

**NONDISCRIMINATION AND ACCESS TO EQUAL EDUCATIONAL
OPPORTUNITY**

Any form of discrimination or harassment can be devastating to an individual's academic progress, social relationship and/or personal sense of self-worth. As such, the Board of Education does not discriminate on the basis of race, color, national origin, sex (including transgender status, change of sex, or gender identity), creed or religion, genetic information, disability, marital status, citizenship status, veteran status, military service, national origin, ancestry, socioeconomic status, academic status, physical appearance, sexual orientation, mental/physical/developmental sensory disability, or any other characteristic protected by law (collectively, "Protected Classes") in its educational programs or activities. (See West Virginia State Board of Education policy 4373)

The Board is also committed to equal employment opportunity in its employment policies and practices as they relate to students. The Board's policies pertaining to employment practices can be found at Policy 1422, Policy [3122](#), and Policy [4122](#) – Nondiscrimination and Equal Employment Opportunity.

In order to achieve the aforesaid goal, the Superintendent shall:

A. Curriculum Content

review current and proposed courses of study and textbooks to detect any bias based upon the Protected Classes ascertaining whether or not supplemental materials, singly or taken as a whole, fairly depict the contribution of both genders, various races, ethnic groups, etc. toward the development of human society;

provide that necessary programs are available for students with limited use of the English language;

B. Staff Training

develop an ongoing program of staff training and in service training for school personnel designed to identify and solve problems of bias based upon the Protected Classes in all aspects of the program;

C. Student Access

1. review current and proposed programs, activities, facilities, and practices to verify that all students have equal access thereto and are not segregated on the basis of the Protected Classes in any duty, work, play, classroom, or school practice, except as may be permitted under State and Federal laws and regulations;
2. verify that facilities are made available in a nondiscriminatory fashion, in accordance with Board Policy [7510](#) - Use of County Facilities, for non-curricular student activities that are initiated by parents or other members of the community, including but not limited to any group officially affiliated with the Boy Scouts of America or any other youth group listed in Title 36 of the United States Code as a patriotic society;

D. County Support

verify that like aspects of the County program receive like support as to staff size and compensation, purchase and maintenance of facilities and equipment, access to such facilities and equipment, and related matters;

E. Student Evaluation

verify that tests, procedures, or guidance and counseling materials, which are designed to evaluate student progress, rate aptitudes, analyze personality, or in any manner establish or tend to establish a category by which a student may be judged, are not differentiated or stereotyped on the basis of the Protected Classes.

County Compliance Officer

The Board designates the following individual to serve as the County's "Compliance Officer" (also known as "Civil Rights Coordinator") (hereinafter referred to as the "CO").

Director of Human Resources

304-258-2430

247 Harrison Avenue

Berkeley Springs, WV 25411

The name, title, and contact information of this individual will be published annually in the County's calendar.

The CO is responsible for coordinating the County's efforts to comply with applicable Federal and State laws and regulations, including the County's duty to address in a prompt and equitable manner any inquiries or complaints regarding discrimination, retaliation, or denial of equal access. The CO shall also verify that proper notice of nondiscrimination for Title II of the Americans with Disabilities Act (as amended), Title VI and Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendment Act of 1972, Section 504 of the Rehabilitation Act of 1973 (as amended) is provided to students, their parents, staff members, and the general public. A copy of each of the Acts and regulations on which this notice is based may be found in the CO's office.

The Superintendent shall attempt annually to identify children with disabilities, ages three (3) through twenty-one (21), which reside in the County but do not receive public education. In addition, s/he shall establish procedures to identify students who are Limited English Proficient (LEP), including immigrant children and youth, to assess their ability to participate in County programs, and develop and administer a program that meets the English language and academic needs of these students. This program shall include procedures for student placement, services, and evaluation and exit guidelines and shall be designed to provide students with effective instruction that leads to academic achievement and timely acquisition of proficiency in English. As a part of this program, the County will evaluate the progress of students in achieving English language proficiency in the areas of listening, speaking, reading and writing, on an annual basis. (See West Virginia State Board of Education policy 2417, Programs of Study for Limited English Proficient Students and West Virginia State Board of Education policy 2419, Regulations for the Education of Students with Exceptionalities)

Reports and Complaints of Unlawful Discrimination and Retaliation

Students and all other members of the County School community and third parties are encouraged to promptly report incidents of unlawful discrimination and/or retaliation to a teacher, administrator, supervisor, or other County official so that the Board may address the conduct. Any teacher, administrator, supervisor, or other County School employee or official who receives such a complaint shall file it with the CO at his/her first opportunity, but no later than two (2) business days.

