

**DISCRIMINATION, HARASSMENT AND BULLYING  
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1 **A. APPLICATION OF POLICY**

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3 All persons, agencies, vendors, contractors and other persons and organizations doing  
4 business with or performing services for the school district must comply with all  
5 applicable federal and state laws and regulations regarding nondiscrimination. Visitors  
6 also are expected to comply with applicable laws, including the prohibition against  
7 harassment and bullying of students or harassment of employees.  
8

9 This policy will apply in, but is not limited to, the following circumstances:

- 10  
11 1. While in any school building or on any school premises before, during or after  
12 school hours;  
13 2. While on any bus or other vehicle as part of any school activity;  
14 3. While waiting at any bus stop;  
15 4. During any school function, extracurricular activity or other activity or event;  
16 5. When subject to the authority of school personnel;  
17 6. While using school or personal electronic communications; and  
18 7. Any time or place when the behavior has a direct and immediate effect on  
19 maintaining order and discipline in the schools.  
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21 **B. DEFINITION**

22  
23 For the purposes of this policy the following definitions have been provided:

- 24  
25 1. *Actual or Perceived Differentiating Characteristics* include, but are not limited to,  
26 race; color; religion; ancestry; national origin; gender; sex; age; socioeconomic  
27 status; academic status; gender identity; physical appearance; sexual orientation;  
28 pregnancy; or mental, physical, developmental or sensory disability or by  
29 association with a person who has or is perceived to have one or more of these  
30 characteristics.  
31  
32 2. *Bullying* is deliberately hurtful behavior repeated often over a period of time or on  
33 isolated occasions, where a student or group of students deliberately intimidate,  
34 threaten or harass another student. Acts of bullying may be psychological or  
35 physical in nature and occur in the form of written, spoken, or gestured words.  
36 Bullying may include, but is not limited to, acts as defined in this section that are  
37 reasonably perceived as being motivated by an actual or perceived differentiating  
38 characteristic or by association with a person who has or is perceived to have a  
39 differentiating characteristic. Examples of bullying include, but are not limited to,

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taunting, intimidation, cyber harassment, rumor spreading, extortion of money or personal items, and playing abusive tricks.

3. ~~*Electronic communications* applies to employee and student e-mails, text messaging, instant messaging, chat rooms, blogging, websites and social networking websites (i.e., MySpace or Facebook).~~

4. ~~*Harassment* is unwanted, unwelcome and uninvited behavior, including gestures, written, electronic or verbal communications, or any physical act or any threatening communication that places the person in actual or reasonable fear of harm to his person or property or that results in a hostile environment that interferes with or impairs the person's educational or work environment. A hostile environment can be created through pervasive or persistent misbehavior or a single incident, if sufficiently severe. Harassing behavior may include, but it not limited to, acts as defined in this section that are reasonably perceived as being motivated by an actual or perceived differentiating characteristic or by association with a person who has or is perceived to have a differentiating characteristic. Examples of harassing behavior include, but are not limited to, epithets, derogatory comments or slurs and lewd propositions, assaults, impeding or blocking movement, offensive touching or any physical interference with normal work or movement and visual insults, such as derogatory posters or cartoons. Legitimate age-appropriate pedagogical techniques are not considered harassing behavior.~~

5. ~~*Hazing* is subjecting "another student to physical injury as part of an initiation, or as a prerequisite to membership into any organized school group, including any society, athletic team, fraternity or sorority or other similar group" (N.C.G.S. § 14-35). Any violation of this section shall constitute a Class 2 misdemeanor.~~

6. ~~*Discrimination* is any act or failure to act that unreasonably and unfavorably differentiates treatment of others based solely on their membership in a socially distinct group or category such as race, ethnicity, sex, pregnancy, religion, age or disability. Discrimination may be intentional or unintentional.~~

**C. COMPLAINT PROCEDURES**

If a student or employee believes that he or she has been subjected to forms of bullying, harassment, hazing or discrimination, whether verbal, nonverbal, written, visual or physical, the student or student's parent/guardian should immediately report the situation

