procedures.[25]

d. Timeliness

The number of days indicated at each step of the grievance procedures should be considered a maximum, and every effort

[20] See 34 C.F.R. 106.45(b)(1).

[21] See 34 C.F.R. 106.45(b)(2).

[22] See 34 C.F.R. 106.45(b)(3).

[23] Omit the reference to informal processes if your LEA does not provide informal means of resolving Title IX complaints.

[24] Although the LEA cannot take disciplinary action against the respondent or other action that does not meet the definition of a supportive measure until the grievance process is complete, this does not bar all measures that place any burden on a respondent, but only those that "unreasonably burden" the respondent (or complainant). Thus, changing a respondent's class schedule or a "no contact" order may be an appropriate supportive measure if such measures do not unreasonably burden the respondent.

[25] See 34 C.F.R. 106.45(b)(5).

should be made to expedite the process.[26]

Reasonable extensions of timeframes may be made on a case-by-case basis for good cause. If an extension is necessary, the parties will receive written notice of the extension and the reason for the extension prior to the end of the original timeframe. School system officials shall make reasonable efforts to keep the parties apprised of progress being made during any extension period. Delays that interfere with the exercise of the party's legal rights are not permitted.

Failure by a party to appeal a decision within the specified time limit will be considered acceptance of the decision at the current step, unless the party has notified the appropriate school system official of a delay and the reason for the delay and the official has consented to the delay in writing.

2. **Dismissal of a Complaint**

Within five days of a complaint being submitted, the Title IX coordinator shall review the allegations and make a determination whether to dismiss the complaint without further investigation.

A decision not to dismiss the complaint at this stage does not prevent the Title IX coordinator or investigator from dismissing the complaint at any point in the grievance procedures if it is determined that a permissible reason exists.

a. Permissible Reasons for Dismissal[27]

A complaint may be dismissed if:

1) the school system is unable to identify the respondent after taking reasonable steps to do so;

2) the respondent is not participating in the education program and is not employed by the school system;

3) the complainant voluntarily withdraws any or all of the allegations in the complaint, the Title IX coordinator declines to initiate a complaint, and the Title IX coordinator determines that, without the complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would

[26] The timeframes listed in each step of the grievance procedures may be modified, provided that any modification satisfies the requirement for "reasonably prompt timeframes." See 34 C.F.R. 106.44(b)(4).
[27] This is an exhaustive list of the permissible reasons to dismiss a complaint. See 34 C.F.R. 106.45(d).

not constitute prohibited sex discrimination even if proven; or

4) the Title IX coordinator determines the conduct alleged in the complaint, even if proven, would not constitute prohibited sex discrimination. Before dismissing the complaint on this basis, the Title IX coordinator shall make reasonable efforts to clarify the allegations with the complainant.

b. Notifications Upon Dismissal[28]

Upon dismissal of a complaint, the Title IX coordinator shall promptly notify the complainant and, if the complainant is a student, the complainant's parent of the dismissal, the basis for the dismissal, and that the dismissal may be appealed. If the dismissal occurs after the respondent has been notified of the allegations, the Title IX coordinator shall provide the same notification to the respondent and, if the respondent is a student, the respondent's parent promptly after notification to the complainant, or simultaneously if notification is in writing.

c. Bases for Appealing a Dismissal[29]

Dismissals may be appealed on the following bases:

1) procedural irregularity that would change the outcome;

2) new evidence that would change the outcome and that was not reasonably available when the dismissal was made; or

3) the Title IX coordinator or investigator had a conflict of interest or bias for or against the complainant or respondent generally or individually that would change the outcome.

d. Appeal Process for Dismissals[30]

~~1) Appeal to the Superintendent~~

The complainant or the parent of a student complainant may appeal the dismissal of the complaint to the superintendent (unless the superintendent was the respondent or took part in the investigation of the allegations or dismissal of the complaint, in which case an appeal may be made directly to

[28] This notification is required by 34 C.F.R. 106.45(d)(3).

[29] This is an exhaustive list of permissible bases for appeal. See 34 C.F.R. 106.45(d)(3) and 106.46(i)(1).

[30] The timeframes may be modified.

the board in accordance with subsection F.2.d.2 below). The appeal must be submitted in writing within three days of receiving notice of the dismissal of the complaint.

The superintendent shall implement appeal procedures equally for the parties. Within three days of receiving an appeal of the dismissal, the superintendent shall notify the parties and, if they are students, their parents of the appeal, including notice of the allegations if notice was not previously provided to the respondent. The superintendent shall then provide the parties a reasonable and equal opportunity to make a written statement in support of or challenging the outcome. Within 10 days of receiving the appeal, the superintendent shall make a decision on the appeal and notify the parties and, if they are students, their parents in writing of the decision and the rationale for the decision. The superintendent's decision is final.

~~2) Appeal to the Board~~

~~Employees and applicants for employment may appeal the superintendent's decision to the board in accordance with subsection E.4.a of policy 1750/7220, Grievance Procedure for Employees. Students, their parents, and other non-employees/applicants may appeal the superintendent's decision to the board in accordance with subsection E.5.a of policy 1740/4010, Student and Parent Grievance Procedure.~~

e. Steps Taken After a Dismissal

When a complaint is dismissed, the Title IX coordinator shall, at a minimum:

1) offer supportive measures to the complainant, as appropriate;

2) if the respondent has been notified of the allegations, offer supportive measures to the respondent, as appropriate; and

3) take other prompt and effective steps, as necessary, to prevent future sex discrimination within the education program.

3. **Notice of Allegations**[31]

[31] See 34 C.F.R. 106.45(c).

If the Title IX coordinator decides not to dismiss the complaint or if the complainant successfully appeals a dismissal, the Title IX coordinator shall promptly provide known parties and, if they are students, their parents with a notice of allegations that includes the following:

a. the grievance procedures and the informal resolution process, as described in this policy;

b. sufficient information available at the time to allow the parties to respond to the allegations, including the identities of the parties involved in the incident(s), the conduct alleged to constitute sex discrimination, and the date(s) and location(s) of the alleged incident(s);

c. a statement that retaliation is prohibited; and

d. a statement that (1) the parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an accurate description of this evidence and (2) if provided a description of the evidence, the parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any party.

If, in the course of an investigation, the investigator decides to investigate additional allegations of sex discrimination by the respondent toward the complainant that are not included in the initial notice or that are included in a complaint that is consolidated, the investigator shall promptly notify the parties of the additional allegations.

4. Initiating an Investigation

After providing the notification of allegations, the Title IX coordinator shall offer and coordinate supportive measures as described in Section I of this policy, as appropriate, for the parties. The Title IX coordinator shall also assign the complaint to the appropriate investigator, who will conduct an investigation.

The investigator is ordinarily determined as described below[32]; however, the Title IX coordinator, in consultation with the superintendent, may determine that conflict of interest, bias, or other individual circumstances warrant the assignment of a different investigator.

[32] Larger school districts may want to include language specifically allowing a central office employee to investigate all Title IX Complaints. Something like the following as a new 4(e): "Notwithstanding any other provision, the Board reserves the right to assign any employee as a Title IX investigator so long as the employee does not have a conflict of interest or bias in the matter."

a. If the respondent is a student, the investigator is the principal or designee of the school with jurisdiction over the incident.

b. If the respondent is an employee or applicant for employment, the investigator is the senior human resources official or designee.

c. If the respondent is neither a student nor an employee/applicant for employment, the investigator is the principal of the school/site supervisor at which the complainant is enrolled or employed.

d. Notwithstanding the above designations, (1) if the respondent is the senior human resources official, the superintendent shall investigate the complaint; and (2) if the respondent is the superintendent or a board member, the Title IX coordinator shall immediately notify the board chair who shall direct the board attorney to investigate, unless the board chair determines that outside counsel should be engaged to investigate.

The investigator may request assistance from the Title IX coordinator to conduct the investigation.

5. Conducting an Investigation

a. General Process

The investigation must be adequate, prompt, reliable, and impartial. Investigations should be concluded within 10 days of an investigator being assigned a complaint. The burden is on the investigator, not on the parties, to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination occurred.[33]

The investigator shall question all relevant parties and witnesses and adequately assess a party's or witness's credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex discrimination.[34] Credibility determinations will not be based on a person's status as a complainant, respondent, or witness.[35]

The investigator shall review all evidence gathered through the investigation, including both evidence that tends to support the allegations (inculpatory evidence) and evidence that tends to refute

[33] See 34 C.F.R. 106.45(f)(1).

[34] See 34 C.F.R. 106.45(g).

[35] See 34 C.F.R. 106.45(b)(6).

the allegations (exculpatory evidence) and determine what evidence is relevant and what evidence is impermissible regardless of relevance.[36]

b. Impermissible Evidence

The following types of evidence, and questions seeking that evidence, are impermissible (i.e., will not be accessed or considered, except to determine whether one of the exceptions listed below applies; will not be disclosed; and will not otherwise be used) at any stage of the grievance procedures, including appeals, regardless of whether the evidence is relevant:[37]

1) ~~evidence provided to a confidential employee or~~ evidence that is otherwise protected under a privilege[38] recognized by federal or State law, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;

2) a party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless the school system obtains that party's or witness's voluntary, written consent for use in the grievance procedures; and

3) evidence that relates to the complainant's sexual interests or prior sexual conduct, unless evidence about the complainant's prior sexual conduct is offered to prove that someone other than the respondent committed the alleged

[36] See 34 C.F.R. 106.45(f)(3).

[37] See 34 C.F.R. 106.45(b)(7).

[38] A privilege is a rule of evidence allowing the holder of the privilege to refuse to disclose information or provide evidence about a certain subject in a judicial or other proceeding. North Carolina recognizes several types of privilege. The ones most likely to be applicable in a proceeding under this policy are communications between: an attorney and a client; a school counselor and a student (G.S. 8-53.4); a health care provider/nurse and a patient (G.S. 8-53, -53.13); a psychologist and a client or patient (G.S. 8-53.3); a behavior analyst and a client or patient (G.S. 8-53.14); a licensed marital and family therapist and client(s) (G.S. 8-53.5); and agents of rape crisis centers and domestic violence programs and victims (G.S. 8-53.12). Also subject to privilege is information acquired by: a social worker in private practice in rendering professional social services (G.S. 8-53.7); a counselor in rendering professional counseling services (G.S. 8-53.8); and journalists (G.S. 8-53.11). Other privileges recognized in North Carolina include communications between: a husband and a wife (G.S. 8-56); an optometrist and a patient (G.S. 8-53.9); a peer counselor rendering services to a client law enforcement employee (G.S. 8-53.10); and clergymen and communicants (G.S. 8-53.2). Please consult your board attorney if there is a question as to whether any information sought in the course of a Title IX grievance procedure could be subject to one of these privileges.

conduct or is evidence about specific incidents of the complainant's prior sexual conduct with the respondent that is offered to prove consent to alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to alleged sex-based harassment or preclude determination that sex-based harassment occurred.

c. Equal Opportunities[39]

The investigator shall provide an equal opportunity for the parties to present fact witnesses and other inculpatory and exculpatory evidence that are relevant and permissible.

The investigator shall provide each party with an equal opportunity to access either the relevant, permissible evidence or an accurate description of this evidence. If the investigator provides a description of the relevant, permissible evidence, the investigator shall provide the parties with an equal opportunity to access such evidence upon the request of any party. The investigator shall provide a reasonable opportunity to respond to the evidence or accurate description of the evidence and shall take reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence obtained solely through the grievance procedures. Disclosures of such information and evidence for purposes of administrative proceedings or litigation related to the complaint are authorized.

6. Investigator's Determination

After completing the investigation, the investigator shall objectively evaluate all relevant, permissible evidence and, in consultation with the board attorney as appropriate, shall use the preponderance of the evidence[40] standard of proof to determine whether the alleged conduct constitutes a violation of this policy.

Within five days of the investigation's completion, the investigator shall notify the parties and, if the parties are students, their parents in writing of the determination whether sex discrimination occurred, including the rationale for such determination, and the procedures for the parties to

[39] See 34 C.F.R. 106.45(f).

[40] For sex discrimination complaints, Title IX requires the use of the preponderance of the evidence standard of proof unless the school system uses the clear and convincing evidence standard of proof in all other comparable proceedings, including proceedings relating to other discrimination complaints, in which case the school system may elect to use that standard of proof. See 34 C.F.R. 106.45(h)(1).

appeal. The investigator also shall provide to the Title IX coordinator a record of the evidence, findings of the investigation, and recommended disciplinary consequences, remedies, and/or other responses. If there is a determination that sex discrimination occurred, the Title IX coordinator shall take appropriate action to address the discrimination as described in Section G, below.

7. Appeals[41]

If either party is dissatisfied with the investigator's determination of whether sex discrimination occurred, the party or, if the party is a student, the party's parent may appeal to the superintendent (unless the superintendent is the respondent or took part in the investigation, in which case an appeal may be made directly to the board in accordance with the next paragraph). The appeal must be submitted in writing within three days of receiving the notice of the outcome of the investigation. If an appeal is not timely submitted, it is considered waived.

The superintendent shall review the record of the evidence, findings of the investigation, and recommended disciplinary consequences, remedies, and/or other responses. The superintendent may also conduct any further investigation necessary or take any other steps to respond. If the appeal includes an appeal of a disciplinary sanction/recommendation of discipline, the procedures in policy 4370, Student Discipline Hearing Procedures; policy 4353, Long-Term Suspension, 365-Days Suspension, Expulsion; policy 7940, Classified Personnel: Suspension and Dismissal; or policy 7930, Professional Employees: Demotion and Dismissal, shall also apply as applicable.

The superintendent shall provide a written response within 10 days of receiving the appeal unless other applicable State law controls the process.

Employees and applicants for employment may appeal the superintendent's decision to the board in accordance with ~~subsection E.4.a of~~ either policy 1750/7220, Grievance Procedure for Employees; policy 7940, Classified Personnel: Suspension and Dismissal; or policy 7930, Professional Employees: Demotion and Dismissal, as applicable.~~.~~ Students, their parents, and other non-employees/applicants may appeal the superintendent's decision to the board in accordance with either ~~subsection E.5.a of~~ policy 1740/4010, Student and Parent Grievance Procedure; policy 4370, Student Discipline Hearing Procedures; or policy

[41] The appeals process may be modified but, at a minimum, the process must be at least the same as the process provided in all other comparable proceedings, including proceedings relating to other discrimination complaints. The process outlined here is the same as the process provided in NCSBA's policy 1710/4020/7230, Discrimination and Harassment Prohibited by Federal Law.

4353, Long-Term Suspension, 365-Days Suspension, Expulsion as applicable.

G. DISCIPLINARY CONSEQUENCES, REMEDIES, AND OTHER RESPONSES TO ADDRESS SEX DISCRIMINATION

The Title IX coordinator is responsible for taking or causing appropriate action to be taken in response to sex discrimination in violation of this policy. Upon a determination that sex discrimination occurred and once all appeals have been exhausted or waived, the Title IX coordinator shall, as appropriate: (1) coordinate with the principal or other relevant school official the imposition of any disciplinary consequences on a respondent, including notification to the complainant of any such disciplinary consequences;[42] (2) coordinate the provision and implementation of remedies to the complainant and other people the investigator identifies as having had their equal access to the education program limited or denied by sex discrimination; and (3) take other appropriate, prompt, and effective steps to ensure that sex discrimination does not continue or recur within the education program.[43]

1. Disciplinary Consequences

No disciplinary consequences will be imposed until any appeals have been exhausted or waived.

a. Disciplinary Consequences for Students

The disciplinary consequences for student violations of this policy will be imposed by the principal, superintendent, or other designated school official in accordance with the Code of Student Conduct. 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 to expulsion.

A student recommended for a long-term suspension or expulsion will have all applicable rights accorded by board policy and state law.

This policy will not be construed to allow school officials to punish student expression or speech based on undifferentiated fear or

[42] There may be a conflict between the federal regulations and state confidentiality laws regarding the disclosure of student and employee information, in which case federal law will preempt state confidentiality law. Conflicts between the Family Educational Rights and Privacy Act (FERPA) and the Title IX regulations are to be resolved in favor of the Title IX regulations. See 34 C.F.R. 106.6(e) ("The obligation to comply with [the Title IX regulations] is not obviated or alleviated by FERPA[.]").

[43] See 34 C.F.R. 106.45(h)(3).

apprehension of a disturbance or out of a desire to avoid the discomfort and unpleasantness that may accompany an unpopular viewpoint.

b. Disciplinary Consequences for Employees

The disciplinary consequences for employee violations of this policy will be imposed by the principal, superintendent, board, or other designated school official. Based on the nature and severity of the offense and the circumstances surrounding the incident, the employee will be subject to discipline up to and including dismissal.

An employee recommended for suspension, demotion, or dismissal will have all applicable rights accorded by board policy and state law.

c. Disciplinary Consequences for Other Infractions

1) False Statements

False or malicious complaints of sex discrimination and false statements made in bad faith in the course of any grievance procedure conducted pursuant to this policy are subject to disciplinary action, up to and including dismissal for an employee and long-term suspension for a student. However, no discipline will be imposed for making a false statement solely on a determination of whether sex discrimination occurred.

2) Other Conduct

Nothing in this policy will preclude the school system from taking disciplinary action against a student or employee when the evidence does not establish sex discrimination as defined in this policy, but the conduct violates other board policy and/or the Code or Student Conduct or expected standards of employee behavior. However, no discipline will be imposed for engaging in consensual sexual conduct based solely on a determination of whether sex discrimination occurred.

d. Consequences for Other Respondents

Volunteers and visitors who engage in sex discrimination will be directed to leave school property and/or be reported to law enforcement, as appropriate, in accordance with policy 5020, Visitors to the Schools. A third party under the supervision and control of the school system will be subject to termination of contracts/agreements,

restricted from access to school property, and/or subject to other consequences, as appropriate.

2. Remedies

Remedial measures may be provided, as appropriate, to complainants or other persons who had their equal access to or participation in the education program limited or denied by sex discrimination in violation of this policy. Such measures may include counseling, mental health services referral, extensions of deadlines or other course-related adjustments, other academic resources or support, modifications of work or class schedules, escort services, change in student parking location, mutual or one-way restrictions on contact between the parties, changes in work locations, leaves of absence, increased security and monitoring, and other measures determined by school officials to be necessary to restore or preserve the person's equal access to the education program.

3. Other Steps

The Title IX coordinator may take other measures to end or prevent instances of sex discrimination regardless of whether any individual has been found responsible for the sex discrimination. The Title IX coordinator may implement or coordinate the implementation of classroom-wide, school-wide, or school system-wide responses such as additional staff training, discrimination prevention programs, and other measures reasonably calculated to end prohibited behavior, eliminate a hostile environment and its effects if one has been created, and prevent recurrence of the behavior.

The Title IX coordinator shall encourage complainants to report any subsequent problems and may conduct follow-up inquiries as warranted to determine if there have been any new incidents of sex discrimination or any instances of retaliation.

H. INFORMAL RESOLUTION[44]

At any time prior to determining whether sex discrimination occurred, the Title IX coordinator may offer the complainant and respondent an informal resolution process. An informal resolution process will not be offered if: (1) there are allegations that an employee engaged in sex-based harassment of a student; (2) the alleged conduct would present a future risk of harm to others; or (3) the Title IX coordinator determines that other circumstances make informal resolution inappropriate. If an informal resolution process is used, the Title IX coordinator

[44] Providing an informal resolution process is optional; however, if such a process is offered, it must comply with the regulatory requirements described in 34 C.F.R. 106.44(k).

shall, to the extent necessary, take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the education program.

An informal resolution process will not be used unless both the complainant and the respondent have voluntarily consented to its use. No school system employee shall require or pressure a complainant or respondent to participate in an informal resolution process. No individual will be required to waive the right to an investigation and determination of a complaint as a condition of participation in the education program or the exercise of any other right.

Before the initiation of an informal resolution process, the parties must receive notice that explains: (1) the allegations; (2) the requirements of the informal resolution process; (3) that, prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and to initiate or resume the grievance procedures; (4) that agreement to a resolution at the conclusion of the informal resolution process precludes the parties from initiating or resuming grievance procedures arising from the same allegations; (5) the potential terms that may be requested or offered in an informal resolution agreement, including notice that an informal resolution agreement is binding only on the parties; and (6) what information the school system will retain and whether and how the school system could disclose such information for use in grievance procedures if grievance procedures are initiated or resumed.

The superintendent, in consultation with the Title IX coordinator, shall assign a school system employee to facilitate the informal resolution process. The facilitator will not be the same person as the investigator in the grievance procedures. The facilitator must have received appropriate training[45] and must not have a conflict of interest or bias for or against the complainant or respondent generally or individually.

I. SUPPORTIVE MEASURES

Supportive measures are defined as individualized measures offered as appropriate, as reasonably available, and at no cost to the parties to: (1) restore or preserve that party's access to the education program, including measures that are designed to protect the safety of the parties or the educational environment; or (2) provide support during the grievance procedures or during the informal resolution process. Supportive measures must not unreasonably burden a party to the complaint and may not be imposed for punitive or disciplinary reasons.

Supportive measures may vary depending on what is reasonably available. These measures may include but are not limited to: counseling; extensions of deadlines and other course-related adjustments; campus escort services; increased security

[45] A facilitator must have received training under 34 C.F.R. 106.8(d)(3).

and monitoring of certain areas of the campus; restrictions on contact applied to one or more parties; leaves of absence; changes in class, work, or extracurricular or any other activity, regardless of whether a comparable alternative exists; and training and education programs related to sex-based harassment.

Supportive measures may, as appropriate, be modified or terminated by the Title IX coordinator at the conclusion of the grievance procedures or informal resolution process or may continue beyond that point. A party whose supportive measure was denied, modified, or terminated may appeal the decision to the superintendent or designee within five days of the decision. The superintendent may modify or reverse the decision upon determining that the action was inconsistent with the definition of supportive measures as described above. In addition, a party may petition the Title IX coordinator for modification or termination of a supportive measure applicable to them if circumstances change materially and may appeal the decision of the Title IX coordinator to the superintendent within five days.