Members of the County School community, that includes students or third parties, who believe they have been unlawfully discriminated/retaliated against are entitled to utilize the complaint process set forth below. Initiating a complaint, whether formally or informally, will not adversely affect the complaining individual's employment or participation in educational or extra-curricular programs. While there are no time limits for initiating complaints under this policy, individuals should make every effort to file a complaint as soon as possible after the conduct occurs while the facts are known and potential witnesses are available.

If, during an investigation of alleged bullying, aggressive behavior and/or harassment in accordance with Policy 5517.01 – Bullying and Other Forms of Aggressive Behavior, the principal believes that the reported misconduct may constitute unlawful discrimination based on a Protected Class, the principal shall report the act to the CO who shall investigate the allegation in accordance with this policy. While the CO investigates the allegation, the principal shall suspend his/her Policy 5517.01 investigation to await the CO's written report. The CO shall keep the principal informed of the status of the Policy [2260](#) investigation and provide him/her with a copy of the resulting written report.

The CO will be available during regular school/work hours to discuss concerns related to unlawful discrimination/retaliation. CO shall accept complaints of unlawful discrimination/retaliation directly from any member of the County school community or a visitor to the County School, or receive complaints that are initially filed with a school building administrator. Upon receipt of a complaint either directly or through a school building administrator, a CO will begin either an informal or formal process (depending on the request of the person alleging the discrimination/retaliation or the nature of the alleged discrimination/retaliation, within the discretion of the CO), or the CO will designate a specific individual to conduct such a process. The CO will provide a copy of this policy to any person who files a complaint. In the case of a formal complaint, the CO will prepare recommendations for the Superintendent or oversee the preparation of such recommendations by a designee. All members of the County school community must report incidents of discrimination/retaliation that are reported to them to the CO at his/her

first opportunity, but no later than two (2) business days of learning of the incident/conduct.

Any Board employee who directly observes unlawful discrimination/retaliation of a student is obligated, in accordance with this policy, to report such observations to the CO within two (2) business days. Additionally, any Board employee who observes an act of unlawful discrimination/retaliation is expected to intervene to stop the misconduct, unless circumstances make such an intervention dangerous, in which case the staff member should immediately notify other Board employees and/or local law enforcement officials, as necessary, to stop the misconduct. Thereafter, the CO or designee must contact the student, if age eighteen (18) or older, or the student's parents if the student is under the age eighteen (18), within two (2) school days to advise s/he/them of the Board's intent to investigate the alleged wrongdoing.

Investigation and Complaint Procedure

Any student who believes that s/he has been subjected to unlawful discrimination or retaliation may seek resolution of his/her complaint through the procedures described below. The formal complaint procedures involve an investigation of the individual's claims and a process for rendering a decision regarding whether the charges are substantiated.

Due to the sensitivity surrounding complaints of unlawful discrimination or retaliation, time lines are flexible for initiating the complaint process; however, individuals should make every effort to file a complaint within thirty (30) calendar days after the conduct occurs. Once the formal complaint process is begun, the investigation will be completed in a timely manner (ordinarily, within fifteen (15) business days of the complaint being received).

The procedures set forth below are not intended to interfere with the rights of a student to pursue a complaint of unlawful discrimination or retaliation with the United States Department of Education Office for Civil Rights ("OCR").

Formal Complaint Procedure

A student who believes s/he has been subjected to unlawful discrimination/retaliation (hereinafter referred to as the "Complainant") may file a formal complaint, either orally or in writing, with a teacher, principal, or other County employee at the student's school, the CO, Superintendent, or another County School employee who works at another school or at the School County level. Due to the sensitivity surrounding complaints of unlawful discrimination, timelines are flexible for initiating the complaint process; however, individuals should make every effort to file a complaint within thirty (30) calendar days after the conduct occurs. If a Complainant informs a teacher, principal, or other County employee at the student's

school, Superintendent, or other County employee, either orally or in writing, about any complaint of discrimination/retaliation, that employee must report such information to the CO at his/her first opportunity, but no later than two (2) business days.

Throughout the course of the process, the CO should keep the parties informed of the status of the investigation and the decision-making process.

All formal complaints must include the following information to the extent it is available: the identity of the individual believed to have engaged in, or be engaging in, the discriminatory/retaliatory conduct; a detailed description of the facts upon which the complaint is based; a list of potential witnesses; and the resolution sought by the Complainant.

