

**DISCRIMINATION, HARASSMENT, AND
BULLYING COMPLAINT PROCEDURE**

Policy Code: **1720/4015/7225**

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

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

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

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24 **A. DEFINITIONS**

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26 **1. Alleged Perpetrator**

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

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31 **2. Complaint**

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

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36 **3. Complainant**

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

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41 **4. Days**

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

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50 **5. Investigative Report**

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

54
55 **6. Investigator**

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

60
61 **7. Report**

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

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67 **B. REPORTING BY EMPLOYEES OR OTHER THIRD PARTIES**

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69 **1. Mandatory Reporting by School Employees**

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

79
80 **2. Reporting by Other Third Parties**

81
82 All members of the school community, including students, parents, volunteers,
83 and visitors, are also strongly encouraged to report any act that may constitute an
84 incident of discrimination, harassment, or bullying.

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86 3. **Anonymous Reporting**

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88 Reports of discrimination, harassment, or bullying may be made anonymously
89 (except mandatory reports by school employees) but formal disciplinary action
90 may not be taken solely on the basis of an anonymous report.

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92 4. **Investigation of Reports**

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

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

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106 1. **Filing a Complaint**

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

- 111
112 a. the principal or assistant principal of the school at which either the alleged
113 perpetrator or alleged victim attends or is employed;
- 114
115 b. an immediate supervisor if the individual making the complaint is an
116 employee;
- 117
118 c. the assistant superintendent of human resources if the alleged perpetrator
119 or alleged victim is an employee of the school system (or the
120 superintendent if the assistant superintendent of human resources is the
121 alleged perpetrator);
- 122
123 d. the Title IX coordinator for claims of sex discrimination or sexual
124 harassment (see policy 1710/4021/7230 for contact information);
- 125
126 e. the Section 504 coordinator or the ADA coordinator for claims of
127 discrimination on the basis of a disability (see policy 1710/4021/7230 for
128 contact information); or

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f. for claims of other forms of prohibited discrimination, the applicable civil rights coordinator as established in policy 1710/4021/7230.

2. Time Period for Filing a Complaint

A complaint should be filed as soon as possible but no later than 30 days after disclosure or discovery of the facts giving rise to the complaint. Complaints submitted after the 30-day period may be investigated; however, individuals should recognize that delays in reporting may significantly impair the ability of school officials to investigate and respond to such complaints.

3. Informal Resolution

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

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

4. Other Resources

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

4000 Maryland Ave., SW

172 Washington, DC 20202-1475
173 Telephone: 202-453-6020 TDD: 800-877-8339
174 FAX: 202-453-6021 E-mail: OCR.DC@ed.gov
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176 **D. PROCESS FOR ADDRESSING COMPLAINTS OF ALLEGED INCIDENTS OF DISCRIMINATION,**
177 **HARASSMENT, OR BULLYING**

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179 **1. Initiating the Investigation**
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181 a. Whoever receives a complaint of discrimination, harassment, or bullying
182 pursuant to subsection C.1, **above**, shall immediately notify the
183 appropriate investigator who shall respond to the complaint and
184 investigate. The investigator of a complaint is **ordinarily** determined as
185 follows; **however, the superintendent may determine that individual**
186 **circumstances warrant the assignment of a different investigator.**
187

188 1) If the alleged incident occurred under the jurisdiction of the
189 principal, the investigator is the principal or designee, unless the
190 alleged perpetrator is the principal, the assistant superintendent of
191 human resources, the superintendent, or a member of the board. If
192 the alleged perpetrator is any other employee, the principal or
193 designee shall conduct the investigation in consultation with the
194 assistant superintendent of human resources or designee.
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196 2) If the alleged perpetrator is the principal, the assistant
197 superintendent of human resources or designee is the investigator.
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199 3) If the alleged incident occurred outside of the jurisdiction of a
200 principal (for example, at the central office), the assistant
201 superintendent of human resources or designee is the investigator
202 unless the alleged perpetrator is the assistant superintendent of
203 human resources, the superintendent, or a member of the board.
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205 4) If the alleged perpetrator is the assistant superintendent of human
206 resources, the superintendent or designee is the investigator.
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208 5) If the alleged perpetrator is the superintendent, the board attorney
209 is the investigator. (In such cases, whoever receives a complaint of
210 discrimination, harassment, or bullying shall immediately notify
211 the assistant superintendent of human resources who shall
212 immediately notify the board chair. The board chair shall direct
213 the board attorney to respond to the complaint and investigate.)
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- 215 6) If the alleged perpetrator is a member of the board, the board
216 attorney is the investigator. (In such cases, whoever receives a
217 complaint of discrimination, harassment, or bullying shall
218 immediately notify the superintendent who shall direct the board
219 attorney to respond to the complaint and investigate. Unless the
220 board chair is the alleged perpetrator, the superintendent shall also
221 notify the board chair of the complaint.)
222
- 223 b. As applicable, the investigator shall immediately notify the Title IX,
224 Section 504, ADA, or other relevant coordinator of the complaint, and, as
225 appropriate, may designate the coordinator to conduct **or assist with** the
226 investigation.
227
- 228 c. **The applicable coordinator and the investigator shall jointly assess the
229 need for interim measures of support for either party and, as necessary,
230 shall implement appropriate measures in a timely manner and monitor the
231 effectiveness of the measures during the pendency of the investigation.
232 Interim measures that restrict the ability of either party to discuss the
233 investigation (“gag orders”) may not be used.**
234
- 235 d. The investigator shall explain the process of the investigation to the
236 complainant and inquire as to whether the complainant would like to
237 suggest a course of corrective action.
238
- 239 e. Written documentation of all reports and complaints, as well as the school
240 system’s response, must be maintained in accordance with policy
241 1710/4021/7230.
242
- 243 f. Failure to investigate and/or address claims of discrimination, harassment,
244 or bullying shall result in disciplinary action.
245