School employees shall not disclose information about supportive measures to persons other than the person to whom they apply unless necessary to provide the supportive measure or restore or preserve a party's access to the education program or when advised by the superintendent or board attorney that an exception is permitted by law.[46]

J. PROHIBITED DISCLOSURES OF PERSONALLY IDENTIFIABLE INFORMATION[47]

School system employees shall not disclose personally identifiable information obtained in the course of complying with this policy, except in the following circumstances: (1) when prior written consent has been obtained from a person with the legal right to consent to the disclosure; (2) when the information is disclosed to a parent with the legal right to receive disclosures on behalf of the person whose personally identifiable information is at issue; (3) to carry out the purposes of this policy, including action taken to address conduct that reasonably may constitute sex discrimination prohibited by this policy; (4) as required by federal law or regulation or the terms and conditions of a federal award, including a grant award or other funding agreement; or (5) to the extent such disclosures are not otherwise in conflict with Title IX, when required by State law or when permitted under the Family Educational Rights and Privacy Act.

K. STUDENTS WITH DISABILITIES

When the complainant or respondent is a student with a disability, the Title IX coordinator will consult with one or more members of the student's Individualized Education Program team, as appropriate, and/or one or more members of the student's Section 504 team, as appropriate, throughout the implementation of the

[46] The permissible exceptions are those described in Section J.

[47] See 34 C.F.R. 106.44(j).

grievance procedures and the provision of any supportive measures to determine how to comply with the requirements of the Individuals with Disabilities Education Act and/or Section 504 of the Rehabilitation Act of 1973.

L. RECORDS

The Title IX coordinator shall create and maintain for a period of seven years:

1. for each complaint of sex discrimination, records documenting the informal resolution process or grievance procedures and the resulting outcome;

2. for each notification the Title IX coordinator receives of information about conduct that reasonably may constitute sex discrimination, records documenting the actions taken by the school system to meet its obligations under Title IX; and

3. all materials used to provide the training described in policy 1720/4030/7235, Title IX Nondiscrimination on the Basis of Sex.

Legal References: Family Educational Rights and Privacy Act, 20 U.S.C. 1232g, h, 34 C.F.R. pt. 99; Individuals with Disabilities Education Act, 20 U.S.C. 1400 *et seq.*; 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 IX of the Education Amendments Act of 1972, 20 U.S.C. 1681 *et seq.*, 34 C.F.R. pt. 106; *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-335.5

Cross References: Discrimination and Harassment Prohibited by Federal Law (policy 1710/4020/7230), Title IX Nondiscrimination on the Basis of Sex (policy 1720/4030/7235), Alternative Learning Programs/Schools (policy 3470/4305), Staff-Student Relations (policy 4040/7310), Child Abuse and Related Threats to Child Safety (policy 4240/7312), Bullying and Harassing Behavior Prohibited (policy 4329/7311), Visitors to the Schools (policy 5020)

Issued: July 28, 2020

Revised: September 30, 2020; September 30, 2021; ~~July 12, 2024~~

SCHOOL SAFETY

Policy Code: **1510/4200/7270**

Safe schools are critical to creating a learning environment in which students can succeed.[1] Staff and students share the responsibility for taking reasonable[2] precautions and following established safety measures to create and maintain safe schools. The following safety measures must be implemented at each school.

A. SUPERVISION OF STUDENTS

Students must be reasonably supervised while in the care and custody of the school system. This supervision must occur throughout school hours, including during class, between classes, on the playground, and during recess or lunch periods; during authorized school field trips; and on school buses. Reasonable precautions should be taken to protect the safety of students on school grounds and on buses before, during, and after school.

Students who are subject to policy 4260, Student Sex Offenders, and are receiving educational services on school property must be supervised by school personnel at all times.

B. SUPERVISION OF VISITORS

School administrators shall strictly enforce policies 5015, School Volunteers, and 5020, Visitors to the Schools.

C. SAFETY OF SCHOOL BUILDINGS AND GROUNDS

The board recognizes its duty to provide each of its employees with a workplace free from recognized hazards that are causing or are likely to cause death or serious physical harm.[3]

The superintendent and each building principal shall comply with all duties set out for their respective positions in G.S. 115C-288(d) and G.S. 115C-525 to minimize fire hazards. The principal is required to inspect school buildings, playgrounds, and equipment for health, fire, and safety hazards on a regular basis, as required by law, and to notify the superintendent immediately of unsanitary conditions or repairs needed to meet safety standards.

---

[1] The board may modify this policy.

[2] Throughout this policy, a "reasonableness" standard is used. Consult with your board attorney before modifying this standard.

[3] This statement reflects the Occupational Safety and Health Act of North Carolina's "General Duty Clause." See G.S. 95-129(1). In the event of an employee's work-related death, injury, or illness, including from COVID-19, the school system may be required to report that information to the Occupational Safety and Health Administration. See 29 C.F.R. part 1904 (incorporated by reference in 13 N.C.A.C. 7A .0301); see also *Protecting Workers: Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace*, Department of Labor, Occupational Safety and Health Administration (as updated August 13, 2021), available at https://www.osha.gov/coronavirus/safework.

This sample policy is provided by the N.C. School Boards Association as a subscriber benefit and is not intended to be legal advice. Policies should be modified to address your specific needs and should be reviewed by your board attorney prior to adoption. © 2024 NCSBA

Any employee who observes any potential hazards must notify the principal or the employee's supervisor immediately.[4]

All warning systems must meet building and equipment codes required by law and must be properly maintained. When necessary, proper signs indicating potential hazards or recommended safety precautions must be posted.

D. ESTABLISHING PROCESSES TO ADDRESS POTENTIAL SAFETY CONCERNS AND EMERGENCIES

1. Responding to Student Altercations and Other Threats to Safety[5]

All school system employees have a duty to be alert at all times to situations that may pose a threat to the safety of students, employees, or visitors on school property, at school events, or in other situations in which the students are under the authority of school employees. Even an employee who does not have responsibility for supervising students is expected to make an immediate report if the employee observes or has reason to suspect that a situation poses a threat to safety and no administrator, teacher, or other supervisory employee is present and aware of the potential threat.

Teachers, teacher assistants, coaches, and other employees with responsibility for supervising students will use appropriate student behavior management techniques to maintain order and discipline on school property, at school events, and anywhere that students are under the employees' authority. Such employees must enforce the Code of Student Conduct and address student behavior in accordance with the school plan for management of student behavior (see policy 4302, School Plan for Management of Student Behavior).

When employees with responsibility for supervising students have personal knowledge or actual notice of a student altercation or other situation that poses an immediate threat to safety, they shall use their professional judgment to determine how best to address the situation to protect the safety of everyone in the vicinity. Emergency procedures identified in a student's Behavior Intervention Plan shall be followed to the maximum extent possible under the circumstances. For minor threats or altercations or altercations involving young children, the employee shall intervene directly to end the fight or address the safety threat if the employee can

[4] G.S. 115C-524 provides that principals, teachers, and janitors are responsible for the safekeeping of school property. Specifically, under G.S. 115C-524(b) "It shall be the duty of all principals, teachers, and janitors to report to their respective boards of education immediately any unsanitary condition, damage to school property, or needed repair." This policy requires reporting to the superintendent as he or she is the ex officio secretary to the board pursuant to G.S. 115C-41 and policy 2210, Duties of Officers. Alternatively, this policy may be revised to require that such reports be made to the "local board of education," as specified in G.S. 115C-524.

[5] G.S. 115C-390.3 requires boards to have policies which provide guidelines for an employee's response if the employee knows of a student altercation. The information in this subsection is intended to address that requirement.

This sample policy is provided by the N.C. School Boards Association as a subscriber benefit and is not intended to be legal advice. Policies should be modified to address your specific needs and should be reviewed by your board attorney prior to adoption. © 2024 NCSBA

do so safely. An employee who encounters a situation that cannot be managed safely and effectively by that employee immediately shall request assistance from other employees or administrative staff and shall take steps to remove bystanders from the area. Only the degree of force or physical control reasonably necessary shall be used to re-establish a safe environment.

Employees should take further action as appropriate in accordance with any response protocols established by the principal or superintendent. All employees are responsible for knowing and following such protocols to the fullest extent reasonable under the circumstances at the time.

2. School Rules

The principal or designee shall develop rules to help prevent accidents in school buildings, on school buses, and on school grounds.

3. Training ~~for Staff and Students~~

Staff training must include detailed instruction on how to respond to a variety of emergency situations. Staff should also be able to recognize and respond to behavior, information, and related indicators that warn of impending problems. In addition, middle and high school employees must receive adequate training on the operation of the school's anonymous safety tip line.[6]

School personnel must teach and review with students (1) safety procedures, including fire safety procedures; (2) precautions for handling chemicals or potentially dangerous equipment; and (3) appropriate responses to threats to school safety. Middle and high school students must also be informed of the anonymous safety tip line and its purpose and function.[7]

Training must be provided annually for all school system stakeholders (including staff, students, parents, coaches, volunteers, and community members) on how to recognize, and how and when to report, threats to the school population or community.[8]

4. Safety Equipment

[6] See G.S. 115C-105.51(b).

[7] See G.S. 115C-105.51(b).

[8] The North Carolina Center for Safer Schools (CSS) directs school systems to provide this training as a means of bolstering the effectiveness of the behavioral threat assessment and management process, which is explained in further detail in Section E below. See *Behavioral Threat Assessment and Management: Best Practice Guidance for North Carolina Behavioral Threat Assessment and Management Teams for Harm Prevention* ("CSS guidance"), N.C. Department of Public Instruction Center for Safer Schools (March 2024), available at https://www.dpi.nc.gov/best-practice-guidance-north-carolina-behavioral-threat-assessment-and-management-teams-harm.

School employees shall provide students and visitors with safety equipment as required by law and shall enforce school rules pertaining to wearing safety equipment.[9] School employees shall wear and use appropriate safety equipment as required for the safe performance of their specific job assignments.

5. Planning for Emergencies and Conducting Fire Drills and Other Emergency Drills

The board, in coordination with local law enforcement and emergency management agencies, will adopt a school risk management plan relating to incidents of school violence for each school in the school system.[10] The superintendent must provide the Department of Public Safety's Division of Emergency Management (Division) with emergency response information[11] it requests for the school risk management plan and updated emergency response information when such updates are made.[12] The superintendent must also provide the Division and local law enforcement with schematic diagrams,[13] including digital schematic diagrams, of all school facilities and updates of the schematic diagrams when the school system makes substantial facility modifications, such as the addition of new facilities or modifications to doors or windows.[14] Schematic diagrams must meet any standards established by the Department of Public Instruction for the preparation and content of the diagrams.[15] In addition, the superintendent shall provide local law enforcement with (1) either keys to the main entrance of all school buildings or emergency access to key storage devices for all school buildings and (2) updated access to school buildings when changes are made to the locks of the main entrances or to the key storage devices.[16]

At least one school-wide tabletop exercise and drill that meets the requirements of state law and is based on the procedures documented in the school risk management plan will be held annually at each school.[17] Principals shall also conduct fire drills

[9] For example, G.S. 115C-166 and -167 require students, teachers, and visitors in certain shop and lab courses to wear industrial-quality eye protective devices when involved in certain types of instructional activities. In addition, students may be required to wear certain safety equipment in order to participate in certain physical education or athletic activities. G.S. 115C-47(49a)(a) requires the board to certify to the State Board of Education that all high school and middle school laboratories are equipped with appropriate personal protective equipment for students and teachers.

[10] See G.S. 115C-47(40). The board must use the school risk and response management system established by the Division of Emergency Management, Department of Public Safety, in creating and maintaining the plan. S.L. 2015-241, Section 8.26.(k) requires the school risk management plans to be adopted by March 1, 2017.

[11] G.S. 115C-105.54(b) clarifies that such emergency response information is not considered a public record under state law.

[12] See G.S. 115C-105.54(a).

[13] G.S. 115C-105.53(c) and G.S. 115C-105.54(b) clarify that schematic diagrams are not considered a public record under state law.

[14] See G.S. 115C-105.53(a) and G.S. 115C-105.54(a).

[15] See G.S. 115C-105.53(b).

[16] See G.S. 115C-105.53(a).

[17] A tabletop exercise involves key personnel conducting simulated scenarios; a drill is a school-wide practice

This sample policy is provided by the N.C. School Boards Association as a subscriber benefit and is not intended to be legal advice. Policies should be modified to address your specific needs and should be reviewed by your board attorney prior to adoption. © 2024 NCSBA

as required by law.[18]

6. Reporting Risks to the School Population

Students should notify any staff member of any acts of violence, harassment, or bullying or any other unusual or suspicious behavior that may endanger safety. Middle and high school students may also use the anonymous safety tip line to report any risks to the school population or buildings.[19] Ongoing student education efforts will aim at minimizing any fear, peer pressure, embarrassment, or other impediments to students reporting potential problems.

Maintaining a safe school environment that is conducive to learning requires staff to be proactive in dealing with violence, harassment, and bullying. Staff members must report immediately to the principal any information regarding unusual or suspicious behavior or acts of violence, harassment, or bullying.[20]

School officials shall investigate and act upon any report of such behavior, including, when appropriate, referring reports to the school threat assessment team and reporting criminal activities to law enforcement, the State Board, the State Superintendent of Public Instruction, and the superintendent or designee (see policies 1710/4020/7230, Discrimination and Harassment Prohibited by Federal Law, 1725/4035/7236, Title IX Sex~~ual~~ Discrimination~~Harassment~~ – Prohibited Conduct and ~~Reporting Process~~Grievance Procedures, ~~1726/4036/7237, Title IX Sexual Harassment Grievance Process,~~ 4040/7310, Staff-Student Relations, 4329/7311, Bullying and Harassing Behavior Prohibited, and 4335, Criminal Behavior~~, and 7232, Discrimination and Harassment in the Workplace~~).

7. Potential Threats of Registered Sex Offenders

exercise. See G.S. 115C-105.49. The drill must include a practice school lockdown due to an intruder on school grounds. Each school is encouraged to hold a tabletop exercise and drill for multiple hazards included in its school risk management plan. Schools are strongly encouraged to include local law enforcement and emergency management agencies in the tabletop exercises and drills. The purpose of the tabletop exercises and drills will be to permit participants to: (1) discuss simulated emergency situations in a low-stress environment; (2) clarify their roles and responsibilities and the overall logistics of dealing with an emergency; and (3) identify areas in which the school risk management plan needs to be modified. The Department of Public Safety, Division of Emergency Management, and the Center for Safer Schools will provide guidance and recommendations on the types of multiple hazards to plan and respond to, including intruders on school grounds.

[18] See G.S. 115C-288(d).

[19] G.S. 115C-105.51(a) requires the board of each secondary school, defined as a school serving grades six or higher, to develop and operate an anonymous tip line, in coordination with local law enforcement and social services agencies, to receive anonymous information on internal or external risks to the school population, school buildings, and school-related activities.

[20] G.S. 115C-307(a) specifically requires teachers, student teachers, substitute teachers, voluntary teachers and teacher assistants to report acts of violence. In addition, G.S. 115C-289.1 requires supervisors to report to the principal any known assault on a school employee that results in physical injury. This policy expands the reporting requirements to all staff and incorporates suspicious behavior.

This sample policy is provided by the N.C. School Boards Association as a subscriber benefit and is not intended to be legal advice. Policies should be modified to address your specific needs and should be reviewed by your board attorney prior to adoption. © 2024 NCSBA

The principal of each school shall register with the North Carolina Sex Offender and Public Protection Registry to receive e-mail notification when a registered sex offender moves within a one-mile radius of the school.[21]

8. Student Behavior Standards

Students are expected to meet behavior standards set forth in board policies.

E. THREAT ASSESSMENT TEAMS

In accordance with G.S. 115C-105.65, the superintendent shall establish a multidisciplinary threat assessment team for each school within the school system to identify, assess, and manage behavior of students or others who may pose a risk of violence or harm to self or others.[22] The threat assessment teams will include, but are not limited to, individuals with expertise in counseling, instruction, school administration, and law enforcement. When practicable, at least one school psychologist, one staff member knowledgeable about and experienced in working with students with special needs, and one staff member knowledgeable about and experienced in working with students with disabilities will be assigned to each threat assessment team. If a school psychologist is not available, a licensed mental health professional may be assigned instead. A member of each threat assessment team will operate as team leader with the responsibility to ensure adherence to the threat assessment process, ensure proper documentation of reports of threats and threat assessment activities, and facilitate collaborative team discussions to ensure various perspectives are considered.[23]

The superintendent shall designate a school system administrator to oversee the school system's threat assessment program and to serve as liaison between the school system and the North Carolina Center for Safer Schools (CSS). The superintendent or designee shall also establish a committee composed of individuals with expertise in human resources, education, school administration, mental health, and law enforcement that will coordinate and monitor the threat assessment teams operating within the school system.[24]

1. Training[25]

All team members will receive behavioral threat assessment and management training annually prior to the start of the school year. Individuals who join the team in the middle of the school year must receive training within 60 calendar days of

[21] The board may opt to require the principal to register for notification within a larger radius of the school, such as a five-mile radius.

[22] In the superintendent's discretion, an established threat assessment team may serve more than one school.

[23] This sentence is optional. CSS recommends that all threat assessment teams have a team leader.

[24] G.S. 115C-105.65(d).

[25] CSS directs school systems to provide training for threat assessment team members as indicated in this subsection.

This sample policy is provided by the N.C. School Boards Association as a subscriber benefit and is not intended to be legal advice. Policies should be modified to address your specific needs and should be reviewed by your board attorney prior to adoption. © 2024 NCSBA

joining the team.[26]

2. Assessment and Intervention

Unless the superintendent establishes a different classification system in the threat assessment protocols developed pursuant to subsection E.4 of this policy, threat assessment teams will use the levels of concern table listed in the behavioral threat assessment and management guidance issued by CSS in assessing the level of threat posed and forming a response to threats.[27]

Upon determining that a student poses a threat, the threat assessment team will develop a written student support, intervention, and monitoring management plan[28] that establishes interventions and specifies required monitoring times of the student based on the level of concern the student presents. To effectively manage and mitigate potential risk, interventions must focus on building resilience and protective factors for the student while also addressing safety concerns.

3. Information Sharing

Parents of a student or minor will be notified as soon as practicable that a threat assessment will be or is being conducted on their child.[29] The threat assessment team will contact the parents and provide them the opportunity to participate in the threat assessment. The team is not required to extend the invitation to participate if the student or minor discloses abuse or neglect from the parent. Once a threat assessment is completed, the team will provide its findings and conclusions to the parents, including any interventions the team is recommending be put in place for the well-being of their child and the school community and any school system or community resources that may be useful for the parents in seeking help for their child.

When the threat assessment team learns that an individual has threatened specific harm to an identifiable potential victim, the team will provide notice of the threat to the potential victim and, if the potential victim is a student or minor, provide notice to the parents.[30]

Any information sharing by, with, or between members of the threat assessment

[26] The CSS guidance states that new team members joining in the middle of the school year should be trained within 60 days; however, the board may want to consult the board attorney as to whether requiring training before participating in a threat assessment is prudent.

[27] G.S. 115C-105.65(c) requires boards to develop policies for assessment and intervention by threat assessment teams, including any scale or classification system that will be used to indicate various levels of threats and the standard response to each level of threat. Alternatively, the board could list a scale or classification system here.

[28] The CSS guidance includes a link to a sample student support, intervention, and monitoring management plan that may be used/adapted for use by threat assessment teams.

[29] The notification requirements established in this paragraph are best practices recommended by CSS.

[30] See G.S. 115C-105.65(e)(5)b.

teams will be done in accordance with the federal Family Educational Rights and Privacy Act (FERPA) and any other applicable state or federal law.[31] (See policy 2125/7315, Confidential Information). Members of a threat assessment team who are not school system employees must sign a written agreement to adhere to the responsibilities and requirements of FERPA before having access to student records.[32]

4. Threat Assessment Protocols

In consultation with CSS guidance and with established threat assessment teams within the school system, the superintendent shall develop, implement, and update threat assessment protocols and procedures that comply with the requirements of G.S. 115C-105.65. At a minimum, these protocols and procedures will delineate the roles and duties to be performed by designated threat assessment team members, the expertise and training of professionals who will serve on threat assessment teams, the steps to be followed in the threat assessment process, including the implementation of interventions, supports, and community services, the timeframe required to responsibly act upon reported concerns, and the engagement of school resource officers and/or law enforcement in the threat assessment process, and the process of documenting reports of threats and threat assessment activities. The protocols and procedures will differentiate between assessment and intervention at the elementary, middle, and high school levels, as appropriate.

The superintendent or designee shall send a copy of this policy and the threat assessment protocols and procedures to CSS when approved or revised.[33] In addition, the superintendent shall ensure that quantitative data on the activities of all threat assessment teams is reported to CSS as required by G.S. 115C-105.65(g) and CSS guidance.

Legal References: 29 C.F.R. part 1904; G.S. 14-208.18; 95-129(1); 115C-36, -47, -105.49, -105.51, -105.53, -105.54, -105.65, -166, -167, -288, -289.1, -307, -390.3, -391.1, -521, -524, -525; 13 N.C.A.C. 7A .0301; 16 N.C.A.C. 6E .0107; State Board of Education Policy SCFC-005

Cross References: Discrimination and Harassment Prohibited by Federal Law (policy 1710/4020/7230), Title IX Sex~~ual Harassment~~ Discrimination – Prohibited Conduct and ~~Reporting Process~~Grievance Procedures (policy 1725/4035/7236), ~~Title IX Sexual Harassment Grievance Process (policy 1726/4036/7237),~~ Confidential Information (policy 2125/7315), School Improvement Plan (policy 3430), Staff-Student Relations (policy 4040/7310), Student Sex Offenders (policy 4260), Student Behavior Policies (4300 series), Bullying and Harassing Behavior Prohibited (policy 4329/7311), School Volunteers (policy 5015), Visitors to the Schools (policy 5020), Registered Sex Offenders (policy 5022), Weapons and Explosives Prohibited (policy 5027/7275), Public Records – Retention, Release, and Disposition (policy 5070/7350),

[31] See G.S. 115C-105.65(e1).
[32] G.S. 115C-105.65(a)(3).
[33] See G.S. 115C-105.65(c).