If the Complainant is unwilling or unable to provide a written statement including the information set forth above, the CO shall ask for such details in an oral interview. Thereafter, the CO will prepare a written summary of the oral interview, and the Complainant will be asked to verify the accuracy of the reported charge by signing the document. Neither the unwillingness of a Complainant to provide a written statement or to verify the accuracy of a reported charge or the request of a Complainant to forgo further pursuit of a reported charge shall serve as a basis to refrain from the investigation of a reported charge.

Upon receiving a formal complaint, the CO will consider whether any action should be taken in the investigatory phase to protect the Complainant from further discrimination or retaliation, including, but not limited to, a change of work assignment or schedule for the Complainant and/or the person alleged to have engaged in the misconduct.

Pursuant to West Virginia State Board of Education policy 4373, upon receiving a formal complaint, the CO, in consultation with the principal will take reasonable steps to protect the Complainant, students, teachers, administrators, or other personnel in any manner throughout the pending investigation.

If a change in work assignment or schedule is deemed necessary, consideration shall first be given to a change in the work assignment or schedule of the person alleged to have engaged in the misconduct. In making such a determination, the CO should consult the Complainant to assess his/her agreement to the proposed action. If the Complainant is unwilling to consent to the proposed change, the CO may still take whatever actions s/he deem appropriate in consultation with the Superintendent.

Within two (2) business days of receiving the complaint, the CO will initiate a formal investigation to determine whether the Complainant has been subjected to unlawful discrimination/retaliation.

Simultaneously, the CO will inform the individual alleged to have engaged in the discriminatory or retaliatory conduct (hereinafter referred to as the "Respondent") that a complaint has been received. The Respondent will be informed about the nature of the allegations and provided with a copy of any relevant policies and/or administrative guidelines, including Policy [2260](#) - Nondiscrimination and Access to Equal Educational Opportunity. The Respondent must also be informed of the opportunity to submit a written response to the complaint within five (5) business days.

The CO will complete an investigation into the allegations of discrimination/retaliation as soon as practical but no later than ten (10) business days of receiving the formal complaint. The investigation will include:

- A. interviews with the Complainant;
- B. interviews with the Respondent;
- C. interviews with any other witnesses who may reasonably be expected to have any information relevant to the allegations;
- D. consideration of any documentation or other information presented by the Complainant, Respondent, or any other witness that is reasonably believed to be relevant to the allegations.

Pursuant to West Virginia State Board of Education policy 4373 at the conclusion of the investigation, the CO shall provide the principal with a written report that summarizes the evidence gathered during the investigation and recommendations based on the evidence and the definition of unlawful discrimination/retaliation as provided in Board policy and State and Federal law as to whether the Complainant has been subjected to unlawful discrimination/retaliation. The CO's recommendations must be based upon the totality of the circumstances, including the ages and maturity levels of those involved. In determining if unlawful discrimination or retaliation occurred, a preponderance of evidence standard will be used.

Further, at the conclusion of the investigation, the CO shall deliver the report provided to the principal to the Superintendent that summarizes the evidence gathered during the investigation and the recommendations given to the principal that were based on the evidence and the definition of unlawful discrimination/retaliation as provided in Board policy and State and Federal

law as to whether the Complainant has been subjected to unlawful discrimination/retaliation.

Absent extenuating circumstances, within five (5) business days of receiving the report of the CO or designee, the Superintendent must either issue a final decision regarding whether the charges have been substantiated or request further investigation. A copy of the Superintendent's final decision will be delivered to both the Complainant and the Respondent.

If the Superintendent requests additional investigation, the Superintendent must specify the additional information that is to be gathered, and such additional investigation must be completed within five (5) days. At the conclusion of the additional investigation, the Superintendent shall issue a final written decision as described above.

If the Superintendent determines the Complainant was subjected to unlawful discrimination/retaliation, s/he must identify what corrective action will be taken to stop, remedy, and prevent the recurrence of the discrimination/retaliation. The corrective action should be reasonable, timely, age-appropriate and effective, and tailored to the specific situation.

A Complainant or Respondent who is dissatisfied with the final decision of the Superintendent may appeal through a signed written statement to the Board within five (5) business days of his/her receipt of the Superintendent's final decision.

In an attempt to resolve the complaint, the Board shall meet with the concerned parties and their representatives within twenty (20) business days of the receipt of such an appeal. A copy of the Board's disposition of the appeal shall be sent to each concerned party within ten (10) business days of this meeting. The decision of the Board will be final. (See Policy [9130](#) – Public Complaints and West Virginia State Board of Education policy 7211 – Appeals Procedure for Citizens)

The Board reserves the right to investigate and resolve a complaint or report of unlawful discrimination/retaliation regardless of whether the student alleging the unlawful discrimination/retaliation pursues the complaint. The Board also reserves the right to have the formal complaint investigation conducted by an external person in accordance with this policy or in such other manner as deemed appropriate by the Board or its designee.