246 **2. Conducting the Investigation**
247

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

258 ~~1730/4022/7231. In so doing, the investigator shall impartially, promptly,~~
259 ~~and thoroughly investigate the complaint.~~ The investigator shall interview
260 **all individuals who may have relevant information, including** (1) the
261 complainant; (2) the alleged perpetrator(s); (3) individuals identified as
262 witnesses by the complainant or alleged perpetrator(s); and (4) any other
263 individuals, including other possible victims, who may have relevant
264 information. The investigation will include a review of all evidence
265 presented by the complainant or alleged perpetrator.
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267 **b. If the investigator, after receipt of the complaint, an interview with the**
268 **complainant, and consultation with the board attorney, determines that the**
269 **allegations submitted, even if factual, do not constitute discrimination,**
270 **harassment, or bullying as defined in policy 1710/4021/7230 or policy**
271 **1730/4022/7231, school officials will address the matter outside the scope**
272 **of this policy. Information regarding the investigator's determination and**
273 **the process for addressing the complaint will be provided to the**
274 **complainant.**
275

276 **c. The complaint and investigation will be kept confidential to the extent**
277 **possible. Information may be shared only with individuals who need the**
278 **information in order to investigate and address the complaint appropriately**
279 **and those with a legal right to access the information. Any requests by the**
280 **complainant for further confidentiality will be evaluated within the context**
281 **of the legal responsibilities of the school system. Any complaints**
282 **withdrawn to protect confidentiality must be recorded in accordance with**
283 **policy 1710/4021/7230.**
284

285 **d. The investigator shall review the factual information gathered through the**
286 **investigation to determine whether, based on a preponderance of the**
287 **evidence, the alleged conduct constitutes discrimination, harassment, or**
288 **bullying, giving consideration to all factual information, the context in**
289 **which the alleged incidents occurred, the age and maturity of the**
290 **complainant and alleged perpetrator(s), and any other relevant**
291 **circumstances. The investigator shall submit a written investigative report**
292 **to the superintendent and, as applicable, to the Title IX, Section 504, ADA**
293 **or other coordinator.**
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295 **3. Notice to Complainant and Alleged Perpetrator**
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297 **a. The investigator shall provide written notification to the complainant of**
298 **the results of the investigation within 15 days of receiving the complaint,**
299 **unless additional time is necessary to conduct an impartial, thorough**
300 **investigation. The investigator shall specify whether the complaint was**

- 301 substantiated and, if so, shall also specify:
302
303 1) reasonable, timely, age-appropriate, corrective action intended to
304 end the discrimination, harassment, or bullying, and prevent it
305 from recurring;
306
307 2) as needed, reasonable steps to address the effects of the
308 discrimination, harassment, or bullying on the complainant; and
309
310 3) as needed, reasonable steps to protect the complainant from
311 retaliation as a result of communicating the complaint.
312
313 b. If required by federal law, information regarding specific disciplinary
314 action imposed on the alleged perpetrator(s) will be given to the
315 complainant, such as when the information relates directly to the
316 complainant (e.g., an order requiring the perpetrator not to have contact
317 with the complainant). However, school officials are encouraged to
318 consult with the superintendent and board attorney before releasing such
319 information.
320
321 c. If the investigator determines that the complaint was substantiated, the
322 perpetrator(s) shall be subject to discipline or other corrective steps, as
323 described in policy 1710/4021/7230. If the corrective steps involve
324 actions outside the scope of the investigator's authority, the superintendent
325 will be notified so that responsibility for taking the corrective steps may be
326 delegated to the appropriate individual.
327
328 d. Each alleged perpetrator will be provided with a written summary of the
329 results of the investigation in regard to whether the complaint was
330 substantiated, whether the alleged perpetrator violated relevant law or
331 board policies by his or her actions, and what, if any, disciplinary actions
332 or consequences will be imposed upon the perpetrator in accordance with
333 board policy. The perpetrator may appeal any disciplinary action or
334 consequence in accordance with board policy and law. However, an
335 appeal by the perpetrator of disciplinary action does not preclude school
336 officials from taking appropriate action to address the discrimination,
337 harassment, or bullying.
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339 **4. Appeal**
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341 a. If the complainant is dissatisfied with the results of the investigation, he or
342 she may appeal the decision to the superintendent (unless the alleged
343 perpetrator is the assistant superintendent of human resources or the