This sample policy is provided by the N.C. School Boards Association as a subscriber benefit and is not intended to be legal advice. Policies should be modified to address your specific needs and should be reviewed by your board attorney prior to adoption. © 2024 NCSBA

Relationship with Law Enforcement (policy 5120), ~~Discrimination and Harassment in the Workplace (policy 7232),~~ Occupational Exposure to Hazardous Chemicals in Science Laboratories (policy 7265), Staff Responsibilities (policy 7300), Security of Facilities (policy 9220)

Other Resources: *Practical Information on Crisis Planning: A Guide for Schools and Communities*, U.S. Department of Education, Office of Safe and Drug-Free Schools (January 2007), available at http://www2.ed.gov/admins/lead/safety/crisisplanning.html; *Behavioral Threat Assessment and Management: Best Practice Guidance for North Carolina Behavioral Threat Assessment and Management Teams for Harm Prevention*, N.C. Department of Public Instruction Center for Safer Schools (March 2024), available at https://www.dpi.nc.gov/best-practice-guidance-north-carolina-behavioral-threat-assessment-and-management-teams-harm

Issued:

Revised: March 6, 1998; September 24, 1999; January 31, 2006; June 30, 2008; October 15, 2008; December 1, 2009; March 31, 2011; September 30, 2011; September 27, 2012; September 13, 2013; September 30, 2014; November 13, 2015; April 28, 2017; September 29, 2017; September 28, 2018; September 30, 2020; March 31, 2021; September 30, 2021; September 30, 2022; July 12, 2024

This sample policy is provided by the N.C. School Boards Association as a subscriber benefit and is not intended to be legal advice. Policies should be modified to address your specific needs and should be reviewed by your board attorney prior to adoption. © 2024 NCSBA

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

DISCRIMINATION AND HARASSMENT PROHIBITED BY FEDERAL LAW

Policy Code: **1710/4020/7230**

[1]The 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[2] on the basis of race, sex,[3] color, national origin, religion, disability, or age (40 or older)~~,~~ in its education program, which includes all operations, services, and activities of the school system, and will provide equal access to the Boy Scouts and other designated youth groups as required by law.[4] In the context of employment, the board prohibits discrimination based on race, sex, color, national origin, religion, disability, age (40 or older), military affiliation, genetic information, or other unlawful grounds.[5]

~~The board will not tolerate any form of unlawful discrimination or harassment in any of its~~

[1] This policy is necessary to fulfill federal legal requirements.

[2] The school system is subject to several federal laws that prohibit discrimination on the basis of membership in a protected class. These include Title IV of the Civil Rights Act of 1964 (religion), Title VI of the Civil Rights Act of 1964 (race, color, or national origin), Title IX of the Education Amendments Act of 1972 (sex), the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 (disability), and the Age Discrimination in Employment Act of 1967 (age 40 or older). In addition, the Boy Scouts of America Equal Access Act guarantees equal access to school facilities by the Boy Scouts and certain other youth groups if the school system allows other outside youth or community groups to meet in school facilities. There is some overlap of the laws just mentioned with other federal laws, such as Title VII of the Civil Rights Act of 1964, that protect against discrimination in the board's employment activities. ~~Discrimination in employment is addressed in policy 7232, Discrimination and Harassment in the Workplace.~~ Careful consideration must be given to all laws that may be applicable when evaluating reports or complaints of harassment or discrimination.

[3] Sex discrimination, including ~~and~~ sex-based~~ual~~ harassment, under Title IX ~~are~~ is subject to ~~extensive~~ federal requirements not applicable to other forms of discrimination (including sex discrimination under Title VII) and ~~are~~ is addressed more fully in ~~other policies. Sex-based discrimination is addressed in~~ policy 1720/4030/7235, Title IX Nondiscrimination on the Basis of Sex, and ~~. Sexual harassment is addressed in~~ policy 1725/4035/7236, Title IX Sex~~ual~~ Discrimination~~Harassment~~ – Prohibited Conduct and Grievance Procedures.~~Reporting Process, and in policy 1726/4036/7237, Title IX Sexual Harassment Grievance Process. Discrimination on the basis of sex (and other protected characteristics) in the board's employment practices is addressed in policy 7232, Discrimination and Harassment in the Workplace.~~

[4] 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.

[5] Various federal laws prohibit employment discrimination on the grounds listed. State law prohibits employment discrimination on the following additional grounds, though not all forms of discrimination are prohibited on every ground listed, and harassment, in particular, would not be prohibited on most grounds: sickle cell trait or hemoglobin C trait (G.S. 95-28.1); off premises smoking or other lawful use of lawful products during nonworking hours (G.S. 95-28.2); National Guard service (G.S. 127A-201 *et seq.*); membership in the North Carolina Wing-Civil Air Patrol (G.S. 143B-1033); AIDS and HIV (G.S. 130A-148(i)); subjection to wage garnishments (G.S. 110-136.8(e)); time missed to obtain a domestic violence protective order (G.S. 50B-5.5); and service as a juror (G.S. 9-32). In addition, North Carolina prohibits discrimination and retaliatory action against an employee because the employee in good faith does, or threatens to, exercise rights or participate in any investigation or proceeding with respect to a number of laws, including but not limited to: worker's compensation, OSHA, wage and hour act, National Guard reemployment rights, and bidding and awarding of state contracts. G.S. 95-241.

~~education activities or programs.~~ All forms of prohibited discrimination and harassment are subject to this policy except ~~the following, for which the board has established more specific policies.~~

- ~~for~~ ~~D~~discrimination and harassment on the basis of sex in violation of Title IX of the Education Amendments Act of 1972.[6] Such discrimination and harassment is addressed separately in policies~~y~~ 1720/4030/7235, Title IX Nondiscrimination on the Basis of Sex, and 1725/4035/7236, Title IX Sex Discrimination – Prohibited Conduct and Grievance Procedures. Allegations of discrimination or harassment in violation of Title IX will be addressed using the processes established in policy 1725/4035/7236.

  - ~~Discrimination and harassment in employment is addressed in policy 7232, Discrimination and Harassment in the Workplace.~~

~~In addition, the process set out in this policy for bringing complaints does not apply to the following.~~

- ~~Complaints of sexual harassment will be brought in accordance with the processes established in policies 1725/4035/7236, Title IX Sexual Harassment – Prohibited Conduct and Reporting Process, and 1726/4036/7237, Title IX Sexual Harassment Grievance Process.~~

- ~~Employee allegations of discrimination or harassment will be addressed using the process established in policy 7232, Discrimination and Harassment in the Workplace.~~[7]

- Though claims of discrimination or harassment on the basis of disability, as specified in policy 1730/4022/7231, Nondiscrimination on the Basis of Disabilities, are subject to this policy, ~~A~~allegations regarding or related to the identification, evaluation, educational placement, or free appropriate public education of a student under Section 504 or the IDEA may be raised through the system of procedural safeguards established under policy 1730/4022/7231~~, Nondiscrimination on the Basis of Disabilities,~~ (for Section 504 complaints) or in accordance with the procedures described in *Parents Rights & Responsibilities in Special Education*, published by the NC Department of Public Instruction (for IDEA complaints).

The board encourages all individuals who believe that they have been discriminated against or harassed in violation of this policy or who have reliable information that another person has been discriminated against or harassed in violation of this policy to report such conduct as soon as possible through the process provided in Section B below. The board takes seriously all reports of unlawful discrimination and harassment and directs school officials to take prompt action to

[6] Although there is much overlap of conduct that would constitute sex discrimination in violation of Title IX and Title VII, the standards for what constitute discrimination and harassment under those laws are not identical. Conduct that does not violate Title IX may still violate Title VII and may need to be addressed in accordance with this policy.

[7] ~~Alternately, the board may use the complaint process in this policy to address alleged violations of policy 7232, Discrimination and Harassment in the Workplace.~~

This sample policy is provided by the N.C. School Boards Association as a subscriber benefit and is not intended to be legal advice. Policies should be modified to address your specific needs and should be reviewed by your board attorney prior to adoption. © 2024 NCSBA

investigate and remedy violations of this policy. The superintendent is responsible for providing effective notice of this policy to students, parents, and employees.

~~The board encourages students, visitors, and other non-employee individuals who believe that they may have been discriminated against or harassed in violation of this policy, (including on the basis of disability, as specified in policy 1730/4022/7231, Nondiscrimination on the Basis of Disabilities), to report such conduct as soon as possible through the process provided in Section B of this policy. Employees who believe that they may have been discriminated against or harassed should report through the process provided in policy 7232, Discrimination and Harassment in the Workplace. Individuals who have witnessed or who have reliable information that another person has been subject to unlawful discrimination or harassment may report the conduct to an individual designated in Section B of this policy.~~

~~Any report made through the process established in this policy may be made anonymously, except mandatory employee reports.~~

A. PROHIBITED BEHAVIOR

Students, school system employees, volunteers, and visitors are expected to behave in a civil and respectful manner. The board expressly prohibits unlawful discrimination and harassment as defined below by students, employees, board members, volunteers, or visitors. "Visitors" includes parents and other family members and individuals from the community, as well as vendors, contractors, and other persons doing business with or performing services for the school system.

1. Discrimination

Discrimination is any act or failure to act, whether intentional or unintentional, by an employee or agent of the school system that unreasonably and unfavorably differentiates treatment of others based solely on ~~their membership in a~~ one or more of the legally-protected ~~class~~characteristics listed in the first paragraph of this policy so as to interfere with or limit their ability to participate in or benefit from the services, activities, or privileges offered by the school system's education program. ~~For purposes of this policy, the legally protected classes are race, color, national origin, religion, and disability.~~[8]

2. Harassment

~~Prohibited h~~Harassment is deliberate unwelcome conduct directed at another person or group of persons based on ~~their membership in a~~ one or more of the legally protected characteristics ~~class~~ listed in the first paragraph of this policy that creates a hostile environment or adversely affects a school system employee's employment. Harassment does not have to include intent to harm, be motivated by

[8] ~~As noted in footnote 3, discrimination on the basis of sex is addressed in other more specific board policies.~~

animus, be directed at a specific target, or involve repeated incidents. Harassment creates a hostile environment when (1) the conduct is sufficiently severe, pervasive, or persistent so as to interfere with or limit a person's ability to participate in or benefit from the services, activities, or opportunities offered by the school system or (2) the conduct is so severe or pervasive that an employee finds his or her working conditions to be abusive and a reasonable person in the employee's position would conclude that the working conditions were abusive.

Examples of behavior that may constitute harassment include, but are not limited to, acts of disrespect, intimidation, or threats, such as verbal taunts, name-calling and put-downs, ~~epithets,~~ derogatory epithets, comments, or slurs, imitating a person's disability-based limitations, mocking a person's accent, making fun of a person's religious garments, jewelry, or displays, 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 hate symbols or derogatory posters or cartoons. Harassment may occur through electronic means, such as through the Internet, email, ~~or~~ text message, or video calls.

Petty slights, annoyances, simple teasing, offhand comments, or isolated incidents (unless extremely serious) are not harassment under this policy. Legitimate age-appropriate pedagogical techniques are not considered harassment, nor are reasonable performance management actions taken to direct and control how work is performed or to monitor and give feedback on work performance. The exercise of legitimate authority administered in a professional and constructive manner is not harassment under this policy.

3. Application of the Policy

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) through the use of school system technological resources; (6) at any time or place when the individual is subject to the authority of school personnel; or (~~6~~7) at any time or place when the behavior has a direct and immediate effect on maintaining order and discipline in the schools or has consequences in the workplace contributing to a hostile work environment.

This policy will not be construed to allow school officials to punish student expression or speech based on undifferentiated fear or apprehension of a disturbance or out of a desire to avoid the discomfort and unpleasantness that may accompany an unpopular viewpoint.

This sample policy is provided by the N.C. School Boards Association as a subscriber benefit and is not intended to be legal advice. Policies should be modified to address your specific needs and should be reviewed by your board attorney prior to adoption. © 2024 NCSBA

B. REPORTING DISCRIMINATION OR HARASSMENT[9]

1. Reporting Suspected Discrimination or Harassment

~~1.~~ Any person who believes that he or she has been discriminated against or harassed in violation of this policy ~~by any student, employee, or other person under the supervision and control of the school system,~~ or any third person who knows or suspects conduct that may constitute discrimination or harassment in violation of this policy should inform a school official designated in Section C below. Reports also may be made anonymously, including through the anonymous tip line.[10]

~~1.~~2. Mandatory Reporting by School Employees

Any employee who witnessed or who has reliable information or reason to believe that another person ~~student or other individual~~ may have been discriminated against or harassed in violation of this policy must report the offense immediately to an appropriate individual designated in Section C below. Any doubt about whether particular conduct is possible discrimination or harassment under this policy or any other policy of the board must be resolved in favor of reporting the conduct.

Employees who observe an incident of harassment are expected to intervene to stop the conduct in situations in which they have supervisory control over the perpetrator and it is safe to do so. If an employee knows of an incident involving discrimination or harassment and the employee fails to report the conduct or take proper action or knowingly provides false information in regard to the incident, the employee will be subject to disciplinary action, up to~~,~~ and including~~,~~ dismissal.

~~2.~~3. Preliminary Inquiry

School officials may make a preliminary inquiry when a report is received to understand what occurred and to determine whether further action under this policy or otherwise is necessary.

C. COMPLAINTS OF DISCRIMINATION AND HARASSMENT

1. Making a Complaint of Discrimination or Harassment

~~1.~~ Any person ~~student, visitor, or other non-employee individual~~ who believes he or she is the victim of ~~unlawful~~ discrimination or harassment in violation of this policy, or any person who has witnessed or who has reliable information that

[9] The reporting process described here may be modified, as long as ample reporting channels are provided.

[10] G.S. 115C-105.51(a) requires the board of each secondary school, defined as a school serving grades six or higher, to develop and operate an anonymous tip line, in coordination with local law enforcement and social services agencies, to receive anonymous information on internal or external risks to the school population, school buildings, and school-related activities.

another person has been subject to ~~unlawful~~ discrimination or harassment ~~under~~ in violation of this policy, may request that school officials investigate and redress any such unlawful conduct by making~~make~~ a formal written complaint to any of the following persons:

a. the principal or assistant principal of the school ~~at which~~ either the alleged victim or alleged perpetrator attends ~~or is employed~~;

b. the principal, assistant principal, or site supervisor at the location where either the alleged victim or alleged perpetrator is employed;

c. the senior human resources official (or if the senior human resources official is the alleged perpetrator, the superintendent) if the alleged victim or alleged perpetrator is an employee or applicant for employment;

~~b.~~d. the Section 504 coordinator or the ADA coordinator for claims of discrimination on the basis of a disability; or

~~c.~~e. for claims of other forms of prohibited discrimination, the applicable civil rights coordinator as established in Section I of this policy.

If a written complaint alleges that the perpetrator is an employee, the school official receiving the complaint shall notify the senior human resources official without delay.

2. Addressing Complaints

~~2.~~ A written complaint alleging that a student, employee, or applicant for employment has been discriminated against or harassed will be addressed in accordance with this policy.

~~A written complaint alleging that an employee has been discriminated against or harassed will be addressed in accordance with policy 7232, Discrimination and Harassment in the Workplace.~~

A written complaint alleging that a person who is not a student, ~~or~~ employee, or applicant for employment has been discriminated against or harassed will be addressed in accordance with the general process for resolving complaints provided in policy 1742/5060, Responding to Complaints, not this policy.

~~1.~~3. Time Period for Making a Complaint

Alleged discrimination or harassment should be reported 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.

D. SCHOOL OFFICIALS' RESPONSE TO REPORTS AND COMPLAINTS OF DISCRIMINATION OR HARASSMENT[11]

1. Investigation

School officials shall investigate all formal written complaints received. Reports of discrimination or harassment that are not followed by a formal written complaint may be investigated ~~at the discretion of school officials~~when necessary to remedy violations of this policy and may be investigated even if the alleged victim does not seek action by school officials.

a. The principal or designee or site supervisor will be the investigator when the alleged perpetrator is a student or third party. The senior human resources official or designee will be the investigator when the alleged perpetrator is an employee. The superintendent may determine that individual circumstances warrant the assignment of a different investigator.

Notwithstanding the above designations, (1) if the alleged perpetrator is the senior human resources official, the superintendent will be the investigator, and (2) if the alleged perpetrator is the superintendent or a member of the board, the board chair shall direct the board attorney to investigate, unless the board chair determines that outside counsel should be engaged to investigate.

b. As applicable, the investigator shall immediately notify the Section 504, ADA, or other relevant coordinator of the complaint~~,~~ and, as appropriate, may request assistance from the coordinator in conducting the investigation.

c. If the investigator, after interviewing the complaining party and/or the alleged victim and consulting with the board attorney, determines that the allegations submitted, even if factual, do not constitute discrimination or harassment as defined in this policy or policy 1730/4022/7231, Nondiscrimination on the Basis of Disabilities, school officials shall address the matter outside the scope of this policy. Information regarding the

[11] The process for investigating and deciding complaints of discrimination described here may be modified, provided the board provides a prompt, thorough, and unbiased investigation and adjudication process ~~for reports and complaints~~. Unlike the ~~very~~ more prescriptive requirements for ~~investigation and adjudication of~~addressing complaints of sex~~ual~~ discrimination~~harassment~~ under Title IX, the Office for Civil Rights (OCR) has not established specific procedures for complaints of discrimination and harassment based on other characteristics protected by federal law. For employment discrimination complaints under Title VII, guidance from the Equal Employment Opportunity Commission states that for a complaint process to be effective, it generally should have the following features: (1) the process provides for prompt and effective investigations and corrective action; (2) the process provides adequate confidentiality protections; and (3) the process provides adequate anti-retaliation protections.

investigator's determination and ~~the process~~any further avenues for addressing the complaint will be provided to the complaining party.

d. Any investigation conducted must be impartial, prompt, and thorough. The investigator shall investigate the facts and circumstances related to the allegation(s) of discrimination or harassment and give the alleged perpetrator an opportunity to respond to the allegations.

The investigator shall consider all the evidence collected, the context in which the alleged incidents occurred, the age and maturity of the parties, and any other relevant circumstances~~,~~ and, in consultation with the board attorney as appropriate, shall determine whether the alleged act(s) constitutes a violation of this policy, policy 1730/4022/7231, Nondiscrimination on the Basis of Disabilities, and/or any other board policy or expected standard of student or employee behavior.

e. The complaint and investigation will be kept confidential to the extent possible and consistent with law. 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.

2. Investigator's Findings

a. If the investigator finds that discrimination occurred, the investigator shall take or recommend steps to address the discrimination.

b. If the investigator finds that harassment occurred ~~and created a hostile environment~~, the investigator shall assign or recommend appropriate disciplinary consequences for the perpetrator and/or take or recommend other reasonable measures to eliminate ~~the~~any hostile environment or rectify any wrongful change in employment and prevent ~~its~~ the recurrence of harassment.

c. If the investigator finds that the conduct did not violate this policy but violated policy 4329/7311, Bullying and Harassing Behavior Prohibited, or another board policy or expected standard of conduct, the investigator shall assign or recommend discipline or other action appropriate to the violation.

d. The investigator shall make a record of the evidence and findings of the investigation and the assigned or recommended discipline and/or other remedial action and provide a copy to the appropriate civil rights coordinator. If the investigator recommends a disciplinary consequence or remedial action that is beyond his or her authority, the investigator shall provide a copy of the record to the superintendent for further action.

This sample policy is provided by the N.C. School Boards Association as a subscriber benefit and is not intended to be legal advice. Policies should be modified to address your specific needs and should be reviewed by your board attorney prior to adoption. © 2024 NCSBA

e. The investigator shall inform the alleged victim and alleged perpetrator of the outcome of the investigation.

3. Steps to Reasonably End Discrimination or Harassment

a. The superintendent is responsible for taking or causing appropriate action to be taken in response to discrimination and harassment in violation of this policy. Appropriate action must include:

i. reasonable, timely, age-appropriate corrective action intended to end the discrimination or harassment and prevent it from recurring;

ii. as needed, reasonable steps to address the effects of the discrimination or harassment on the victim; and

iii. as needed, reasonable steps to protect the victim from retaliation as a result of the complaint.

b. Appropriate steps to end discrimination and harassment may include, but are not limited to, separating the parties, providing counseling for the parties, and/or taking disciplinary action against a perpetrator determined to have violated this policy. The superintendent may take non-punitive measures to end or prevent instances of discrimination or harassment regardless of whether any individual has been found responsible for the discrimination or harassment. The superintendent also may implement or direct the implementation of classroom-wide, school-wide, or school system-wide responses such as additional staff training, harassment prevention programs, and other measures reasonably calculated to end the behavior, eliminate a hostile environment and its effects if one has been created, and prevent recurrence of the behavior.[12]

c. The applicable civil rights coordinator shall encourage victims of discrimination and harassment to report any subsequent problems and may conduct follow-up inquiries as warranted to determine if there have been any new incidents of discrimination or harassment or any instances of retaliation.

E. APPEALS

1. Appeals to the Superintendent

[12] This is the enforcement standard used by ~~the Office for Civil Rights~~OCR. See *Dear Colleague Letter* (Harassment and 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.