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79 to the school principal at the school where the student attends. The complaint may be  
80 submitted anonymously; however, an anonymous report shall not be construed to permit  
81 formal disciplinary action based solely on this report. If for any reason the student or  
82 employee is not comfortable reporting the incident to the school principal, then the  
83 complaint should be reported to the Policy Chairman at the Transylvania County Schools  
84 Administrative Offices. This person may be contacted by calling the Transylvania  
85 County Schools Administrative Offices at (828) 884-6173. Inherent within this policy is  
86 the prohibition of reprisal or retaliation against any individual who is involved in the  
87 reporting of acts associated with bullying, harassing, hazing or discrimination.  
88

89 An attempt to resolve the problem shall then be made through the following process:  
90

- 91 1. Within two (2) school days, the principal/designee to whom the problem has been  
92 reported shall confer with the charging party in order to obtain a clear understanding  
93 of the grieving party's statement of the facts.  
94
- 95 2. Within two (2) school days, the principal/designee shall meet with the charged party  
96 in order to obtain his or her response to the complaint.  
97
- 98 3. Within three (3) school days, the principal/designee will fully investigate all charges,  
99 and on the basis of the principal/designee's perception of the situation, he or she may:  
100
  - 101 (1) Attempt to resolve the matter informally through conciliation/mediation.  
102
  - 103 (2) Follow the student discipline policy (JFC R) and place a record of the  
104 incident in the charged student's disciplinary record or in the charged  
105 employee's personnel file.  
106
- 107 4. Any student or employee not satisfied with the decision of the principal/designee may  
108 request a review of the record by the superintendent/designee. This request for  
109 review of the record must be in writing and presented to the superintendent/designee  
110 within five (5) school days after the principal's decision.  
111
- 112 5. Within five (5) school days after receiving the written request to review the record,  
113 the superintendent/designee may attempt to gather more evidence necessary to decide  
114 the case, and thereafter impose any sanctions deemed appropriate, including a  
115 recommendation to the Board for termination or suspension for a charged employee.  
116 The written decision of the superintendent/designee will be given to the grieving

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party no later than fifteen (15) school days after receiving the request to review the record.

~~Any violation of this policy is considered serious and appropriate action will be taken in response. Students and employees are expected to comply with the behavior standards established by Board policy and the Student Code of Conduct. Students or employees in violation of this or any affiliated policy or the Student Code of Conduct will be disciplined in accordance with Board policy.~~

~~The principal is responsible for reporting and documenting verified acts of bullying, harassment or hazing on the Annual School Violence Report. Responsibility also extends to providing students, parents, and school staff access to this policy and relevant procedures in writing. All Transylvania County employees shall report any known violations of this policy to the school principal or the Policy Chairman.~~

**D. — TRAINING**

~~The Board directs the superintendent to establish training and other programs that are designed to help eliminate bullying, harassment, hazing and discrimination and to foster an environment of understanding and respect for all members of the school community. Information about this policy and related complaint procedures must be included in the training plan.~~

**E. — NOTICE**

~~The superintendent is responsible for providing effective notice to students, parents and employees of the procedures for reporting and investigating complaints of bullying, hazing and discrimination. This policy shall be posted on the school system's website and copies of the policy shall be available in the principal's office, the media center at each school and the superintendent's office. Notice of this policy shall appear in all student handbooks and in any school publication that sets forth the comprehensive rules, procedures and standards of conduct for students.~~

**F. — NO PROTECTED CLASS**

~~Nothing in this policy shall be construed to create any classification, protected class, suspect category or preference beyond those existing in state or federal law or case law.~~

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The Board takes seriously all complaints of unlawful discrimination, harassment and bullying. The process provided in this policy is designed for those individuals who believe that they may have been discriminated against, bullied or harassed in violation of Policy ACB, “Discrimination, Harassment and Bullying.” Individuals who have witnessed or have reliable information that another person has been subject to unlawful discrimination, harassment or bullying also should report such violations to one of the school system officials listed in subsection C.1. of this policy. Reports may be made anonymously.

**A. DEFINITIONS**

1. Alleged Perpetrator

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

2. Complaint

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

3. Complainant

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

4. Days

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

5. Investigative Report

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

6. Investigator

The investigator is the school official responsible for investigating and responding to the complaint.