344 superintendent, in which cases the complainant may appeal directly to the
345 board in accordance with the procedure described in subsection D.4.b,
346 below). The appeal must be submitted in writing within five days of
347 receiving the notice of the results of the investigation. The superintendent
348 may review the documents, conduct any further investigation necessary, or
349 take any other steps the superintendent determines to be appropriate in
350 order to respond to the complaint. The superintendent shall provide a
351 written response within 10 days after receiving the appeal, unless further
352 investigation is needed.

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- 354 b. If the complainant is dissatisfied with the superintendent's response, he or
355 she may appeal the decision to the board within five days of receiving the
356 superintendent's response. The board will review the documents, direct
357 that further investigation be conducted if necessary, and take any other
358 steps that the board determines to be appropriate in order to respond to the
359 complaint. Upon request of the complainant, the board will hold a hearing
360 pursuant to policy 2500, Hearings Before the Board. The board will
361 provide a written response within 30 days after receiving the appeal,
362 unless further investigation is necessary or the hearing necessitates that
363 more time be taken to respond.

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365 **E. TIMELINESS OF PROCESS**

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367 *The school system will make a good faith effort to conduct a fair, impartial investigation*
368 *in a timely manner designed to provide all parties with a prompt and equitable resolution.*
369 The number of days indicated at each step of the process should be considered a
370 maximum. Every effort should be made to expedite the process. *The school system*
371 *reserves the right to extend any deadline contained in this policy for good cause with*
372 *written notice to the parties of the delay and the reason for the delay.*

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

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

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F. GENERAL REQUIREMENTS

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

G. RECORDS

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

Legal References: Age Discrimination in Employment Act of 1967, 29 U.S.C. 621 *et seq.*, 34 C.F.R. pt. 110; Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.*, 28 C.F.R. pt. 35; Family Educational Rights and Privacy Act, 20 U.S.C. 1232g; Rehabilitation Act of 1973, 29 U.S.C. 705(20), 794, 34 C.F.R. pt. 104; Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.*, 34 C.F.R. pt. 100; Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.*, 29 C.F.R. pt. 1604; Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.*, 34 C.F.R. pt. 106; Boy Scouts of America Equal Access Act, 20 U.S.C. 7905, 34 C.F.R. pt. 108; *Racial Incidents and Harassment Against Students at Educational Institutions: Investigative Guidance*, U.S. Department of Education, Office for Civil Rights (1994); *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties*, U.S. Department of Education, Office for Civil Rights (2001); *Notice of Non-Discrimination*, U.S. Department of Education, Office for Civil Rights (2010); *Dear Colleague*

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430 *Letter (Bullying)*, U.S. Department of Education, Office for Civil Rights (2010), available at
431 <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>; *Dear Colleague Letter*
432 *(Sexual Harassment)*, U.S. Department of Education, Office for Civil Rights (2006), available at
433 <https://www2.ed.gov/about/offices/list/ocr/letters/sexhar-2006.html>; *Q&A on Campus Sexual*
434 *Misconduct*, U.S. Department of Education, Office for Civil Rights (2017), available at
435 <https://www2.ed.gov/about/offices/list/ocr/docs/qa-title-ix-201709.pdf>; *Gebser v. Lago Vista*
436 *Independent School District*, 524 U.S. 274 (1998); *Davis v. Monroe County Board of Education*,
437 526 U.S. 629 (1999); G.S. 115C-407.15 through -407.18
438

439 Cross References: Prohibition Against Discrimination, Harassment, and Bullying (policy
440 1710/4021/7230), *Nondiscrimination on the Basis of Disabilities* (policy 1730/4022/7231),
441 Student and Parent Grievance Procedure (policy 1740/4010), Hearings Before the Board (policy
442 2500), *Staff-Student Relations* (policy 4040/7310), Assaults, Threats, and Harassment (policy
443 4331)
444

445 Adopted: February 7, 1994
446

447 Revised: August 16, 2004; March 7, 2005; December 21, 2009; January 21, 2004;
448 September 21, 2015; December 14, 2015; May 16, 2016; [DATE]

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