~~1.~~ ~~If t~~The alleged victim ~~is dissatisfied with the outcome of the investigation, he or she~~ may appeal the investigator's decision to the superintendent (unless the alleged perpetrator is the superintendent, in which case the alleged victim may appeal directly to the board in accordance with the next ~~paragraph~~subsection). The appeal must be submitted in writing within three ~~school~~ business days of receiving the notice of the outcome 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 business days after receiving the appeal, unless further investigation is needed.[13]

2. Appeals to the Board

~~2.~~ Student victims or their parents may appeal the superintendent's decision to the board in accordance with subsection E.5.a of policy 1740/4010, Student and Parent Grievance Procedure. Victims who are ~~E~~employees or applicants for employment may appeal the superintendent's decision to the board in accordance with subsection E.4.a of policy 1750/7220, Grievance Procedure for Employees.

3. Discipline Rights Provided by Law

~~3.~~ Any student or employee subject to discipline for violating this policy will be accorded all rights provided by law.[14]

F. RETALIATION PROHIBITED

The board prohibits retaliation against any person for making a report or complaint of a violation of this policy, supporting someone for reporting or intending to report a violation of this policy, or participating in the investigation of a reported violation of this policy. No reprisals will be taken by the board against a complaining party or other individual who makes a good faith report of discrimination or harassment. Any person who is found to have engaged in retaliation will be subject to discipline, up to and including dismissal. Acts of retaliation may also be subject to policy 1760/7280, Prohibition Against Retaliation.

G. TRAINING AND PROGRAMS

The board directs the superintendent to establish training and other programs that are designed to prevent discrimination and harassment and to foster an environment of understanding and respect for all members of the school community. Information about the prohibited conduct and complaint procedure in this policy ~~and those in policies 1725/4035/7236, Title IX Sexual Harassment – Prohibited Conduct and Reporting Process,~~

[13] The timelines in this paragraph may be modified.

[14] For example, a student is entitled to appeal a long-term suspension or expulsion and employees have appeal rights under state law and board policy for certain employment actions. Students with disabilities may be entitled to a manifestation hearing before discipline can be imposed.

~~and 1726/4036/7237, Title IX Sexual Harassment Grievance Process,~~ must be included in the training plan.

As funds are available, the board will provide students, employees, and volunteers who have significant contact with students with additional training regarding the board's efforts to address discrimination and harassment and will create programs to address these issues. The training or programs should (1) provide examples of behavior that constitute~~s~~ discrimination or harassment; (2) teach employees to identify groups that may be the target of discrimination or harassment; 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.

See policy 1720/4030/7235, Title IX Nondiscrimination on the Basis of Sex, for information regarding additional training requirements specific to sex discrimination prohibited under Title IX of the Education Amendments Act of 1972.

H. RECORDS

The superintendent or designee shall maintain confidential records of complaints or reports of discrimination or harassment. The records must identify the names of all individuals accused of such offenses and the resolution of such complaints or reports.[15] 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 free of discrimination and harassment.[16]

I. CONTACTS FOR INQUIRIES[17]

The superintendent has appointed individuals[18] to coordinate the school system's efforts to comply with and carry out its responsibilities under federal nondiscrimination laws, including investigating any complaints communicated to school officials alleging noncompliance with those laws. Inquiries about the application of the nondiscrimination laws addressed in this policy may be referred to the designated civil rights coordinator and/or the ~~Assistant Secretary for Civil Rights in the~~ Office for Civil Rights at the U.S. Department of Education or the Equal Employment Opportunities Commission.

[15] Even unsubstantiated complaints or reports should be maintained in case a pattern of complaints of unlawful discrimination or harassment develops.

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

[17] Technically, Section 504, ADA, and Age Discrimination Act regulations are the only federal regulations relevant to this policy 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~~OCR recommends the practice of designating one or more employees to handle *all* discrimination claims.

[18] This policy designates separate coordinators, but instead one individual may be appointed to coordinate all civil rights compliance.

This sample policy is provided by the N.C. School Boards Association as a subscriber benefit and is not intended to be legal advice. Policies should be modified to address your specific needs and should be reviewed by your board attorney prior to adoption. © 2024 NCSBA

The contact information for the designated civil rights coordinators is as follows.

a. The Section 504 Coordinator is:[19] **[fill in before adopting this policy]**
Office Address: **[fill in before adopting this policy]**
Email Address:[20] **[fill in before adopting this policy]**
Phone Number:[21] **[fill in before adopting this policy]**

b. The ADA Coordinator is: **[fill in before adopting this policy]**
Office Address: **[fill in before adopting this policy]**
Email Address: **[fill in before adopting this policy]**
Phone Number: **[fill in before adopting this policy]**

c. The Age Discrimination Coordinator is: **[fill in before adopting this policy]**
Office Address: **[fill in before adopting this policy]**
Email Address: **[fill in before adopting this policy]**
Phone Number: **[fill in before adopting this policy]**

d. The Coordinator for Other Non-discrimination Laws is: **[fill in before adopting this policy]**
Office Address: **[fill in before adopting this policy]**
Email Address: **[fill in before adopting this policy]**
Phone Number: **[fill in before adopting this policy]**

~~The contact information for the U.S. Department of Education Office for Civil Rights with jurisdiction over North Carolina is as follows.[22]~~

~~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~~

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; Boy Scouts of America Equal Access Act, 20 U.S.C. 7905, 34 C.F.R. pt. 108; Individuals with Disabilities Education Act, 20 U.S.C. 1400 *et seq.*; Rehabilitation Act of 1973, 29 U.S.C. 705(20), 794, 34 C.F.R. pt. 104; Title II of the Genetic Information Nondiscrimination Act of 2008; 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

[19] For each of the coordinators, the individual's name and/or position may be listed.

[20] For each of the coordinators, a generic email address may be preferred over one tied to a specific individual to ensure messages are directed to the correct person when there is turnover in the position.

[21] For each of the coordinators, the phone number for a central switchboard may be preferable over one tied to a specific individual to ensure calls are correctly routed when there is turnover in the position.

[22] ~~The contact information for the Office for Civil Rights is not required and may be omitted from this policy and from publication on the school system's website and handbooks.~~

This sample policy is provided by the N.C. School Boards Association as a subscriber benefit and is not intended to be legal advice. Policies should be modified to address your specific needs and should be reviewed by your board attorney prior to adoption. © 2024 NCSBA

Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.*, 29 C.F.R. pt. 1604; Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. 4301 *et seq.*; *Racial Incidents and Harassment Against Students at Educational Institutions; Investigative Guidance*, U.S. Department of Education, Office for Civil Rights (1994), available at https://www2.ed.gov/about/offices/list/ocr/docs/race394.html; ~~*Notice of Non-Discrimination*, U.S. Department of Education, Office for Civil Rights (2010);~~ *Dear Colleague Letter* (Harassment and 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; *Enforcement Guidance on Harassment in the Workplace*, U.S. Equal Employment Opportunity Commission (April 2024), available at https://www.eeoc.gov/laws/guidance/enforcement-guidance-harassment-workplace?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=; G.S. 115C-407.15 through -407.18; 126-16; 16 N.C.A.C. 6E .0107; *Parent Rights & Responsibilities in Special Education*, (N.C. Dept. of Public Instruction, Exceptional Children Division), available at https://www.dpi.nc.gov/districts-schools/classroom-resources/exceptional-children/parent-resources#dispute-resolution~~https://ec.ncpublicschools.gov/parent-resources/parents-rights-handbook~~

Cross References: Title IX Nondiscrimination on the Basis of Sex (policy 1720/4030/7235), Title IX Sex~~ual~~ Discrimination~~Harassment~~ – Prohibited Conduct and ~~Reporting Process~~Grievance Procedures (policy 1725/4035/7236), ~~Title IX Sexual Harassment Grievance Process (policy 1726/4036/7237),~~ Nondiscrimination on the Basis of Disabilities (policy 1730/4022/7231), Student and Parent Grievance Procedure (policy 1740/4010), Responding to Complaints (policy 1742/5060), Grievance Procedure for Employees (policy 1750/7220), Prohibition Against Retaliation (policy 1760/7280), Hearings Before the Board (policy 2500), Staff-Student Relations (policy 4040/7310), School Plan for Management of Student Behavior (policy 4302), Bullying and Harassing Behavior Prohibited (policy 4329/7311), Visitors to the Schools (policy 5020), Community Use of Facilities (policy 5030)~~, Discrimination and Harassment in the Workplace (policy 7232)~~

Issued: July 28, 2020

Revised: September 30, 2020; March 31, 2021; July 12, 2024

© 2024 NCSBA

TITLE IX NONDISCRIMINATION ON THE BASIS OF SEX

Policy Code: **1720/4030/7235**

[1]The school system does not discriminate on the basis of sex (including on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions,[2] ~~childbirth,~~ sexual orientation, ~~and~~or gender identity[3])[4] and prohibits sex discrimination, including sex-based harassment, in ~~its~~the education program~~s or activities~~, a~~s~~nd ~~is~~ required by Title IX of the Education Amendments Act of 1972 and federal regulations. Throughout this policy, the term "education program" refers to all operations, services, and activities of the school system, including admissions and employment. The board also prohibits school system employees from implementing any policy, practice, or procedure, or from taking any employment action, on the basis of sex: (1) concerning the current, potential, or past parental, family, or marital status of a student, employee, or applicant for employment, which treats persons differently; or (2) that is based upon whether an employee or applicant for employment is the head of household or principal wage earner in such employee's or applicant's family unit.[5] ~~to not discriminate in such a manner. This requirement extends to admission and employment. The board will not tolerate discrimination on the basis of sex, including any form of sexual harassment as that term is defined under Title IX, in any program or activity of the school system.~~[6]

A. INQUIRIES ABOUT TITLE IX

The board has designated a Title IX coordinator to coordinate its efforts to comply with its responsibilities under Title IX and its implementing regulations. Inquiries about the application of Title IX and its implementing federal regulations may be referred to the Title

---

[1] The board is required to give notice of the information in this policy to students and their parents or guardians, employees, and applicants. As noted in subsequent footnotes, some of the information must also be posted on the school system's website and included in student and employee handbooks.

[2] 34 C.F.R. 106.2 defines "pregnancy or related conditions" as: (1) pregnancy, childbirth, termination of pregnancy, or lactation; (2) medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or (3) recovery from pregnancy, childbirth, termination of pregnancy, lactation, or their related medical conditions.

[3] ~~In *Grimm v. Gloucester County School Board*, 972 F.3d 586 (4th Cir. 2020), the U.S. Court of Appeals for the Fourth Circuit held that a school board's policy requiring students to use the restroom consistent with their "biological gender" violated Title IX. The Court also found a violation of Title IX where the school system refused to update a transgender student's school records to list him as male after he received an amended birth certificate from the state doing the same.~~

[4] See 34 C.F.R. 106.10.~~U.S. Department of Education (DOE) regulations include discrimination based on pregnancy or childbirth as forms of discrimination on the basis of sex prohibited under Title IX. See 34 C.F.R. 106.40, 106.57. DOE's Office for Civil Rights has interpreted Title IX's prohibition against discrimination on the basis of sex to include discrimination based on sexual orientation and gender identity. See *Enforcement of Title IX of the Education Amendments of 1972 with Respect to Discrimination Based on Sexual Orientation and Gender Identity in Light of Bostock v. Clayton County*, U.S. Department of Education, Office for Civil Rights (2021).~~

[5] See 34 C.F.R. 106.40(a), 106.57(a).

[6] ~~The first two sentences of this paragraph, along with the statement about inquiries in the second paragraph of the policy constitute the board's "policy" on nondiscrimination on the basis of sex that is required by 34 C.F.R. 106.8(b). That information, along with certain other information in this policy, must be posted on the school system's website and included in student and employee handbooks.~~

This sample policy is provided by the N.C. School Boards Association as a subscriber benefit and is not intended to be legal advice. Policies should be modified to address your specific needs and should be reviewed by your board attorney prior to adoption. © 2024 NCSBA

IX coordinator and/or ~~the Assistant Secretary for Civil Rights in~~ the Office for Civil Rights at the U.S. Department of Education.[7]

The contact information[8] for the Title IX coordinator is as follows.

The Title IX Coordinator is:[9]
Office Address: **[fill in before adopting this policy]**
Email Address:[10] **[fill in before adopting this policy]**
Phone Number:[11] **[fill in before adopting this policy]**

~~The contact information for the Office for Civil Rights with jurisdiction over North Carolina is as follows.[12]~~

~~4000 Maryland Ave, SW~~
~~Washington, DC 20202-1475~~
~~Telephone: 202-453-6020 TDD: 800-877-8339~~
~~FAX: 202-453-6021 Email:~~

B. RESOLUTION OF GRIEVANCES[13]

The board has established grievance procedures that provide for the prompt and equitable resolution of complaints alleging discrimination on the basis of sex ~~(other than sexual harassment)~~ in ~~a program or activity of the school system~~the education program in violation of Title IX ~~occurring against a person in the United States~~. ~~Students and parents or guardians~~Individuals may report such alleged sex discrimination through the ~~processes~~ procedures provided in policy 1725/4035/7236, Title IX Sex Discrimination – Prohibited Conduct and Grievance Procedures. ~~1740/4010, Student and Parent Grievance Procedure. Employees and applicants may use the process provided in policy 1750/7220, Grievance Procedure for Employees.~~

~~The board has adopted additional means for reporting sexual harassment specifically. Any person may report alleged sexual harassment in the education program or activities of the~~

[7] ~~This statement must be posted on the school system's website and included in student and employee handbooks. See 34 C.F.R. 106.8(b)(1).~~

[8] ~~The contact information for the Title IX coordinator must also be posted on the school system's website and included in student and employee handbooks. It must be kept up to date.~~

[9] The individual's name and/or position may be listed.

[10] A generic email address for the Title IX coordinator may be preferred over one tied to a specific individual to ensure messages are directed to the correct person when there is turnover in the position.

[11] The phone number for a central switchboard may be preferable over one tied to a specific individual to ensure calls are correctly routed when there is turnover in the position.

[12] ~~The contact information for the Office for Civil Rights is not required and may be omitted from this policy and from publication on the school system's website and handbooks.~~

[13] ~~The board is required to have a grievance "procedure" for complaints alleging sex discrimination and a separate grievance "process" that complies with 34 C.F.R. 106.45 for formal complaints of sexual harassment as defined in 34 C.F.R. 106.30.~~

This sample policy is provided by the N.C. School Boards Association as a subscriber benefit and is not intended to be legal advice. Policies should be modified to address your specific needs and should be reviewed by your board attorney prior to adoption. © 2024 NCSBA

~~school system occurring against a person in the United States in accordance with policy 1725/4035/7236, Title IX Sexual Harassment – Prohibited Conduct and Reporting Process. Those who believe they have been sexually harassed may also file a formal complaint of sexual harassment in accordance with policy 1726/4036/7237, Title IX Sexual Harassment Grievance Process, to initiate a prompt and equitable resolution through a formal investigation and adjudication or through an informal resolution process.[14] The board encourages students, employees, and applicants to first make a report of sexual harassment in accordance with policy 1725/4035/7236 before filing a formal complaint.~~

The Title IX coordinator shall monitor the education program for barriers to reporting information about conduct that reasonably may constitute sex discrimination under Title IX and its regulations and take steps reasonably calculated to address any such barriers.[15]

C. RETALIATION PROHIBITED

Retaliation against any person for the exercise of rights under Title IX or to interfere with those rights in any way is strictly prohibited and will subject the perpetrator to disciplinary action. The identity of any person who has made a report or complaint of sex discrimination ~~or sexual harassment~~ or who is the alleged perpetrator of sex discrimination ~~or sexual harassment~~ will be confidential unless otherwise required or permitted by law. Individuals may report alleged retaliation through the processes provided in policy 1725/4035/7236, Title IX Sex Discrimination – Prohibited Conduct and Grievance Procedures. ~~Complaints alleging retaliation may be filed according to the grievance processes established in policies 1740/4010 and 1750/7220. Acts of retaliation may also be subject to policy 1760/7280, Prohibition Against Retaliation.~~

D. NOTICE OF ~~THE~~ BOARD'S ~~POLICY OF~~ NONDISCRIMINATION BASED ON SEX

The superintendent is responsible for providing a notice of nondiscrimination ~~the board's nondiscrimination policy~~ to students and their parents or legal guardians, employees, and applicants for admission or employment. ~~The superintendent shall also ensure that each principal or site supervisor makes a copy of this policy available to those persons. In addition, the following must be posted on the school system website and included in all student and employee handbooks~~The notice of nondiscrimination will contain the following information: (1) a statement that the school system does not discriminate ~~of the board's policy of nondiscrimination~~ on the basis of sex and prohibits sex discrimination in the education program, including in admission and employment, as required by Title IX and its regulations; (2) contact information for the Title IX coordinator; and (3) a statement that Title IX inquiries may be referred to the Title IX coordinator, ~~or to~~ the Office for Civil Rights, or both;~~Assistant Secretary for Civil Rights~~ (4) how to locate this policy and the grievance procedures for sex discrimination complaints (1725/4035/7236, Title IX Sex Discrimination – Prohibited Conduct and Grievance Procedures); and (5) how to report

~~[14] Omit the reference to an informal process if the board does not provide an informal process for resolving formal complaints of sexual harassment.~~

[15] See 34 C.F.R. 106.44(b).

This sample policy is provided by the N.C. School Boards Association as a subscriber benefit and is not intended to be legal advice. Policies should be modified to address your specific needs and should be reviewed by your board attorney prior to adoption. © 2024 NCSBA

information about conduct that may constitute sex discrimination and how to make a complaint of sex discrimination.[16] All the information in the notice of nondiscrimination will be prominently displayed on the school system website and included in any school system handbook, catalog, announcement, bulletin, and application form made available to students, parents or guardians, employees, or applicants for admission or employment, unless the format or size of the publication makes it necessary to instead (1) include a statement that the school system prohibits sex discrimination in the education program and that individuals may report concerns or questions to the Title IX coordinator and (2) provide the location of the notice of nondiscrimination on the school system website.

E. TRAINING

In accordance with the requirements of Title IX, all school system employees must be trained on: (1) the school system's obligation to address sex discrimination in the education program; (2) the scope of conduct that constitutes sex discrimination, including the definition of sex-based harassment; and (3) all applicable notification and information requirements under 34 C.F.R. 106.40(b)(2) and 106.44.

In addition to the training applicable to all employees, employees with certain Title IX roles must undergo additional Title IX trainings specific to their responsibilities. All individuals who serve as investigators or decisionmakers for sex discrimination complaints or other persons who are responsible for implementing the sex discrimination grievance procedures or have the authority to modify or terminate supportive measures must be trained as required by 34 C.F.R. 106.8(d)(2). Facilitators of the informal resolution process for sex discrimination complaints must be trained on the rules and practices associated with the informal resolution process and on how to serve impartially, including by avoiding conflicts of interest and bias. The Title IX coordinator and any designees must receive the training provided to the investigators and to the informal resolution process facilitators as well as training on their specific responsibilities, on the school system's recordkeeping system and related requirements, and on any other topics as necessary to coordinate the school system's Title IX compliance.

Legal References: Title IX of the Education Amendments Act of 1972, 20 U.S.C. 1681 *et seq.*; 34 C.F.R. Part 106~~; *Grimm v. Gloucester County School Board*, 972 F.3d 586 (4th Cir. 2020)~~

Cross References: Title IX Sex~~ual Harassment~~ Discrimination – Prohibited Conduct and Grievance Procedures~~Reporting Process~~ (policy 1725/4035/7236)~~, Title IX Sexual Harassment Grievance Process (policy 1726/4036/7237), Student and Parent Grievance Procedure (policy 1740/4010), Responding to Complaints (policy 1742/5060), Grievance Procedure for Employees (policy 1750/7220), Prohibition Against Retaliation (policy 1760/7280), Staff-Student Relations (policy 4040/7310)~~

~~Other Resources: *Enforcement of Title IX of the Education Amendments of 1972 with Respect to Discrimination Based on Sexual Orientation and Gender Identity in Light of Bostock v. Clayton*~~

[16] The posting of this information is required under 34 C.F.R. 106.8(b)(2)(i).

This sample policy is provided by the N.C. School Boards Association as a subscriber benefit and is not intended to be legal advice. Policies should be modified to address your specific needs and should be reviewed by your board attorney prior to adoption. © 2024 NCSBA

~~*County*, U.S. Department of Education, Office for Civil Rights (2021)~~

Issued: July 28, 2020

Revised: September 30, 2021; July 12, 2024

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

PREGNANT AND PARENTING STUDENTS AND EMPLOYEES

Policy Code: **4023/7233**

A. STUDENTS[1]

1. Nondiscrimination[2]

The board will provide all pregnant and parenting students with the same educational instruction as other students or its equivalent. ~~Pregnant and parenting s~~Students will not be discriminated against or excluded from school or from any program, class, or extracurricular activity based on the students' current, potential, or past pregnancy or related conditions or because they are ~~pregnant or~~ parenting students. For purposes of this policy, "pregnancy or related conditions" means pregnancy, childbirth, termination of pregnancy, or lactation; medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

2. General Requirements[3]

School administrators shall provide assistance and support to encourage pregnant and parenting students to remain enrolled in school and graduate. In accordance with state law, school system officials shall use, as needed, supplemental funds from the At-Risk Student Services allotment to support programs for pregnant and parenting students. Students who are pregnant or parenting will be given excused absences from school for pregnancy and related conditions for the length of time the students' physicians find medically necessary and for absences due to the illness or medical appointment during school hours of a child of whom the student is the custodial parent. Homework and make-up work will be made available to pregnant and parenting students to ensure that they have the opportunity to keep current with assignments and avoid losing course credit because of their absence from school. To the extent necessary, a homebound teacher will be assigned.