7. Report

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

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

1. Mandatory Reporting by School Employees

Any employee who witnessed or who has reliable information or reason to believe that an individual may have been discriminated against, harassed or bullied in violation of Policy ACB, "Discrimination, Harassment and Bullying," must report the offense immediately to an appropriate individual designated in subsection C.1., below. An employee who does not promptly report possible discrimination, harassment or bullying shall be subject to disciplinary action.

2. Reporting by Other Third Parties

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

3. Anonymous Reporting

Reports of discrimination, harassment or bullying may be made anonymously but formal disciplinary action may not be taken solely on the basis of an anonymous report.

4. Investigation of Reports

Reports of discrimination, harassment or bullying shall be investigated sufficiently to determine whether further action under this policy or otherwise is necessary, and school officials shall take such action as appropriate under the circumstances. At the option of the alleged victim, the report may be treated as a complaint by the alleged victim under this policy.

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

1. Filing a Complaint

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

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- a. The principal or assistant principal of the school at which either the alleged perpetrator or alleged victim attends or is employed;
- b. An immediate supervisor if the individual making the complaint is an employee;
- c. The assistant superintendent if the alleged perpetrator or alleged victim is an employee of the school system (or the superintendent if the assistant superintendent is the alleged perpetrator);
- d. The Title IX coordinator for claims of sex discrimination or sexual harassment;
- e. The Section 504 coordinator or the ADA coordinator for claims of discrimination on the basis of a disability; or
- f. For claims of other forms of prohibited discrimination, the applicable civil rights coordinator as established in Policy ACB.
- g. If for any reason the student or employee is not comfortable reporting the incident to the individuals listed above, then the complaint should be reported to the policy chairman at the Transylvania County Schools Administrative Offices. This person may be contacted by calling the Transylvania County Schools Administrative Offices at (828) 884-6173.

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 through such methods as conferences or mediation, and the board encourages the use of such procedures to the extent possible. 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 request formal procedures at any time; and (2) make a copy of this policy and other relevant policies available to the complainant. In those



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circumstances in which informal procedures fail or are inappropriate or in which 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.

**D. PROCESS FOR ADDRESSING COMPLAINTS OF ALLEGED INCIDENTS OF DISCRIMINATION, HARASSMENT OR BULLYING**

1. Initiating the Investigation

a. Whoever receives a complaint of discrimination, harassment or bullying pursuant to subsection C.1. shall immediately notify the appropriate investigator who shall respond to the complaint and investigate. The investigator of a complaint is determined as follows.

- 1) If the alleged incident occurred under the jurisdiction of the principal, the investigator is the principal or designee, unless the alleged perpetrator is the principal, the assistant superintendent, the superintendent or a member of the board. If the alleged perpetrator is any other employee, the principal or designee shall conduct the investigation in consultation with the assistant superintendent of human resources or designee.
- 2) If the alleged perpetrator is the principal, the assistant superintendent or designee is the investigator.
- 3) If the alleged incident occurred outside of the jurisdiction of a principal (for example, at the central office), the assistant superintendent or designee is the investigator unless the alleged perpetrator is the assistant superintendent of human resources, the superintendent or a member of the board.
- 4) If the alleged perpetrator is the assistant superintendent, the superintendent or designee is the investigator.
- 5) If the alleged perpetrator is the superintendent, the board attorney is the investigator. (In such cases, whoever receives a complaint of discrimination, harassment or bullying shall immediately notify the assistant superintendent who shall immediately notify the board



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chair. The board chair shall direct the board attorney to respond to the complaint and investigate.)

6) If the alleged perpetrator is a member of the Board, the board attorney is the investigator. (In such cases, whoever receives a complaint of discrimination, harassment or bullying shall immediately notify the superintendent who shall direct the board attorney to respond to the complaint and investigate. Unless the board chair is the alleged perpetrator, the superintendent shall also notify the board chair of the complaint.)

- b. As applicable, the investigator shall immediately notify the Title IX, Section 504, ADA or other relevant coordinator of the complaint, and, as appropriate, may designate the coordinator to conduct the investigation.
- c. The investigator shall explain the process of the investigation to the complainant and inquire as to whether the complainant would like to suggest a course of corrective action.
- d. Written documentation of all reports and complaints, as well as the school system's response, must be maintained in accordance with Policy ACB.
- e. Failure to investigate and/or address claims of discrimination, harassment or bullying shall result in disciplinary action.