The Complainant may be represented, at his/her own cost, at any of the above described meetings/hearings.

The right of a person to a prompt and equitable resolution of the complaint shall not be impaired by the person's pursuit of other remedies such as the filing of a Complaint with the Office for Civil Rights or the filing of a court

case. Use of this internal complaint procedure is not a prerequisite to the pursuit of other remedies.

Privacy/Confidentiality

The County School will employ all reasonable efforts to protect the rights of the Complainant, the Respondent(s) individual(s), and the witnesses as much as possible, consistent with the Board's legal obligations to investigate, to take appropriate action, and to conform with any discovery or disclosure obligations. All records generated under the terms of this policy shall be maintained as confidential to the extent permitted by law. Confidentiality, however, cannot be guaranteed. All Complainants proceeding through the formal investigation process will be advised that their identities may be disclosed to the Respondent(s).

During the course of a formal investigation, the CO or designee will instruct each person who is interviewed about the importance of maintaining confidentiality. Any individual who is interviewed as part of an investigation is expected not to disclose to third parties any information that s/he learns and/or provides during the course of the investigation.

All records created as a part of an investigation of a complaint of discrimination/retaliation will be maintained by the CO in accordance with the Board's records retention policy. Any records that are considered student education records in accordance with the *Family Educational Rights and Privacy Act* or under student records law will be maintained in a manner consistent with the provisions of the Federal and State law.

Sanctions and Monitoring

The Board shall vigorously enforce its prohibitions against unlawful discrimination/retaliation by taking appropriate action reasonably calculated to stop and prevent further misconduct. While observing the principles of due process, a violation of this policy may result in disciplinary action up to and including the discharge of an employee or the suspension/expulsion of a student. All disciplinary action will be taken in accordance with applicable State law and the terms of the relevant collective bargaining agreement(s). When imposing discipline, the Superintendent shall consider the totality of the circumstances involved in the matter, including the ages and maturity levels of those involved. In those cases where unlawful discrimination/retaliation is not substantiated, the Board may consider whether the alleged conduct nevertheless warrants discipline in accordance with other Board policies, consistent with the terms of the relevant collective bargaining agreement(s).

Where the Board becomes aware that a prior remedial action has been taken against a member of the County School community, all subsequent sanctions

imposed by the Board and/or Superintendent shall be reasonably calculated to end such conduct, prevent its reoccurrence, and remedy its effects.

Retaliation

Retaliation against a person who makes a report or files a complaint alleging unlawful discrimination, or participates as a witness in an investigation is prohibited. Specifically, the Board will not retaliate against, coerce, intimidate, threaten, or interfere with any individual because the person opposed any act or practice made unlawful by any Federal or State civil rights law, or because that individual made a charge, testified, assisted or participated in any manner in an investigation, proceeding, or hearing under those laws, or because that individual exercised, enjoyed, aided, or encouraged any other person in the exercise or enjoyment of any right granted or protected by those laws.

Education and Training

In support of this policy, the Board promotes preventative educational measures to create greater awareness of unlawful discriminatory practices. The Superintendent or designee shall provide appropriate information to all members of the County school community related to the implementation of this policy and shall provide training for County students and staff where appropriate. All training, as well as all information, provided regarding the Board's policy and discrimination in general, will be age and content appropriate.

Fourteenth Amendment, U.S. Constitution

20 U.S.C. Section 1681, Title IX of Education Amendment Act

20 U.S.C. Section 1701 et seq., Equal Educational Opportunities Act of 1974

20 U.S.C. Section 7905, Boy Scouts of America Equal Access Act

29 U.S.C. Section 794, Rehabilitation Act of 1973, as amended

42 U.S.C. Section 2000 et seq., Civil Rights Act of 1964

42 U.S.C. Section 2000ff et seq., The Genetic Information Nondiscrimination Act

42 U.S.C. 12101 et seq., The Americans with Disabilities Act of 1990, as amended

42 U.S.C. 6101 et seq., Age Discrimination Act of 1975

29 C.F.R. Part 1635

34 C.F.R. Part 110 (7/27/93)

Vocational Education Program Guidelines for Eliminating Discrimination and Denial of

Services, Department of Education, Office of Civil Rights, March 1979

Title III of the No Child Left Behind Act of 2001

WV Code 18-20-1 et seq.

Individuals with Disabilities Education Act Amendments of 1997 (IDEA 97)

West Virginia State Board of Education policy 2419
West Virginia State Board of Education policy 4373

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