3. Providing Title IX Coordinator Contact and Other Information[4]

When a student or student's parent or guardian informs any school system employee of the student's pregnancy or related conditions, the employee shall

[1] ~~The information in this section is required by G.S. 115C-375.5.~~

[2] The school system does not engage in prohibited discrimination when it allows a student, based on pregnancy or related conditions, to voluntarily participate in a separate portion of its education program or activity provided the school system ensures that the separate portion is comparable to that offered to students who are not pregnant and do not have related conditions.

[3] The information in this section is required by G.S. 115C-375.5.

[4] See 34 C.F.R. 106.40(b)(2).

This sample policy is provided by the N.C. School Boards Association as a subscriber benefit and is not intended to be legal advice. Policies should be modified to address your specific needs and should be reviewed by your board attorney prior to adoption. © 2024 NCSBA

promptly provide that person with the Title IX coordinator's contact information and inform that person that the Title IX coordinator can coordinate specific actions to prevent sex discrimination and ensure the student's equal access to the school system's education program or activity. The employee does not need to provide such information if the employee reasonably believes that the Title IX coordinator has already been notified of the student's pregnancy or related conditions.

4. Specific Actions to Prevent Discrimination and Ensure Equal Access[5]

Once a student or student's parent or guardian notifies the Title IX coordinator of the student's pregnancy or related conditions, the Title IX coordinator must coordinate the following specific actions designed to promptly and effectively prevent sex discrimination and ensure access to the school system's education program or activity:

a. inform the student (and, if applicable, the student's parent or guardian) of the school system's Title IX obligations under 34 C.F.R. 106.40(b)(1) through (5) and 34 C.F.R. 106.44(j) and provide the school system's notice of nondiscrimination on the basis of sex (see policy 1720/4030/7235, Title IX Nondiscrimination on the Basis of Sex);

b. consult with the student in order to offer, based on the student's individualized needs, reasonable modifications[6] to school system policies, practices, or procedures, as necessary, and implement each reasonable modification offered by the school system and accepted by the student;

c. allow the student to voluntarily access any separate and comparable portion of the school system's education program or activity provided that the separate portion is comparable to that offered to students who are not pregnant and who do not have related conditions;

d. allow the student to voluntarily take a leave of absence from the school system education program or activity to cover, at a minimum, the period of time deemed medically necessary by the student's licensed healthcare provider and when the student returns following the voluntary absence, reinstate the student to the academic status and, as practicable, to the

[5] See 34 C.F.R. 106. 40(b)(3).

[6] Reasonable modifications to school system policies, practices, or procedures are modifications that would prevent sex discrimination and ensure equal access to the education program or activity but that would not fundamentally alter the nature of the education program or activity. Reasonable modifications may include breaks during class to express breast milk, breastfeed, or attend to health needs associated with pregnancy or related conditions, including eating, drinking, or using the restroom; intermittent absences to attend medical appointments; access to online or homebound education; changes in schedule or course sequence; extensions of time for coursework and rescheduling of tests and examinations; allowing a student to sit or stand, or carry or keep water nearby; counseling; changes in physical space or supplies (for example, access to a larger desk or a footrest); elevator access; and other changes to policies, practices, or procedures.

This sample policy is provided by the N.C. School Boards Association as a subscriber benefit and is not intended to be legal advice. Policies should be modified to address your specific needs and should be reviewed by your board attorney prior to adoption. © 2024 NCSBA

extracurricular status that the student held when the absence began; and

e. ensure that the student can access, as needed, a lactation space, other than a bathroom, that is clean, shielded from view, free from intrusion by others, and may be used for expressing breast milk or breastfeeding.

Supporting documentation[7] or certifications[8] will not be required except as permitted by law.

B. EMPLOYEES

The board prohibits discrimination in employment on the basis of current, potential, or past pregnancy~~, childbirth,~~ or related ~~medical~~ conditions.[9] Pregnancy or related conditions will be treated as any other temporary medical conditions for all job-related purposes.[10] ~~(See also policy 7232, Discrimination and Harassment in the Workplace.) Pregnant and nursing employees will be provided accommodations as required by law.~~

1. Reasonable Accommodations for Pregnancy-Related Limitations[11]

[7] The school system may not require supporting documentation under subsection B.4 unless the documentation is necessary and reasonable for the school system to determine the reasonable modifications to make or whether to take additional specific actions. Examples of situations when requiring supporting documentation is not necessary and reasonable include, but are not limited to, when the student's need for a specific action is obvious, such as when a student who is pregnant needs a bigger uniform; when the student has previously provided the school system with sufficient supporting documentation; when the reasonable modification because of pregnancy or related conditions at issue is allowing a student to carry or keep water nearby and drink, use a bigger desk, sit or stand, or take breaks to eat, drink, or use the restroom; when the student has lactation needs; or when the specific action is available to students for reasons other than pregnancy or related conditions without submitting supporting documentation. See 34 C.F.R. 106.40(b)(3)(vi).

[8] The school system may not require a student who is pregnant or has related conditions to provide certification from a healthcare provider or any other person that the student is physically able to participate in the school system's class, program, or extracurricular activity unless (1) the certified level of physical ability or health is necessary for participation in the class, program, or extracurricular activity; (2) the school system requires such certification of all students participating in the class, program, or extracurricular activity; and (3) the information obtained is not used as a basis for sex discrimination. See 34 C.F.R. 106.40(b)(5).

[9] The Pregnancy Discrimination Act of 1978 expanded the reach of Title VII's language prohibiting discrimination "on the basis of sex" and "because of sex" to include discrimination on the basis of pregnancy, childbirth, or related medical conditions. The Title IX regulations prohibit discrimination against an employee or applicant on the basis of current, potential, or past pregnancy or related conditions. See 34 C.F.R. 106.57(b).

[10] Job-related purposes include: commencement, duration, and extensions of leave; payment of disability income; accrual of seniority and any other benefit or service; reinstatement; and under any fringe benefit offered to employees by virtue of employment. See 34 C.F.R. 106.57(c).

[11] The Pregnant Workers Fairness Act makes it unlawful for the school system to: (1) fail to make reasonable accommodations to a qualified employee's known limitations related to pregnancy, childbirth, or related medical conditions, unless the school system can demonstrate that the accommodation would impose an undue hardship on the operation of the school system; (2) require a qualified employee affected by pregnancy, childbirth, or related medical conditions to accept an accommodation other than a reasonable accommodation arrived at through the interactive process; (3) deny employment opportunities to a qualified employee based on the need to make reasonable accommodations; (4) require a qualified employee to take leave, whether paid or unpaid, if another reasonable accommodation can be provided; or (5) take adverse action in terms, conditions, or privileges of

In accordance with the Pregnant Workers Fairness Act,[12] qualifying applicants and employees with known limitations related to pregnancy, childbirth, or related medical conditions will be provided reasonable accommodations, unless the accommodation demonstrably would impose an undue hardship on the operation of the school system. No adverse action will be taken against an applicant or employee for requesting or using a reasonable accommodation.

The superintendent shall ensure that appropriate procedures are in place to implement this requirement.

2. Break Time to Express Milk[13, 14]

~~For one year a~~After the birth of an employee's child, the employee will be provided reasonable break times to express breast milk for the child or breastfeed as needed~~each time the employee has need to express milk~~.[15] The principal at each school and the site supervisor at other school system buildings and facilities will designate a place, other than a bathroom, that the employee may use to express milk or breastfeed. Any designated place must be functional as a space for expressing milk or breastfeeding, shielded from view, and free from intrusion from others.

Legal References: Consolidated Appropriations Act, P.L. 117-328, div. II - Pregnant Workers Fairness Act, 29 C.F.R. pt. 1636; Fair Labor Standards Act, as amended, 29 U.S.C. 201, *et seq.*; 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 Act of 1972, 20 U.S.C. 1681 *et seq.*, 34 C.F.R. pt. 106; G.S. 115C-375.5

Cross References: Title IX Nondiscrimination on the Basis of Sex (policy 1720/4030/7235), Equal Educational Opportunities (policy 4001), Attendance (policy 4400)~~, Discrimination and Harassment in the Workplace (policy 7232)~~

Issued: August 1, 2007

Revised: December 1, 2009; September 30, 2020; March 31, 2023; July 12, 2024

employment against a qualified employee because the employee is requesting or using a reasonable accommodation.

[12] See the Consolidated Appropriations Act, P.L. 117-328, div. II - Pregnant Workers Fairness Act, 29 C.F.R. pt. 1636.

[13] The information in this subsection is required by 29 U.S.C. 218d.

[14] Break times to express milk are compensable time if employees otherwise are permitted to take short bathroom or other rest breaks that are considered paid time and the employee uses that break time to pump milk.

[15] The Fair Labor Standards Act requires that employees be provided time to express breast milk for one year after the child's birth. The Title IX regulations, however, say that employees must be provided time to express breast milk or breastfeed as needed.

This sample policy is provided by the N.C. School Boards Association as a subscriber benefit and is not intended to be legal advice. Policies should be modified to address your specific needs and should be reviewed by your board attorney prior to adoption. © 2024 NCSBA

BULLYING AND HARASSING BEHAVIOR PROHIBITED

Policy Code: **4329/7311**

[1]The board is committed to providing a safe, inviting, and civil educational environment for all students, employees, and other members of the school community. The board expects all students, employees, volunteers, and visitors to behave in a manner consistent with that goal. The board recognizes that bullying and harassing behavior creates an atmosphere of intimidation and fear, detracts from the safe environment necessary for student learning, and may lead to more serious misconduct or to violence. Accordingly, the board prohibits all forms of bullying and harassing behavior, including encouragement of such behavior, by students, employees, volunteers, and visitors. "Visitors" includes parents and other family members and individuals from the community, as well as vendors, contractors, and other persons doing business with or performing services for the school system.

This policy prohibits bullying and harassing behavior, or the encouragement of bullying or harassing 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) through the use of school system technological resources; (6) at any time or place when the student, employee, or other person is subject to the authority of school personnel; or (~~6~~7) at any time or place when the bullying has a direct and immediate effect on maintaining order and discipline in the schools.

This policy is not intended to prohibit expression of religious, philosophical, social, or political views, provided that the expression does not substantially disrupt the educational environment.[2]

A. RELATIONSHIP TO OTHER POLICIES

This policy applies to bullying and harassing behavior that is not otherwise prohibited by

[1] This policy is intended to meet the requirements of G.S. 115C-407.16, known as "state bullying and harassment statute." Conduct that violates this policy may also violate other board policies that prohibit harassment based on certain personal characteristics protected from discrimination by federal law, including sex-based~~ual~~ harassment and harassment based on race, color, national origin, disability, or religion. This policy does not provide a legally sufficient response to discriminatory harassment under federal law. Therefore, it is critical that school officials carefully consider under which board policy an incident of bullying or harassment should be addressed. The assistance of legal counsel should be sought if there is any uncertainty about the correct policy to follow.

[2] G.S. 115C-407.18(a) prohibits suppression of student expression or speech based on an undifferentiated fear or apprehension of disturbance or out of a desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint. *See also Tinker v. Des Moines Independent Community School District, 393* U.S. 503 (1969). As explained by the Supreme Court in the *Tinker* case, school officials may censor student speech and expression only when it creates or is reasonably likely to create a substantial disruption to the educational environment. Student conduct that constitutes bullying or harassing behavior under this policy is likely to be inherently disruptive. *See Kowalski v. Berkeley County Schools*, 652 F.3d 565 (4th Cir. 2011) (upholding school discipline against free speech challenge because student's off campus website created to bully a peer created substantial disorder and disruption in the school and, if left unpunished, could have resulted in a snowballing effect). School officials are encouraged to consult the board attorney for guidance when bullying or harassing behavior of a student is speech-related to avoid inadvertently violating the student's free speech rights.

This sample policy is provided by the N.C. School Boards Association as a subscriber benefit and is not intended to be legal advice. Policies should be modified to address your specific needs and should be reviewed by your board attorney prior to adoption. © 2024 NCSBA

the following board policies that address discriminatory harassment in violation of federal law:[3]

- Discrimination and Harassment Prohibited by Federal Law, policy 1710/4020/7230 (prohibiting harassment based on federally protected characteristics, such as race, color, national origin, sex, disability, age (40 or older)~~or~~, religion, military affiliation, or genetic information)

- Title IX Sex~~ual~~ Discrimination~~Harassment~~ – Prohibited Conduct and ~~Reporting Process~~Grievance Procedures, policy 1725/4035/7236 (prohibiting sex-based~~ual~~ harassment)

- ~~Discrimination and Harassment in the Workplace, policy 7232 (prohibiting harassment of employees and applicants based on race, color, national origin, sex, age, disability, military affiliation, or genetic information)~~

Individuals who wish to report bullying or harassing behavior that is based on sex, race, color, national origin, disability, religion, or other personal characteristic addressed by the policies above should refer to and follow the reporting processes provided in those policies.

Conduct that may constitute discriminatory harassment under federal law must be addressed first in accordance with the requirements of the applicable policy(ies) listed above. If subsequently, the conduct is determined not to rise to the level of discriminatory harassment prohibited by those policies, the conduct may be addressed under this policy.[4] Conduct that does not rise to the level of bullying or harassing behavior as defined and prohibited in this policy may nevertheless violate other board policies or school rules.[5]

B. CONDUCT THAT IS CONSIDERED BULLYING OR HARASSING BEHAVIOR[6]

1. Bullying is deliberate conduct intended to harm another person or group of persons. It is characterized by repeated unwanted aggressive behavior that typically involves a real or perceived imbalance of power, such as a difference in physical size, strength, social standing, intellectual ability, or authority. It may consist of either physical, verbal, or nonverbal behavior. Cyberbullying is a form of bullying that is carried out using electronic communication media, such as words, action, or

[3] The cited policies direct school officials to investigate and respond to discriminatory harassment in a manner that is designed to meet the board's legal obligations under federal law. Sex-based~~ual~~ harassment that meets the definition under Title IX is of particular concern, as federal law mandates a specific response to reports and complaints of sex-based~~ual~~ harassment ~~and requires the school system to make a specialized grievance process available for resolving formal complaints~~.

[4] Not all conduct that may be considered "harassment" will violate federal law. As is the case under this policy, the harassment must cross a certain threshold of severity and/or frequency to be unlawful. Harassment that is not unlawful may nevertheless violate this policy.

[5] For example, the conduct may violate the board's policy on Integrity and Civility, policy 4310.

[6] State law does describe or provide examples of the range of behaviors that could potentially be "bullying," "harassing behavior," or "bullying or harassing behavior." The descriptions provided here may be modified.

This sample policy is provided by the N.C. School Boards Association as a subscriber benefit and is not intended to be legal advice. Policies should be modified to address your specific needs and should be reviewed by your board attorney prior to adoption. © 2024 NCSBA

conduct conveyed through email, instant messages, text messages, tweets, blogs, photo or video sharing, chat rooms, or websites, and may exist in the absence of a power imbalance typical of other forms of bullying.[7]

2. Harassing behavior is conduct that is intimidating, hostile, or abusive, or is unwelcome conduct of a sexual nature. Harassing behavior may violate this policy even if no harm is intended to the target and no power imbalance is evident.

3. Bullying or harassing behavior includes conduct that is, or reasonably appears to be, motivated by actual or perceived differentiating personal characteristics, or by a person's association with someone who has or is perceived to have a differentiating personal characteristic. Differentiating personal characteristics include, but are not limited to race, color, religion, ancestry, national origin, gender, socioeconomic status, academic status, gender identity, physical appearance, sexual orientation, or mental, physical, developmental, or sensory disability.[8] Bullying and harassing behavior can violate this policy regardless of a student's motivation.

4. Examples of behavior that may constitute bullying or harassing behavior are repeated acts of disrespect, intimidation, or threats, such as verbal taunts, name-calling and put-downs, epithets, derogatory or lewd comments, spreading rumors, extortion of money or possessions, implied or stated threats, assault, offensive touching, physical interference with normal work or movement, visual insults, such as derogatory posters or cartoons, and sharing intimate photos or video of a person or sharing photos or videos that may subject a person to ridicule or insult.

5. Other behaviors that may constitute bullying or harassing behavior under this policy are deliberate, unwelcome touching that has sexual connotations or is of a sexual nature, pressure for sexual activity, offensive sexual flirtations, advances or propositions, verbal remarks about an individual's body, sexually degrading words used toward an individual or to describe an individual, or the display of sexually suggestive drawings, objects, pictures, or written materials.

6. These examples are not exhaustive but are intended to illustrate the wide range of behavior that may constitute bullying and harassing behavior.

---

[7] The characterization of bullying as unwanted aggressive behavior that typically occurs in the presence of a power imbalance is not part of the state definition of bullying and harassing behavior under G.S. 115C-407.15, but such power imbalance is generally considered a hallmark of bullying. See, e.g., https://www.stopbullying.gov/bullying/what-is-bullying~~the definition used by the U.S. Department of Health and Human Services, available at https://www.hhs.gov/ash/oah/adolescent-development/healthy-relationships/bullying/index.html~~. Cyberbullying is not defined in the statute, but "electronic communications" are included as conduct that could constitute "bullying or harassing behavior" and boards are required to annually provide certain persons with the LEA's "policy prohibiting bullying and harassing behavior, including cyber-bullying…." G.S. 115C-407.15(a) and -407.17(d).

[8] Bullying and harassing behavior based on the enumerated personal characteristics is specified in G.S. 115C-407.15(a).

This sample policy is provided by the N.C. School Boards Association as a subscriber benefit and is not intended to be legal advice. Policies should be modified to address your specific needs and should be reviewed by your board attorney prior to adoption. © 2024 NCSBA

7. Conduct such as the following is not considered bullying or harassing behavior: legitimate pedagogical techniques, the exercise of legitimate authority, and academic or work performance monitoring and evaluation.

C. WHEN BULLYING OR HARASSING BEHAVIOR VIOLATES THIS POLICY

Not all conduct that may be described as bullying or harassing behavior violates this policy.[9] Bullying or harassing behavior violates this policy when any pattern of repeated gestures or written, electronic, or verbal communications, or any physical act or threatening communication:

1. places a student, an employee, or other person in actual and reasonable fear of harm to their person or 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.

   "Hostile environment" means that the victim subjectively views the conduct as bullying or harassing behavior and the conduct is objectively severe or pervasive enough that a reasonable person would agree that it is bullying or harassing behavior.

The definition of bullying and harassing behavior in this section is intended to be no less inclusive than the definition of bullying and harassing behavior in G.S. 115C-407.15.

Bullying or harassing behavior based on sex, race, color, national origin, disability, ~~or~~ religion, age (40 or older), military affiliation, or genetic information may also constitute discriminatory harassment in violation of federal law and other board policies as described in Section A, above.

D. REPORTING BULLYING AND HARASSING BEHAVIOR

1. Reports by Students and/or Parents and Guardians

   a. The board encourages students or parents/guardians of students who have been the victim of or who have witnessed bullying or harassing behavior in violation of this policy to immediately report such incidents to a teacher, counselor, coach, assistant principal, or the principal.

   b. Reports may be made orally or in writing and may be made anonymously.

   c. All reports of serious violations and complaints made under this policy will be investigated expeditiously. Anonymous reports will be investigated to

[9] This policy adopts the definition of "bullying and harassing behavior" established in G.S. 115C-407.15.

the extent reasonably possible under the circumstances.

d. If, at any time, school officials determine that the alleged bullying or harassing behavior appears to be based on sex, race, color, national origin, disability, ~~or~~ religion, age (40 or older), military affiliation, or genetic information, the matter will be investigated in accordance with the applicable policy listed in Section A above.

2. Mandatory Reporting by School Employees[10]

An employee who witnesses or who has reliable information that a student or other individual has been bullied or harassed in violation of this policy must report the incident to his or her supervisor or to the building principal immediately. If sex-based~~ual~~ harassment is suspected, the employee also must report the incident to the Title IX coordinator. An employee who does not promptly report possible bullying or harassing behavior will be subject to disciplinary action.

3. Reporting by Other Third Parties

Other members of the school community may report incidents of bullying or harassment to the school principal or the superintendent or designee.

4. Reporting False Allegations

It is a violation of board policy to knowingly report false allegations of bullying or harassing behavior. A student or employee found to knowingly report or corroborate false allegations will be subject to disciplinary action.

E. REPORTS OF BULLYING OR HARASSING BEHAVIOR BASED ON A FEDERALLY PROTECTED CHARACTERISTIC~~SEX, RACE, COLOR, NATIONAL ORIGIN, DISABILITY, OR RELIGION~~

Bullying or harassing behavior that is based on a federally protected characteristic, such as sex, race, color, national origin, disability, ~~or~~ religion, age (40 or older), military affiliation, or genetic information, may constitute discriminatory harassment that is a violation of the individual's civil rights. A school employee who receives a report of bullying or harassing behavior that may constitute sex-based~~ual~~ harassment must immediately contact the Title IX coordinator. If the reported behavior appears to be based on any other ~~such personal~~ federally protected characteristic, the employee must immediately notify the appropriate civil rights coordinator designated in policy 1710/4020/7230, Discrimination and Harassment Prohibited by Federal Law.[11] Uncertainty as to whether alleged bullying or harassing behavior is based on ~~sex, race, color, national origin, disability, or religion~~a federally protected characteristic should be resolved by notifying the Title IX Coordinator.

[10] School employees are required by G.S. 115C-407.15(d) to report bullying or harassing behavior.

[11] Alternately, the contact information for each civil rights coordinator could be listed in the policy.

This sample policy is provided by the N.C. School Boards Association as a subscriber benefit and is not intended to be legal advice. Policies should be modified to address your specific needs and should be reviewed by your board attorney prior to adoption. © 2024 NCSBA

F. RESPONSE TO REPORTS OF BULLYING OR HARASSING BEHAVIOR

1. Reports of bullying and harassing behavior or the encouragement of such behavior under this policy will be investigated promptly by the principal or the principal's designee and addressed in accordance with this policy and policy 4340, School-Level Investigations. If the principal is the alleged perpetrator, the superintendent will designate an appropriate investigator.