2. Conducting the Investigation

- a. The investigator is responsible for determining whether the alleged act(s) constitutes a violation of Policy ACB. In so doing, the investigator shall impartially, promptly and thoroughly investigate the complaint. The investigator shall interview (1) the complainant; (2) the alleged perpetrator(s); and (3) any other individuals, including other possible victims, who may have relevant information.
- b. Information may be shared only with individuals who need the information in order to investigate and address the complaint appropriately. Any requests by the complainant for confidentiality shall be evaluated within the context of the legal responsibilities of the school system. Any complaints withdrawn to protect confidentiality must be

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recorded in accordance with Policy ACB.

- c. The investigator shall review the factual information gathered through the investigation to determine whether the alleged conduct constitutes discrimination, harassment or bullying, giving consideration to all factual information, the context in which the alleged incidents occurred, the age and maturity of the complainant and alleged perpetrator(s), and any other relevant circumstances.

3. Investigative Report

- a. The investigator shall submit a written investigative report to the superintendent and, as applicable, to the Title IX, Section 504, ADA or other coordinator.
- b. The investigator shall notify the complainant of the results of the investigation within 15 days of receiving the complaint, unless additional time is necessary to conduct an impartial, thorough investigation. The investigator shall specify whether the complaint was substantiated and, if so, shall also specify:
- 1) Reasonable, timely, age-appropriate, corrective action intended to end the discrimination, harassment or bullying and prevent it from recurring;
  - 2) As needed, reasonable steps to address the effects of the discrimination, harassment or bullying on the complainant; and
  - 3) As needed, reasonable steps to protect the complainant from retaliation as a result of communicating the complaint.
- c. Information regarding specific disciplinary action imposed on the alleged perpetrator(s) will not be given to the complainant unless the information relates directly to the complainant (e.g., an order requiring the perpetrator not to have contact with the complainant).
- d. If the investigator determines that the complaint was substantiated, the perpetrator(s) shall be subject to discipline or other corrective steps, as described in policy 1710/4021/7230. If the corrective steps involve

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actions outside the scope of the investigator's authority, the superintendent will be notified so that responsibility for taking the corrective steps may be delegated to the appropriate individual.

- e. Each alleged perpetrator will be provided with a written summary of the results of the investigation in regard to whether the complaint was substantiated, whether the alleged perpetrator violated relevant law or board policies by his or her actions, and what, if any, disciplinary actions or consequences will be imposed upon the perpetrator in accordance with board policy. The perpetrator may appeal any disciplinary action or consequence in accordance with board policy and law. However, an appeal by the perpetrator of disciplinary action does not preclude school officials from taking appropriate action to address the discrimination, harassment or bullying.

4. Appeal of Investigative Report

- a. If the complainant is dissatisfied with the investigative report, he or she may appeal the decision to the superintendent (unless the alleged perpetrator is the assistant superintendent of human resources or the superintendent, in which cases the complainant may appeal directly to the board in accordance with the procedure described in subsection D.4.b below). The appeal must be submitted in writing within five days of receiving the investigative report. 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 days after receiving the appeal, unless further investigation is needed.
- b. If the complainant is dissatisfied with the superintendent's response, he or she may appeal the decision to the Board within five days of receiving the superintendent's response. The Board will review the documents, direct that further investigation be conducted if necessary and take any other steps that the Board determines to be appropriate in order to respond to the complaint. Upon request of the complainant, the Board will hold a hearing pursuant to Policy BDA, "Hearings Before the Board." The Board will provide a written response within 30 days after receiving the appeal, unless further investigation is necessary or the hearing necessitates

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that more time be taken to respond.

**E. TIMELINESS OF PROCESS**

The number of days indicated at each step of the process should be considered a maximum. Every effort should be made to expedite the process.

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

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

**F. GENERAL REQUIREMENTS**

1. No reprisals or retaliation of any kind will be taken by the Bboard 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.

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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 ACB.

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); *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-407.15 through -407.18; State Board of Education Policy HRS-A-007

Cross References: Discrimination, Harassment and Bullying (Policy ACB), Hearings Before the Board (Policy BDA).

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