2. If at any time before, during, or after the investigation under this policy, the principal or designee determines or suspects that the alleged bullying or harassing behavior is based on sex, race, color, national origin, disability, or religion, the principal or designee shall notify the appropriate civil rights coordinator and proceed in accordance with the applicable board policy as described in Section A, above. However, referral to the civil rights coordinator will not preclude appropriate disciplinary consequences for a violation of this policy if, following the designated investigation and resolution process under the appropriate board policy, the behavior is determined not to constitute discriminatory harassment in violation of federal law.

3. No reprisals or retaliation of any kind are permitted as a result of good faith reports of bullying or harassing behavior.[12] An employee who engages in reprisal or retaliation will be subject to disciplinary action, up to and including dismissal. A student who does so is subject to disciplinary consequences as provided in Section G, below.

G. CONSEQUENCES

1. Students

   The disciplinary consequences for violations of this policy should take into consideration the frequency of incidents, the developmental age of the student involved, and the severity of the conduct and must be consistent with the Code of Student Conduct. The superintendent or designee shall list in the Code of Student Conduct the specific range of consequences that may be imposed on a student for violations of this policy.

   A student who is convicted under G.S. 14-458.2 of cyberbullying a school employee will be transferred to another school. If there is no other appropriate school within the school system, the student will be transferred to a different class or assigned to a teacher who was not involved as a victim of the cyberbullying. The superintendent may modify the required transfer of an individual student on a case-by-case basis and shall provide a written statement of this modification in the

[12] G.S. 115C-407.15 prohibits reprisal or retaliation against anyone who reports reliable information about an act of bullying or harassment.

This sample policy is provided by the N.C. School Boards Association as a subscriber benefit and is not intended to be legal advice. Policies should be modified to address your specific needs and should be reviewed by your board attorney prior to adoption. © 2024 NCSBA

student's record.[13]

2. Employees

Employees who violate this policy will be subject to disciplinary action, up to and including dismissal.

3. Others

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. A third party under the supervision and control of the school system will be subject to termination of contracts/agreements, restricted from school property, and/or subject to other consequences, as appropriate.

H. OTHER INTERVENTIONS

Interventions designed to remediate the impact of a violation of this policy and to restore a positive school climate will be provided as determined necessary by school officials.

I. NOTICE[14]

This policy must be provided to employees, students, and parents, guardians, and caregivers at the beginning of each school year.[15] Notice of this policy must be included in the Code of Student Conduct and in all student and employee handbooks.[16] Principals are encouraged to post a copy or summary of this policy in each classroom and in a prominent location within the school building and to make an age-appropriate summary of the policy available to elementary students.[17] Information about this policy must also be incorporated into employee training programs.[18]

J. RECORDS

The superintendent or designee shall maintain confidential records of complaints or reports of bullying or harassing behavior under this policy. The records must identify the names of all individuals accused of such offenses and the resolution of such complaints or

[13] The transfer requirement is established in G.S. 115C-366.4.

[14] G.S. 115C-407.17((b)(8) requires the board to include a statement of how the policy is going to be disseminated and publicized, including notice that the policy applies to participation in school-sponsored functions.

[15] This action is required by G.S. 115C-407.17(d).

[16] This action is required by G.S. 115C-407.17(d). The notice must be included in any publication that "sets forth the comprehensive rules, procedures, and standards of conduct for schools…and in any student and school employee handbook."

[17] This statement is optional.

[18] This action is required by G.S. 115C-407.17(e).

This sample policy is provided by the N.C. School Boards Association as a subscriber benefit and is not intended to be legal advice. Policies should be modified to address your specific needs and should be reviewed by your board attorney prior to adoption. © 2024 NCSBA

reports.[19] The superintendent also shall maintain records of any remedial interventions or other steps taken by the school system to provide an environment free of bullying.[20]

Legal References: G.S. 14-458.2; 115C-105.51, -366.4, -407.15 through -407.18

Cross References: Discrimination and Harassment Prohibited by Federal Law (policy 1710/4020/7230), Title IX Sex~~ual~~ Discrimination~~Harassment~~ – Prohibited Conduct and Grievance Procedures~~Reporting Process~~ (policy 1725/4035/7236), School-Level Investigations (policy 4340), Visitors to the Schools (policy 5020)~~, Discrimination and Harassment in the Workplace (policy 7232)~~

Issued: July 28, 2020

Revised: September 30, 2021; July 12, 2024

[19] Even unsubstantiated complaints or reports should be maintained in case a pattern of complaints develops.

[20] This statement is optional. Records of corrective action and training necessary to address conduct that constitutes unlawful discrimination should be maintained as described in applicable policies. Remedial interventions may be beneficial even for conduct that does not rise to that level and should be documented if provided.

This sample policy is provided by the N.C. School Boards Association as a subscriber benefit and is not intended to be legal advice. Policies should be modified to address your specific needs and should be reviewed by your board attorney prior to adoption. © 2024 NCSBA

TITLE IX SEX DISCRIMINATION – PROHIBITED CONDUCT AND GRIEVANCE PROCEDURES

Policy Code: **1725/4035/7236**

The 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. As provided in policy 1720/4030/7235, Title IX Nondiscrimination on the Basis of Sex, the board prohibits sex discrimination, including sex-based harassment, in the education program of the school system. Throughout this policy, references to the "education program" include all operations, services, and activities of the school system.

This policy provides a process for students, employees, and others to report sex discrimination prohibited by Title IX for response by school officials. All incidents of conduct that could constitute sex discrimination under this policy are to be reported and treated in accordance with this policy, even if the incidents may also constitute violations of other board policies or standards of conduct.

Conduct that involves discrimination on the basis of sex but that does not meet the definition of sex discrimination prohibited by this policy may nevertheless violate other board policies or established standards of conduct and will be treated accordingly. See, for example, policy 4329/7311, Bullying and Harassing Behavior Prohibited, policy 1710/4020/7230, Discrimination and Harassment Prohibited by Federal Law, and policy 4040/7310, Staff-Student Relations. Nothing in this policy is intended to limit discipline for violations of other board policies in such circumstances when appropriate and consistent with law.[1] In addition, nothing in this policy is intended to limit reports to law enforcement when warranted.

A. PROHIBITED BEHAVIOR

Students, school system employees, volunteers, and visitors are expected to behave in a civil and respectful manner. The board expressly prohibits sex discrimination, including sex-based harassment and retaliation, by students, employees, board members, volunteers, or visitors in the education program. "Visitors" includes parents and other family members and individuals from the community, as well as vendors, contractors, and other persons doing business with or performing services for the school system.

1. Sex Discrimination

[1] Before imposing discipline, school officials are encouraged to consult with the board attorney to ensure that disciplining a student will not be considered prohibited retaliation. The Title IX regulations appear to permit school officials to impose discipline for Code of Conduct violations that do not involve sex discrimination, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, provided the discipline is not imposed (1) as a substitute for, or in lieu of, the response required by school officials under this policy or (2) for the purpose of interfering with a person's Title IX rights or because the person participated in Title IX grievance procedures.

This sample policy is provided by the N.C. School Boards Association as a subscriber benefit and is not intended to be legal advice. Policies should be modified to address your specific needs and should be reviewed by your board attorney prior to adoption. © 2024 NCSBA

Sex discrimination occurs when, as a result of any act or failure to act, someone is treated differently and unfavorably on the basis of sex (including on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions,[2] sexual orientation, gender identity, or parental, family, or marital status[3])[4] in the education program. Sex discrimination includes, but is not limited to, sex-based harassment.

2. Sex-Based Harassment[5]

Sex-based harassment, which is a type of sex discrimination, is defined as sexual harassment and other sex-based conduct that is one of the following, as described below: quid pro quo harassment, hostile environment harassment, sexual assault, dating violence, domestic violence, or stalking.

a. Quid Pro Quo Harassment

Quid pro quo harassment occurs when an employee, contractor, or other agent of the school system explicitly or impliedly conditions the provision of an educational service or other aid or benefit of the school system on an individual's participation in unwelcome sexual conduct.

b. Hostile Environment Harassment

Hostile environment harassment is unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the education program (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

1) the degree to which the conduct affected the complainant's ability to access the education program;

2) the type, frequency, and duration of the conduct;

3) the parties' ages, roles within the education program, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;

4) the location of the conduct and the context in which the conduct

[2] 34 C.F.R. 106.2 defines "pregnancy or related conditions" as: (1) pregnancy, childbirth, termination of pregnancy, or lactation; (2) medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or (3) recovery from pregnancy, childbirth, termination of pregnancy, lactation, or their related medical conditions.

[3] See 34 C.F.R. 106.40.

[4] See 34 C.F.R. 106.10.

[5] See 34 C.F.R. 106.2.

occurred; and

5) other sex-based harassment in the education program.

c. Sexual Assault, Dating or Domestic Violence, Stalking

Sexual assault, dating violence, domestic violence, and stalking are defined as follows:

1) sexual assault means an offense classified as a sex offense under the uniform crime reporting system of the Federal Bureau of Investigation (i.e., rape, fondling, incest, and statutory rape);[6]

2) dating violence means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, with the existence of such a relationship determined based on a consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship;

3) domestic violence means felony or misdemeanor crimes committed by a person who (i) is a current or former spouse or intimate partner of the victim under North Carolina family or domestic violence laws, or a person similarly situated to a spouse of the victim; (ii) is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner; (iii) shares a child in common with the victim; or (iv) commits acts against a youth or adult victim who is protected from those acts under North Carolina family or domestic violence laws; and

4) stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or suffer substantial emotional distress.

Examples of sex-based conduct that would be considered sex-based harassment if the conduct satisfies the criteria above include, but are not limited to: unwelcome sexual advances; requests for sexual favors; and other verbal or physical conduct of a sexual nature, such as 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; the display of sexually suggestive drawings, objects,

[6] See https://le.fbi.gov/file-repository/nibrs-user-manual-063023.pdf/view.

pictures, or written materials; posting sexually suggestive pictures of a person without the person's consent; and forwarding pornographic material depicting a classmate or other member of the school community. Acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex characteristics, sex stereotypes, pregnancy or related conditions, gender identity, or sexual orientation but not involving conduct of a sexual nature may also constitute sex-based harassment. Sex-based harassment may be committed in person or through various mediums including via e-mail, text message, Internet message boards, interactions on social media, or other electronic media.

3. Retaliation

Retaliation, including peer retaliation, will be treated as a type of sex discrimination for purposes of this policy. Retaliation means intimidation, threats, coercion, or discrimination against any person by the board, a student, or an employee or agent of the school system for the purpose of interfering with any right or privilege secured by Title IX or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under Title IX, including in an informal resolution process, in grievance procedures, and in any other actions taken in compliance with the school system's obligations under Title IX.

B. DEFINITIONS

The following additional definitions apply in this policy.

1. Complaint

A complaint is a written or oral request that objectively can be understood as a request for school officials to investigate and make a determination about alleged sex discrimination.

2. Complainant

The complainant is the individual who is alleged in a report or complaint to have been subjected to sex discrimination prohibited by this policy. The complainant may be a student or a school system employee or may be another person who was participating or attempting to participate in the school system's educational program when the alleged sex discrimination occurred.

~~3. Confidential Employee[7]~~

~~[7] See 34 C.F.R. 106.2. The regulations also permit a school system to designate employees as confidential for the purpose of providing services related to sex discrimination. In such cases, if the employee also has duties not associated with providing those services, the employee's confidential status is only with respect to information received about sex discrimination in providing those services.~~

~~A confidential employee is an employee who may have some communications that are privileged or confidential under federal or State law, such as a school counselor or nurse. The employee's confidential status, for purposes of this policy, is only with respect to information received while the employee is functioning within the scope of the employee's duties to which privilege or confidentiality applies and does not impact any requirements to report certain conduct to law enforcement or otherwise as required by policies 4040/7310, Student-Staff Relations, and 4240/7312, Child Abuse and Related Threats to Child Safety.~~

~~The superintendent shall ensure that all students and employees are notified of how to contact school system confidential employees.~~[8]

~~4.~~3. Days

Days are business days unless specified otherwise.

~~5.~~4. Parent

The term parent refers to a parent, guardian, or other authorized legal representative with the legal right to act on behalf of a student or other minor.

~~6.~~5. Party

Party means a complainant or respondent.

~~7.~~6. Report

A report is an oral or written notification of alleged sex discrimination.

~~8.~~7. Respondent

The respondent is the person who is alleged in a report or complaint to have engaged in sex discrimination prohibited by this policy.

When a complaint alleges that a board policy or practice discriminates based on sex in violation of this policy, the board is not considered to be a respondent and the requirements in this policy related to a respondent do not apply.

C. REPORTS OF SEX DISCRIMINATION

1. Reporting Suspected Sex Discrimination

Any person who believes he or she has been subject to sex discrimination in the

~~[8] See 34 C.F.R. 106.44(d)(1).~~

This sample policy is provided by the N.C. School Boards Association as a subscriber benefit and is not intended to be legal advice. Policies should be modified to address your specific needs and should be reviewed by your board attorney prior to adoption. © 2024 NCSBA

school system's education program in violation of this policy or who has information about conduct that reasonably may constitute sex discrimination prohibited by this policy is encouraged to report the matter to the Title IX coordinator. Reports may also be made to a principal, teacher, counselor, assistant principal, teacher assistant, or any other school employee. Reports may be made anonymously, including through the anonymous tip line, but school officials may be limited in their ability to respond if the report does not identify the complainant.[9]

2. Mandatory Reporting by School Employees and Board Members

Any school system employee or board member who has information about conduct that reasonably may constitute sex discrimination prohibited by this policy must immediately notify the Title IX coordinator.[10] Employees and board members should provide as much detail about the alleged sex discrimination as is known. Any doubt about whether conduct may reasonably constitute sex discrimination must be resolved in favor of reporting the conduct. An employee who does not promptly report conduct as required by this subsection, or who knowingly provides false information about the incident, will be subject to disciplinary action, up to and including dismissal.

~~Confidential employees are exempt from the requirement that employees must report to the Title IX coordinator. However, confidential employees must explain to any person who informs the confidential employee of conduct that reasonably may constitute sex discrimination: (1) of the employee's status as confidential for these purposes, including the circumstances in which the employee is not required to notify the Title IX coordinator about conduct that reasonably may constitute sex discrimination; (2) how to contact the Title IX coordinator and how to make a complaint of sex discrimination; and (3) that the Title IX coordinator may be able to offer and coordinate supportive measures, as well as initiate an informal resolution process or an investigation under the grievance procedures.~~

The mandatory reporting required by this subsection is in addition to required reporting under policies 4040/7310, Student-Staff Relations, and 4240/7312, Child Abuse and Related Threats to Child Safety, where the conduct at issue requires a report under either of those policies.

3. Time Period for Making a Report

Reports by students and third parties can be made at any time. During non-business hours, reports can be made by using the contact information for the Title IX

[9] G.S. 115C-105.51(a) requires the board of each secondary school, defined as a school serving grades six or higher, to develop and operate an anonymous tip line, in coordination with local law enforcement and social services agencies, to receive anonymous information on internal or external risks to the school population, school buildings, and school-related activities.

[10] See 34 C.F.R. 106.44(c)(1).

coordinator provided on the school system's website and in policy 1720/4030/7235, Title IX Nondiscrimination on the Basis of Sex. A report should be made as soon as possible after disclosure or discovery of the facts giving rise to the report.[11] Delays in reporting may impair the ability of school officials to investigate and respond to any subsequent complaint.

School employees and board members with knowledge of conduct that reasonably may constitute sex discrimination must report that information immediately, as provided in subsection C.2 above.

4. Title IX Coordinator Response to Alleged Sex Discrimination

[12]The Title IX coordinator, whenever notified of conduct that he or she reasonably determines may constitute sex discrimination prohibited under Title IX and this policy, must promptly take the following actions:

a. treat the complainant and respondent equitably;

b. offer and coordinate supportive measures as described in Section I of this policy, as appropriate, for the complainant;

c. notify the complainant and, if the complainant is a student, the complainant's parent,[13] of the grievance procedures and, if appropriate, the informal resolution process as described in Section H of this policy;

d. if the complainant is unknown, notify the individual who reported the conduct of the grievance procedures and, if appropriate, the informal resolution process;

e. notify the principal of the report and, if an employee is the complainant or respondent, the senior human resources official or designee;[14] and

f. take any other appropriate prompt and effective steps to end any sex discrimination, prevent its recurrence, and remedy its effects.

[11] All timeframes in this policy may be modified. The intent is to balance the need for an expeditious process with the need to provide the school system with sufficient time to investigate and respond.

[12] See 34 C.F.R. 106.44(f).

[13] The regulations do not explicitly require the Title IX coordinator to notify the parent. However, state law may require notification. See G.S. 115C-76.45(a)(4). Further, the Title IX regulations should not be read to deprive parents of any legal right to act on behalf of their child. 34 C.F.R. 106.6(g). The board may want to consult the board attorney for more definitive guidance on when a student's parent should be informed of a report of sex discrimination.

[14] These officials may need to know of the report in order to ensure safety of students or employees or to otherwise assist in responding to the report. Other school officials may be designated if knowledge of the confidential report is necessary for them to perform their job responsibilities.

In addition, if the complainant or respondent is a student with a disability, the Title IX coordinator shall comply with the requirements of Section K, below.

D. COMPLAINTS OF SEX DISCRIMINATION

1. Submitting Complaints of Sex Discrimination

A request for school officials to investigate an allegation of sex discrimination prohibited by this policy may be made by submitting an oral or written complaint to the Title IX coordinator.

Complaints of sex discrimination, including sex-based harassment, may be submitted by the complainant or the parent of a student complainant. In addition, for complaints of sex discrimination other than sex-based harassment, any student or employee or any other person who was participating or attempting to participate in the school system's education program at the time of the alleged sex discrimination may submit the complaint.

2. Complaints Initiated by the Title IX Coordinator

If no complaint is submitted within five days of the Title IX coordinator receiving notice of conduct that he or she reasonably determines may constitute sex discrimination or if any or all of the allegations in a complaint are withdrawn, and an informal resolution process is not underway, the Title IX coordinator must determine whether to initiate a complaint. In making the determination, the Title IX coordinator, in consultation with the board attorney if necessary, shall consider all the factors described in 34 C.F.R. 106.44(f)(1)(v)(A)[15] and any other relevant factors. If the Title IX coordinator determines that the conduct as alleged presents an imminent and serious threat to the health or safety of the complainant or other person or that the conduct as alleged prevents the school system from ensuring equal access on the basis of sex to its education program, the Title IX coordinator shall initiate a complaint after notifying the complainant and, if the complainant is a student, the complainant's parent of the intent to initiate the complaint and shall appropriately address reasonable concerns about the complainant's safety or the safety of others, including by providing supportive measures consistent with Section I of this policy.

[15] The factors that must be considered include, at a minimum: (1) the complainant's request not to proceed with initiating a complaint; (2) the complainant's reasonable safety concerns regarding initiating a complaint; (3) the risk that additional sex discrimination would occur if a complaint is not initiated; (4) the severity of the alleged sex discrimination, including whether the discrimination, if established, would require the removal of the respondent from school or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence; (5) the age and relationship of the parties, including whether the respondent is an employee; (6) the scope of the alleged sex discrimination, including information suggesting a pattern, ongoing sex discrimination, or sex discrimination alleged to have impacted multiple individuals; (7) the availability of evidence to assist the decisionmaker in determining whether sex discrimination occurred; and (8) whether school officials could end the alleged sex discrimination and prevent its recurrence without initiating the grievance procedures.

A decision by the Title IX coordinator to initiate a complaint is not to be construed as (1) supportive of the complainant or in opposition to the respondent; (2) an indication of whether the allegations are credible or have merit; or (3) an indication of whether there is evidence sufficient to determine responsibility. Initiating a complaint does not make the Title IX coordinator a complainant or party to the complaint nor relieve the Title IX coordinator from any responsibilities under this policy.

The Title IX coordinator shall document the decision of whether to initiate a complaint and the reasons for that decision.

3. Consolidation of Complaints[16]

Complaints against more than one respondent, or by more than one complainant against one or more respondents, or by one party against another party, may be consolidated and investigated as one complaint when the allegations of sex discrimination arise out of the same facts or circumstances, unless consolidation would violate the Family Educational Rights and Privacy Act. When more than one complainant or more than one respondent is involved, references in this policy include the plural, as applicable.

E. TEMPORARY REMOVAL OF RESPONDENT FROM SCHOOL OR EMPLOYMENT[17]

Any respondent is subject to removal from the education program, or any part of the program, on an emergency basis if a school-based threat assessment team conducts an individualized safety and risk analysis and determines that removal is justified because the person poses an imminent and serious health or safety threat to any person arising from the allegations of sex discrimination. A removal under this subsection includes a transfer of a student to an alternative education program consistent with policy 3470/4305, Alternative Learning Programs/Schools. A schedule change and/or removing a student from an extracurricular activity is also considered a removal under this subsection where such action would not otherwise constitute a supportive measure.

Any such removal must be consistent with federal and state law, including any applicable law protecting the rights of individuals with disabilities. The respondent shall receive notice of the removal and an opportunity to challenge the decision in an informal hearing with the superintendent or designee immediately following the removal.

An employee respondent may be placed on administrative leave during the pendency of

[16] For consolidation of complaints of sex discrimination, see 34 C.F.R. 106.45(e).

[17] We strongly recommend consultation with the board attorney before removing a student or employee under this provision to ensure the removal is consistent with state and federal law. The Title IX emergency removal requirements are found at 34 C.F.R. 106.44(h).

the grievance procedures if consistent with applicable state and federal laws.[18]

F. GRIEVANCE PROCEDURES FOR COMPLAINTS OF SEX DISCRIMINATION[19]

The board provides these grievance procedures for the resolution of complaints of sex discrimination submitted or initiated in accordance with Section D, above.

1. General Principles

a. Equitable Treatment

During the pendency of the grievance procedures, the school system will treat complainants and respondents equitably.[20] No person with a conflict of interest or bias for or against the complainant or respondent individually or generally may act as the Title IX coordinator, investigator, or decisionmaker.[21]

b. Presumption of Non-Responsibility/Innocence

The respondent will be presumed not responsible for the alleged sex discrimination until a determination is made at the conclusion of the grievance procedures.[22] No disciplinary consequence or other action that is not a supportive measure may be imposed for a violation of this policy unless the respondent agrees to a specific disciplinary consequence or action in an informal resolution[23] or has been determined to be responsible for the sex discrimination at the conclusion of the grievance procedures.[24] Notwithstanding the limitation just described, respondents are subject to temporary removal as described above in Section E.

c. Privacy

School officials involved in the grievance procedures shall take reasonable steps to protect the privacy of the parties and witnesses throughout the

[18] Administrative leave is authorized at 34 C.F.R. 106.44(i).

[19] The Title IX regulations require that any steps or provisions added to the grievance procedures beyond what is required under Title IX apply equally to the parties.

[20] See 34 C.F.R. 106.45(b)(1).

[21] See 34 C.F.R. 106.45(b)(2).

[22] See 34 C.F.R. 106.45(b)(3).

[23] Omit the reference to informal processes if your LEA does not provide informal means of resolving Title IX complaints.

[24] Although the LEA cannot take disciplinary action against the respondent or other action that does not meet the definition of a supportive measure until the grievance process is complete, this does not bar all measures that place any burden on a respondent, but only those that "unreasonably burden" the respondent (or complainant). Thus, changing a respondent's class schedule or a "no contact" order may be an appropriate supportive measure if such measures do not unreasonably burden the respondent.

This sample policy is provided by the N.C. School Boards Association as a subscriber benefit and is not intended to be legal advice. Policies should be modified to address your specific needs and should be reviewed by your board attorney prior to adoption. © 2024 NCSBA

grievance procedures, including requiring the parties and witnesses to maintain the confidentiality of information and evidence obtained solely through the grievance proceedings. However, no steps will be imposed that restrict the ability of the parties to (1) obtain and present evidence, including by speaking to witnesses; (2) consult with their family members, confidential resources, or advisors; or (3) otherwise prepare for or participate in the grievance procedures.[25]

d. Timeliness

The number of days indicated at each step of the grievance procedures should be considered a maximum, and every effort should be made to expedite the process.[26]

Reasonable extensions of timeframes may be made on a case-by-case basis for good cause. If an extension is necessary, the parties will receive written notice of the extension and the reason for the extension prior to the end of the original timeframe. School system officials shall make reasonable efforts to keep the parties apprised of progress being made during any extension period. Delays that interfere with the exercise of the party's legal rights are not permitted.

Failure by a party to appeal a decision within the specified time limit will be considered acceptance of the decision at the current step, unless the party has notified the appropriate school system official of a delay and the reason for the delay and the official has consented to the delay in writing.

2. Dismissal of a Complaint

Within five days of a complaint being submitted, the Title IX coordinator shall review the allegations and make a determination whether to dismiss the complaint without further investigation.

A decision not to dismiss the complaint at this stage does not prevent the Title IX coordinator or investigator from dismissing the complaint at any point in the grievance procedures if it is determined that a permissible reason exists.

a. Permissible Reasons for Dismissal[27]

A complaint may be dismissed if:

[25] See 34 C.F.R. 106.45(b)(5).

[26] The timeframes listed in each step of the grievance procedures may be modified, provided that any modification satisfies the requirement for "reasonably prompt timeframes." See 34 C.F.R. 106.44(b)(4).

[27] This is an exhaustive list of the permissible reasons to dismiss a complaint. See 34 C.F.R. 106.45(d).

1) the school system is unable to identify the respondent after taking reasonable steps to do so;

2) the respondent is not participating in the education program and is not employed by the school system;

3) the complainant voluntarily withdraws any or all of the allegations in the complaint, the Title IX coordinator declines to initiate a complaint, and the Title IX coordinator determines that, without the complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute prohibited sex discrimination even if proven; or

4) the Title IX coordinator determines the conduct alleged in the complaint, even if proven, would not constitute prohibited sex discrimination. Before dismissing the complaint on this basis, the Title IX coordinator shall make reasonable efforts to clarify the allegations with the complainant.

b. Notifications Upon Dismissal[28]

Upon dismissal of a complaint, the Title IX coordinator shall promptly notify the complainant and, if the complainant is a student, the complainant's parent of the dismissal, the basis for the dismissal, and that the dismissal may be appealed. If the dismissal occurs after the respondent has been notified of the allegations, the Title IX coordinator shall provide the same notification to the respondent and, if the respondent is a student, the respondent's parent promptly after notification to the complainant, or simultaneously if notification is in writing.

c. Bases for Appealing a Dismissal[29]

Dismissals may be appealed on the following bases:

1) procedural irregularity that would change the outcome;

2) new evidence that would change the outcome and that was not reasonably available when the dismissal was made; or

3) the Title IX coordinator or investigator had a conflict of interest or bias for or against the complainant or respondent generally or individually that would change the outcome.

[28] This notification is required by 34 C.F.R. 106.45(d)(3).

[29] This is an exhaustive list of permissible bases for appeal. See 34 C.F.R. 106.45(d)(3) and 106.46(i)(1).

d. Appeal Process for Dismissals[30]

~~1) Appeal to the Superintendent~~

The complainant or the parent of a student complainant may appeal the dismissal of the complaint to the superintendent (unless the superintendent was the respondent or took part in the investigation of the allegations or dismissal of the complaint, in which case an appeal may be made directly to the board in accordance with subsection F.2.d.2 below). The appeal must be submitted in writing within three days of receiving notice of the dismissal of the complaint.

The superintendent shall implement appeal procedures equally for the parties. Within three days of receiving an appeal of the dismissal, the superintendent shall notify the parties and, if they are students, their parents of the appeal, including notice of the allegations if notice was not previously provided to the respondent. The superintendent shall then provide the parties a reasonable and equal opportunity to make a written statement in support of or challenging the outcome. Within 10 days of receiving the appeal, the superintendent shall make a decision on the appeal and notify the parties and, if they are students, their parents in writing of the decision and the rationale for the decision. The superintendent's decision is final.

~~2) Appeal to the Board~~

~~Employees and applicants for employment may appeal the superintendent's decision to the board in accordance with subsection E.4.a of policy 1750/7220, Grievance Procedure for Employees. Students, their parents, and other non-employees/applicants may appeal the superintendent's decision to the board in accordance with subsection E.5.a of policy 1740/4010, Student and Parent Grievance Procedure.~~

e. Steps Taken After a Dismissal

When a complaint is dismissed, the Title IX coordinator shall, at a minimum:

1) offer supportive measures to the complainant, as appropriate;

2) if the respondent has been notified of the allegations, offer

[30] The timeframes may be modified.

This sample policy is provided by the N.C. School Boards Association as a subscriber benefit and is not intended to be legal advice. Policies should be modified to address your specific needs and should be reviewed by your board attorney prior to adoption. © 2024 NCSBA

supportive measures to the respondent, as appropriate; and

3) take other prompt and effective steps, as necessary, to prevent future sex discrimination within the education program.

3. Notice of Allegations[31]

If the Title IX coordinator decides not to dismiss the complaint or if the complainant successfully appeals a dismissal, the Title IX coordinator shall promptly provide known parties and, if they are students, their parents with a notice of allegations that includes the following:

a. the grievance procedures and the informal resolution process, as described in this policy;

b. sufficient information available at the time to allow the parties to respond to the allegations, including the identities of the parties involved in the incident(s), the conduct alleged to constitute sex discrimination, and the date(s) and location(s) of the alleged incident(s);

c. a statement that retaliation is prohibited; and

d. a statement that (1) the parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an accurate description of this evidence and (2) if provided a description of the evidence, the parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any party.

If, in the course of an investigation, the investigator decides to investigate additional allegations of sex discrimination by the respondent toward the complainant that are not included in the initial notice or that are included in a complaint that is consolidated, the investigator shall promptly notify the parties of the additional allegations.

4. Initiating an Investigation

After providing the notification of allegations, the Title IX coordinator shall offer and coordinate supportive measures as described in Section I of this policy, as appropriate, for the parties. The Title IX coordinator shall also assign the complaint to the appropriate investigator, who will conduct an investigation.

The investigator is ordinarily determined as described below[32]; however, the Title

[31] See 34 C.F.R. 106.45(c).

[32] Larger school districts may want to include language specifically allowing a central office employee to

This sample policy is provided by the N.C. School Boards Association as a subscriber benefit and is not intended to be legal advice. Policies should be modified to address your specific needs and should be reviewed by your board attorney prior to adoption. © 2024 NCSBA

IX coordinator, in consultation with the superintendent, may determine that conflict of interest, bias, or other individual circumstances warrant the assignment of a different investigator.

a. If the respondent is a student, the investigator is the principal or designee of the school with jurisdiction over the incident.

b. If the respondent is an employee or applicant for employment, the investigator is the senior human resources official or designee.

c. If the respondent is neither a student nor an employee/applicant for employment, the investigator is the principal of the school/site supervisor at which the complainant is enrolled or employed.

d. Notwithstanding the above designations, (1) if the respondent is the senior human resources official, the superintendent shall investigate the complaint; and (2) if the respondent is the superintendent or a board member, the Title IX coordinator shall immediately notify the board chair who shall direct the board attorney to investigate, unless the board chair determines that outside counsel should be engaged to investigate.

The investigator may request assistance from the Title IX coordinator to conduct the investigation.

5. Conducting an Investigation

a. General Process

The investigation must be adequate, prompt, reliable, and impartial. Investigations should be concluded within 10 days of an investigator being assigned a complaint. The burden is on the investigator, not on the parties, to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination occurred.[33]

The investigator shall question all relevant parties and witnesses and adequately assess a party's or witness's credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex discrimination.[34] Credibility determinations will not be based on a person's status as a complainant, respondent, or witness.[35]

investigate all Title IX Complaints. Something like the following as a new 4(e): "Notwithstanding any other provision, the Board reserves the right to assign any employee as a Title IX investigator so long as the employee does not have a conflict of interest or bias in the matter."

[33] See 34 C.F.R. 106.45(f)(1).

[34] See 34 C.F.R. 106.45(g).

[35] See 34 C.F.R. 106.45(b)(6).

This sample policy is provided by the N.C. School Boards Association as a subscriber benefit and is not intended to be legal advice. Policies should be modified to address your specific needs and should be reviewed by your board attorney prior to adoption. © 2024 NCSBA

The investigator shall review all evidence gathered through the investigation, including both evidence that tends to support the allegations (inculpatory evidence) and evidence that tends to refute the allegations (exculpatory evidence) and determine what evidence is relevant and what evidence is impermissible regardless of relevance.[36]

b. Impermissible Evidence

The following types of evidence, and questions seeking that evidence, are impermissible (i.e., will not be accessed or considered, except to determine whether one of the exceptions listed below applies; will not be disclosed; and will not otherwise be used) at any stage of the grievance procedures, including appeals, regardless of whether the evidence is relevant:[37]

1) ~~evidence provided to a confidential employee or~~ evidence that is otherwise protected under a privilege[38] recognized by federal or State law, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;

2) a party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless the school system obtains that party's or witness's voluntary, written consent for use in the grievance procedures; and

3) evidence that relates to the complainant's sexual interests or prior sexual conduct, unless evidence about the complainant's prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct or is evidence about

[36] See 34 C.F.R. 106.45(f)(3).

[37] See 34 C.F.R. 106.45(b)(7).

[38] A privilege is a rule of evidence allowing the holder of the privilege to refuse to disclose information or provide evidence about a certain subject in a judicial or other proceeding. North Carolina recognizes several types of privilege. The ones most likely to be applicable in a proceeding under this policy are communications between: an attorney and a client; a school counselor and a student (G.S. 8-53.4); a health care provider/nurse and a patient (G.S. 8-53, -53.13); a psychologist and a client or patient (G.S. 8-53.3); a behavior analyst and a client or patient (G.S. 8-53.14); a licensed marital and family therapist and client(s) (G.S. 8-53.5); and agents of rape crisis centers and domestic violence programs and victims (G.S. 8-53.12). Also subject to privilege is information acquired by: a social worker in private practice in rendering professional social services (G.S. 8-53.7); a counselor in rendering professional counseling services (G.S. 8-53.8); and journalists (G.S. 8-53.11). Other privileges recognized in North Carolina include communications between: a husband and a wife (G.S. 8-56); an optometrist and a patient (G.S. 8-53.9); a peer counselor rendering services to a client law enforcement employee (G.S. 8-53.10); and clergymen and communicants (G.S. 8-53.2). Please consult your board attorney if there is a question as to whether any information sought in the course of a Title IX grievance procedure could be subject to one of these privileges.

specific incidents of the complainant's prior sexual conduct with the respondent that is offered to prove consent to alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to alleged sex-based harassment or preclude determination that sex-based harassment occurred.

c. Equal Opportunities[39]

The investigator shall provide an equal opportunity for the parties to present fact witnesses and other inculpatory and exculpatory evidence that are relevant and permissible.

The investigator shall provide each party with an equal opportunity to access either the relevant, permissible evidence or an accurate description of this evidence. If the investigator provides a description of the relevant, permissible evidence, the investigator shall provide the parties with an equal opportunity to access such evidence upon the request of any party. The investigator shall provide a reasonable opportunity to respond to the evidence or accurate description of the evidence and shall take reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence obtained solely through the grievance procedures. Disclosures of such information and evidence for purposes of administrative proceedings or litigation related to the complaint are authorized.

6. Investigator's Determination

After completing the investigation, the investigator shall objectively evaluate all relevant, permissible evidence and, in consultation with the board attorney as appropriate, shall use the preponderance of the evidence[40] standard of proof to determine whether the alleged conduct constitutes a violation of this policy.

Within five days of the investigation's completion, the investigator shall notify the parties and, if the parties are students, their parents in writing of the determination whether sex discrimination occurred, including the rationale for such determination, and the procedures for the parties to appeal. The investigator also shall provide to the Title IX coordinator a record of the evidence, findings of the investigation, and recommended disciplinary consequences, remedies, and/or other responses. If there is a determination that sex discrimination occurred, the Title IX

[39] See 34 C.F.R. 106.45(f).

[40] For sex discrimination complaints, Title IX requires the use of the preponderance of the evidence standard of proof unless the school system uses the clear and convincing evidence standard of proof in all other comparable proceedings, including proceedings relating to other discrimination complaints, in which case the school system may elect to use that standard of proof. See 34 C.F.R. 106.45(h)(1).

coordinator shall take appropriate action to address the discrimination as described in Section G, below.

7. Appeals[41]

If either party is dissatisfied with the investigator's determination of whether sex discrimination occurred, the party or, if the party is a student, the party's parent may appeal to the superintendent (unless the superintendent is the respondent or took part in the investigation, in which case an appeal may be made directly to the board in accordance with the next paragraph). The appeal must be submitted in writing within three days of receiving the notice of the outcome of the investigation. If an appeal is not timely submitted, it is considered waived.

The superintendent shall review the record of the evidence, findings of the investigation, and recommended disciplinary consequences, remedies, and/or other responses. The superintendent may also conduct any further investigation necessary or take any other steps to respond. If the appeal includes an appeal of a disciplinary sanction/recommendation of discipline, the procedures in policy 4370, Student Discipline Hearing Procedures; policy 4353, Long-Term Suspension, 365-Days Suspension, Expulsion; policy 7940, Classified Personnel: Suspension and Dismissal; or policy 7930, Professional Employees: Demotion and Dismissal, shall also apply as applicable.

The superintendent shall provide a written response within 10 days of receiving the appeal unless other applicable State law controls the process.

Employees and applicants for employment may appeal the superintendent's decision to the board in accordance with ~~subsection E.4.a of~~ either policy 1750/7220, Grievance Procedure for Employees; policy 7940, Classified Personnel: Suspension and Dismissal; or policy 7930, Professional Employees: Demotion and Dismissal, as applicable.~~.~~ Students, their parents, and other non-employees/applicants may appeal the superintendent's decision to the board in accordance with either ~~subsection E.5.a of~~ policy 1740/4010, Student and Parent Grievance Procedure; policy 4370, Student Discipline Hearing Procedures; or policy 4353, Long-Term Suspension, 365-Days Suspension, Expulsion as applicable.

G. Disciplinary Consequences, Remedies, and Other Responses to Address Sex Discrimination

The Title IX coordinator is responsible for taking or causing appropriate action to be taken

[41] The appeals process may be modified but, at a minimum, the process must be at least the same as the process provided in all other comparable proceedings, including proceedings relating to other discrimination complaints. The process outlined here is the same as the process provided in NCSBA's policy 1710/4020/7230, Discrimination and Harassment Prohibited by Federal Law.

in response to sex discrimination in violation of this policy. Upon a determination that sex discrimination occurred and once all appeals have been exhausted or waived, the Title IX coordinator shall, as appropriate: (1) coordinate with the principal or other relevant school official the imposition of any disciplinary consequences on a respondent, including notification to the complainant of any such disciplinary consequences;[42] (2) coordinate the provision and implementation of remedies to the complainant and other people the investigator identifies as having had their equal access to the education program limited or denied by sex discrimination; and (3) take other appropriate, prompt, and effective steps to ensure that sex discrimination does not continue or recur within the education program.[43]

1. Disciplinary Consequences

No disciplinary consequences will be imposed until any appeals have been exhausted or waived.

a. Disciplinary Consequences for Students

The disciplinary consequences for student violations of this policy will be imposed by the principal, superintendent, or other designated school official in accordance with the Code of Student Conduct. 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 to expulsion.

A student recommended for a long-term suspension or expulsion will have all applicable rights accorded by board policy and state law.

This policy will not be construed to allow school officials to punish student expression or speech based on undifferentiated fear or apprehension of a disturbance or out of a desire to avoid the discomfort and unpleasantness that may accompany an unpopular viewpoint.

b. Disciplinary Consequences for Employees

The disciplinary consequences for employee violations of this policy will be imposed by the principal, superintendent, board, or other designated school official. Based on the nature and severity of the offense and the circumstances surrounding the incident, the employee will be subject to discipline up to and including dismissal.

[42] There may be a conflict between the federal regulations and state confidentiality laws regarding the disclosure of student and employee information, in which case federal law will preempt state confidentiality law. Conflicts between the Family Educational Rights and Privacy Act (FERPA) and the Title IX regulations are to be resolved in favor of the Title IX regulations. See 34 C.F.R. 106.6(e) ("The obligation to comply with [the Title IX regulations] is not obviated or alleviated by FERPA[.]").

[43] See 34 C.F.R. 106.45(h)(3).

This sample policy is provided by the N.C. School Boards Association as a subscriber benefit and is not intended to be legal advice. Policies should be modified to address your specific needs and should be reviewed by your board attorney prior to adoption. © 2024 NCSBA

An employee recommended for suspension, demotion, or dismissal will have all applicable rights accorded by board policy and state law.

c. Disciplinary Consequences for Other Infractions

1) False Statements

False or malicious complaints of sex discrimination and false statements made in bad faith in the course of any grievance procedure conducted pursuant to this policy are subject to disciplinary action, up to and including dismissal for an employee and long-term suspension for a student. However, no discipline will be imposed for making a false statement solely on a determination of whether sex discrimination occurred.

2) Other Conduct

Nothing in this policy will preclude the school system from taking disciplinary action against a student or employee when the evidence does not establish sex discrimination as defined in this policy, but the conduct violates other board policy and/or the Code or Student Conduct or expected standards of employee behavior. However, no discipline will be imposed for engaging in consensual sexual conduct based solely on a determination of whether sex discrimination occurred.

d. Consequences for Other Respondents

Volunteers and visitors who engage in sex discrimination will be directed to leave school property and/or be reported to law enforcement, as appropriate, in accordance with policy 5020, Visitors to the Schools. A third party under the supervision and control of the school system will be subject to termination of contracts/agreements, restricted from access to school property, and/or subject to other consequences, as appropriate.

2. Remedies

Remedial measures may be provided, as appropriate, to complainants or other persons who had their equal access to or participation in the education program limited or denied by sex discrimination in violation of this policy. Such measures may include counseling, mental health services referral, extensions of deadlines or other course-related adjustments, other academic resources or support, modifications of work or class schedules, escort services, change in student parking location, mutual or one-way restrictions on contact between the parties, changes in work locations, leaves of absence, increased security and monitoring, and other

measures determined by school officials to be necessary to restore or preserve the person's equal access to the education program.

3. Other Steps

The Title IX coordinator may take other measures to end or prevent instances of sex discrimination regardless of whether any individual has been found responsible for the sex discrimination. The Title IX coordinator may implement or coordinate the implementation of classroom-wide, school-wide, or school system-wide responses such as additional staff training, discrimination prevention programs, and other measures reasonably calculated to end prohibited behavior, eliminate a hostile environment and its effects if one has been created, and prevent recurrence of the behavior.

The Title IX coordinator shall encourage complainants to report any subsequent problems and may conduct follow-up inquiries as warranted to determine if there have been any new incidents of sex discrimination or any instances of retaliation.

H. INFORMAL RESOLUTION[44]

At any time prior to determining whether sex discrimination occurred, the Title IX coordinator may offer the complainant and respondent an informal resolution process. An informal resolution process will not be offered if: (1) there are allegations that an employee engaged in sex-based harassment of a student; (2) the alleged conduct would present a future risk of harm to others; or (3) the Title IX coordinator determines that other circumstances make informal resolution inappropriate. If an informal resolution process is used, the Title IX coordinator shall, to the extent necessary, take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the education program.

An informal resolution process will not be used unless both the complainant and the respondent have voluntarily consented to its use. No school system employee shall require or pressure a complainant or respondent to participate in an informal resolution process. No individual will be required to waive the right to an investigation and determination of a complaint as a condition of participation in the education program or the exercise of any other right.

Before the initiation of an informal resolution process, the parties must receive notice that explains: (1) the allegations; (2) the requirements of the informal resolution process; (3) that, prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and to initiate or resume the grievance procedures; (4) that agreement to a resolution at the conclusion of the informal resolution process precludes the parties from initiating or resuming grievance procedures arising from the same allegations; (5) the

[44] Providing an informal resolution process is optional; however, if such a process is offered, it must comply with the regulatory requirements described in 34 C.F.R. 106.44(k).

potential terms that may be requested or offered in an informal resolution agreement, including notice that an informal resolution agreement is binding only on the parties; and (6) what information the school system will retain and whether and how the school system could disclose such information for use in grievance procedures if grievance procedures are initiated or resumed.

The superintendent, in consultation with the Title IX coordinator, shall assign a school system employee to facilitate the informal resolution process. The facilitator will not be the same person as the investigator in the grievance procedures. The facilitator must have received appropriate training[45] and must not have a conflict of interest or bias for or against the complainant or respondent generally or individually.

I. SUPPORTIVE MEASURES

Supportive measures are defined as individualized measures offered as appropriate, as reasonably available, and at no cost to the parties to: (1) restore or preserve that party's access to the education program, including measures that are designed to protect the safety of the parties or the educational environment; or (2) provide support during the grievance procedures or during the informal resolution process. Supportive measures must not unreasonably burden a party to the complaint and may not be imposed for punitive or disciplinary reasons.

Supportive measures may vary depending on what is reasonably available. These measures may include but are not limited to: counseling; extensions of deadlines and other course-related adjustments; campus escort services; increased security and monitoring of certain areas of the campus; restrictions on contact applied to one or more parties; leaves of absence; changes in class, work, or extracurricular or any other activity, regardless of whether a comparable alternative exists; and training and education programs related to sex-based harassment.

Supportive measures may, as appropriate, be modified or terminated by the Title IX coordinator at the conclusion of the grievance procedures or informal resolution process or may continue beyond that point. A party whose supportive measure was denied, modified, or terminated may appeal the decision to the superintendent or designee within five days of the decision. The superintendent may modify or reverse the decision upon determining that the action was inconsistent with the definition of supportive measures as described above. In addition, a party may petition the Title IX coordinator for modification or termination of a supportive measure applicable to them if circumstances change materially and may appeal the decision of the Title IX coordinator to the superintendent within five days.

School employees shall not disclose information about supportive measures to persons other than the person to whom they apply unless necessary to provide the supportive measure or restore or preserve a party's access to the education program or when advised

[45] A facilitator must have received training under 34 C.F.R. 106.8(d)(3).

by the superintendent or board attorney that an exception is permitted by law.[46]

J. PROHIBITED DISCLOSURES OF PERSONALLY IDENTIFIABLE INFORMATION[47]

School system employees shall not disclose personally identifiable information obtained in the course of complying with this policy, except in the following circumstances: (1) when prior written consent has been obtained from a person with the legal right to consent to the disclosure; (2) when the information is disclosed to a parent with the legal right to receive disclosures on behalf of the person whose personally identifiable information is at issue; (3) to carry out the purposes of this policy, including action taken to address conduct that reasonably may constitute sex discrimination prohibited by this policy; (4) as required by federal law or regulation or the terms and conditions of a federal award, including a grant award or other funding agreement; or (5) to the extent such disclosures are not otherwise in conflict with Title IX, when required by State law or when permitted under the Family Educational Rights and Privacy Act.

K. STUDENTS WITH DISABILITIES

When the complainant or respondent is a student with a disability, the Title IX coordinator will consult with one or more members of the student's Individualized Education Program team, as appropriate, and/or one or more members of the student's Section 504 team, as appropriate, throughout the implementation of the grievance procedures and the provision of any supportive measures to determine how to comply with the requirements of the Individuals with Disabilities Education Act and/or Section 504 of the Rehabilitation Act of 1973.

L. RECORDS

The Title IX coordinator shall create and maintain for a period of seven years:

1. for each complaint of sex discrimination, records documenting the informal resolution process or grievance procedures and the resulting outcome;

2. for each notification the Title IX coordinator receives of information about conduct that reasonably may constitute sex discrimination, records documenting the actions taken by the school system to meet its obligations under Title IX; and

3. all materials used to provide the training described in policy 1720/4030/7235, Title IX Nondiscrimination on the Basis of Sex.

Legal References: Family Educational Rights and Privacy Act, 20 U.S.C. 1232g, h, 34 C.F.R. pt. 99; Individuals with Disabilities Education Act, 20 U.S.C. 1400 *et seq.*; 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.

[46] The permissible exceptions are those described in Section J.

[47] See 34 C.F.R. 106.44(j).

2000d *et seq.*, 34 C.F.R. pt. 100; Title IX of the Education Amendments Act of 1972, 20 U.S.C. 1681 *et seq.*, 34 C.F.R. pt. 106; *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-335.5

Cross References: Discrimination and Harassment Prohibited by Federal Law (policy 1710/4020/7230), Title IX Nondiscrimination on the Basis of Sex (policy 1720/4030/7235), Alternative Learning Programs/Schools (policy 3470/4305), Staff-Student Relations (policy 4040/7310), Child Abuse and Related Threats to Child Safety (policy 4240/7312), Bullying and Harassing Behavior Prohibited (policy 4329/7311), Visitors to the Schools (policy 5020)

Issued: July 28, 2020

Revised: September 30, 2020; September 30, 2021; ~~July 12, 2024~~

This sample policy is provided by the N.C. School Boards Association as a subscriber benefit and is not intended to be legal advice. Policies should be modified to address your specific needs and should be reviewed by your board attorney prior to adoption. © 2024 NCSBA

Good afternoon/evening

As district liaison for the school system consolidation feasibility study, I would like to bring to the Board the latest project updates and highlights. As you know, to complete the study, the County has contracted the services of Prismatic Services Inc. Since our last update with the Board, Dr. Tatia and her team have covered a lot with their boots on the ground engagement and communication. To date, they have fulfilled over 200 data requests and participated in…..

- 95 one-to-one interviews with key ACS & BCS personnel
- Hosted onsite school nutrition reviews at 18 schools (6 ACS/BCS) – AHS, AMS, HF, Dickson, SILSA
- Hosted onsite transportation reviews at 6 schools (3 ACS, 3 BCS)- AHS, AMS, Jones
- Hosted onsite facility reviews at 11 schools (5 ACS, 6 BCS)- AHS, AMS, CLX, HF, Dickson
- Hosted 7 focus groups of nearly 50 participants from stakeholder organizations whose work is affiliated with education. A list of nearly 100 organizations was developed by County staff with input from the local project team with a goal to broadly include youth-serving groups.

Looking ahead….Prismatic with the help of the Buncombe County Communication and Public Engagement department will….

- Host 9 community meetings & 1 online forum in September. We are asking the community at large to join Prismatic Services for a 15-30 minute drop-in meeting to share your input which will shape their final report. For the Community Meetings, there will be various stations where attendees can meaningfully participate. We will provide Spanish interpretation at the community meetings and the online forum. The ACS drop in community meetings will be September 16 @ Dickson/3:45 to 6:45 and September 19 @ Hall Fletcher/3:45 to 6:30. To assist people who cannot park near each campus, a shuttle bus will be provided. The online session will be September 23 from 5:30 to 7:30. Go to www.engage.buncombecounty.org for more details about the upcoming community meetings.
- Prismatic will also roll out a constituent survey in September to collect info from school personnel, high school students, and parents of children who attend schools in the County. The survey will be housed on the Engage Buncombe County page and available online early September.
- They will be hosting additional onsite reviews and interviews (including governing boards and elected officials)
- The local project team will meet in September for review of the initial data, trends, and literature review
- They will engage Boards in Nov/Dec as the final report comes in
- We should receive the presentation of the final report, including findings and recommendations, in January 2025.
- Boards will decide how to respond to the report and forward final recommendations to the NC General Assembly in February 2025.

Our ask of elected officials-

- Share info about the public meetings with their networks to help us have wide participation
- Be on the lookout for an individual interview request from Prismatic Services for September.

ashevillecityschools.net

you belong here

#YouBelongInACS

#ChallengingAndRelevantInACS

#EverySecondCountsInACS

Superintendent Updates

August 12, 2024



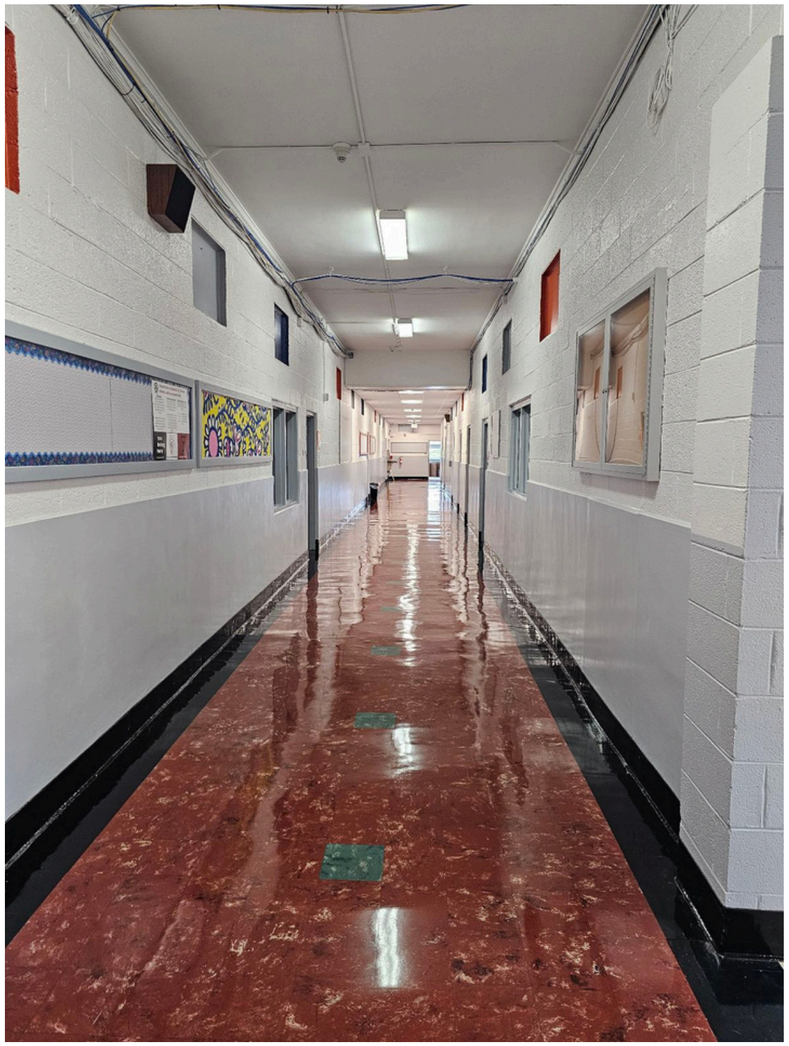


Facilities Updates

Randolph Campus







Facilities Updates

Asheville High School

1. Gymnasium Project Complete
2. Auditorium Project - making great progress
3. CTE Wing - Asbesto Removal and Painting Complete
4. Plumbing Projects - making great progress

Facilities Updates

Lucy S. Herring Elementary School

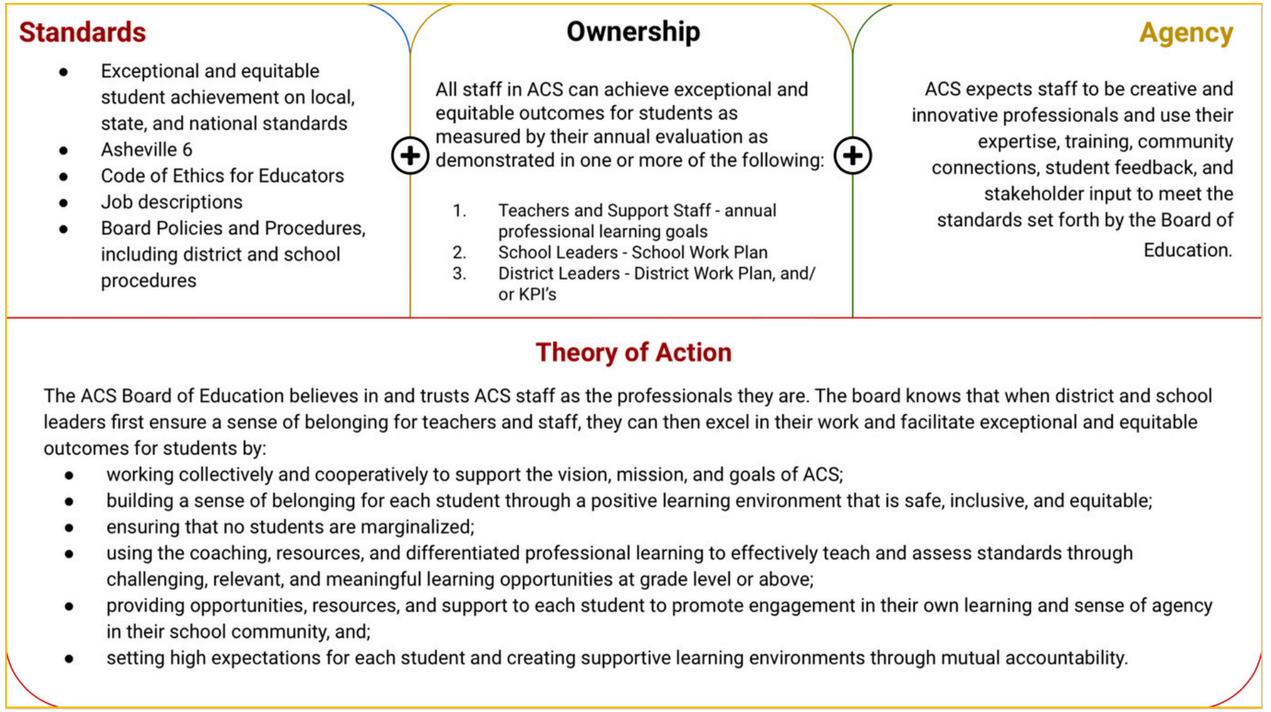
1. Progressing on schedule
2. Cafeteria upgrades completed with new cooler, freezer, and RR updates for cafe staff
3. HVAC system is up and running properly
4. Drop ceilings nearly done

Summer Leadership Learning

1. Beyond Diversity - June
    a. A two-day professional learning for racial equity to help staff understand the impact of race on student learning and investigate the role that racism plays in institutionalizing academic inequities.
    b. Participants will be introduced to the CCAR Protocol: the 4 Agreements, 6 Conditions and Compass
2. Crew - June
    a. Vision setting for school improvement teams to build their understanding of Crew and time to build their school work plans

Summer Leadership Learning

3. Fall Leadership Retreat – August
   - Reviewed and unpacked our TOA and how it will guide our work
   - Every decision starts with students
   - No exceptions, no excuses



2024 -2025 District Work Plan

Multiyear Impact Goals

Mastery of Knowledge and Skills	Character	High Quality Work
Asheville City Schools will become a district in which students will emerge as leaders of their journey through high quality instructional practices that create a sense of belonging and producing quality work. We will achieve this by engaging in culturally relevant curriculum and instructional practices that make every instructional second count.	The Asheville City Schools Cougar Crew is the heartbeat of our community. As leaders and learners, we cultivate a deep sense of belonging so we can accomplish more than we think possible. We are Crew and celebrate diversity as the cornerstone of our culture where each person is seen, heard, and loved for who they are and the gifts and talents they bring. As Crew, we collaborate and share responsibility to positively impact our well-being and reach our achievement goals.	ACS students will produce high quality work that matters to students and the greater community.

2024 -2025 District Work Plan

Annual Performance Benchmark

Mastery of Knowledge and Skills	Character	High Quality Work
By the end of the 2024-25 school year, all schools will meet or exceed growth in all student groups as measured by standardized measures. We will raise academic performance for the Black students by 50% or more.	By the end of the 2024-25 school year leaders and teachers 100% of staff members will feel a strong sense of belonging in their schools, know what is expected of them, and have the tools to be able to meet expectations.	By the end of the 2024-25 school year teachers will begin to identify the attributes of high quality work. (Complexity, Authenticity and Craftsmanship) Students will receive a sense of agency and opportunities to engage in their own learning by giving and receiving feedback to enhance the quality of their work.

ASHEVILLE CITY SCHOOLS

Consolodation Study Update

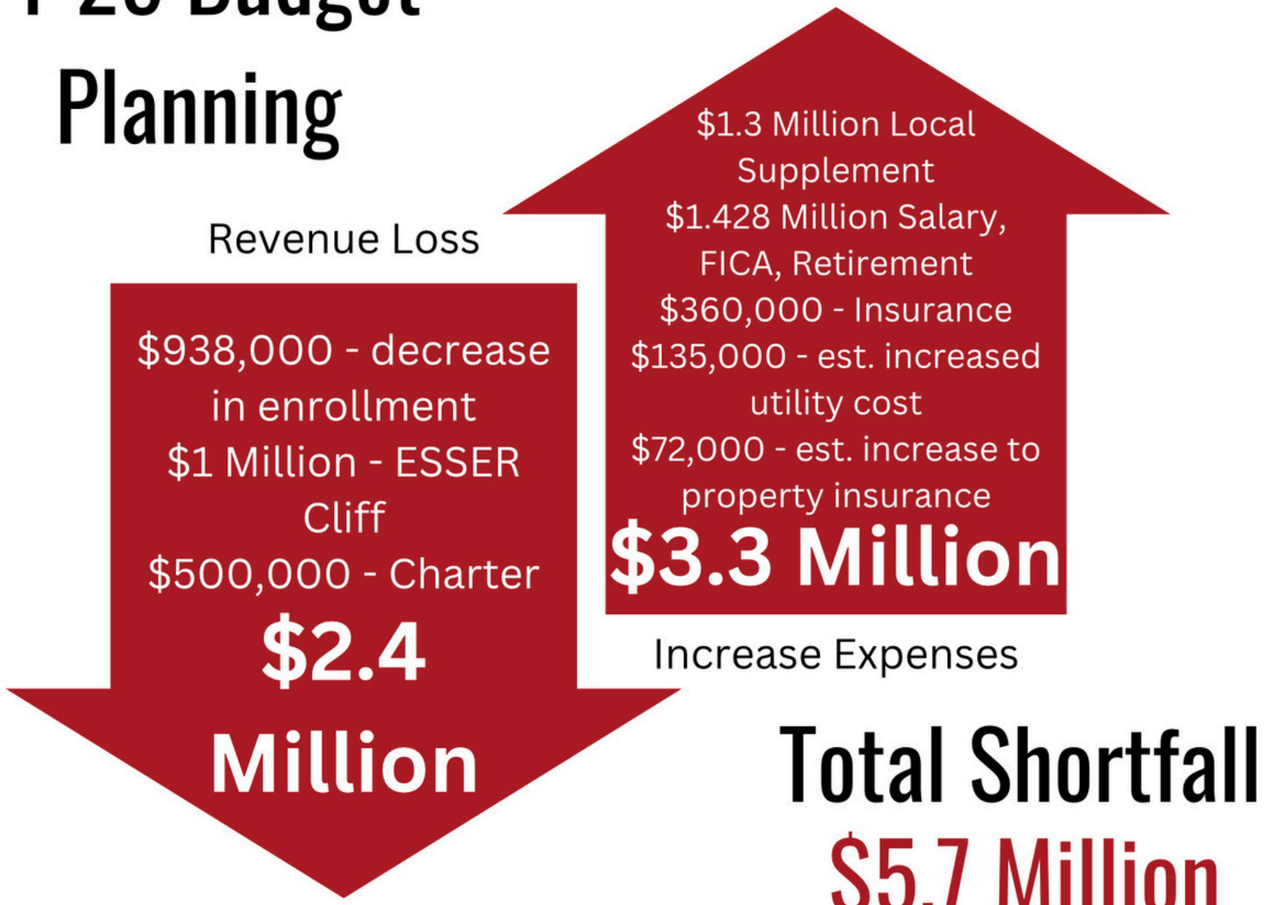
Dr. Mark Dickerson

SCHOOL SYSTEM
CONSOLIDATION
Feasibility Study



Initial FY 25 Projections (April 2024)

FY 25 Budget Planning



Total Shortfall

$5.7 Million

Updated FY 25 Budget

Initial Projections	Values
Initial Shortfall	$5.7 Million
Actual Increase from BC	$140,000
~~Requested Enhancements~~	~~$2.1 Million~~
Fund Balance Allocation	$3 Million
Additional Cuts Needed	**$2.6 Million**

Summary Budget Adjustments

Enhancements	Amount
Student Support Specialists	$497,494
Randolph Campus - ECA	$604,877
Total Enhancements	**$1,102371**

Summary Budget Adjustments

Reductions	Amount
Allotment Formula Savings	$965,757
MS Consolidation Savings	$1.3
CO Savings: Personnel, Operational Budget Cuts, and Contracts	$1.2 Million
Reduction in Overtime	$250,000
Total Reductions	**$3,797,330**

Net Change - $2.6 Million

Department Updates

1. Thank you to Marilee and Rebecca for outstanding communications for ACS
2. Welcomed new employees to the ACS Cougar Crew
3. ACS welcomed our BT1 on August 6th and received training on management in the active classroom and a deeper diver into crew
4. AMS hosted WRESA regional New Teacher training attended by 60+ NTO from the western region.

Questions & Discussion



#EverySecondCountsInACS