

WILKES-BARRE AREA SCHOOL DISTRICT

1. Policy

Public School Code § 1310;
Civil Rights Act
Title VI: 42 USC § 2000d
et seq.;
1972 Ed. Am.
Act. Title IX:
20 USC§ 1681;
42 USC § 12101
et seq.;
ADEA: 29 USC
§ 621 *et seq.*;
29 USC § 701 *et seq.*;
34 CFR Parts
100,104, 106, 110;
Pa.HRA: 43 PA.
STAT. ANN. § 951 *et seq.*;
16 Pa. Code ch. 44, 47;
PHRC guidelines;
29 CFR § 1606.8(a);
22 Pa. Code § 4.4

Nondiscrimination Policy and Procedure

The Board declares it to be the policy of this District to provide an equal opportunity for all students to achieve their maximum potential through the programs offered in the District regardless of race, color, age, creed, religion, gender, sexual orientation, ancestry, national origin, familial status, handicap/disability, union membership, or any other legally protected classification. The District shall provide to all students, without discrimination, course offerings, counseling, assistance, employment, athletics and extracurricular activities.

The Board declares it to be the policy of this District to provide to all persons equal access to all categories of employment in this district, regardless of race, color, age, creed, religion, gender, sexual orientation, ancestry, national origin, familial status, handicap/disability, union membership, or any other legally protected classification.

Further, in all other respects, the Board declares it to be the policy of this District that no person shall be excluded from participation in, be denied the benefits of, or otherwise subjected to unlawful discrimination on the ground of race, color, age, creed, religion, gender, sexual orientation, ancestry, national origin, handicap/disability or any other legally protected classification with respect to any of its programs or activities or in the employment of any personnel.

The District shall make reasonable accommodations for identified physical and mental impairments that constitute disabilities, consistent with the requirements of federal and state laws and regulations.

Sexual Harassment and other types of unlawful Harassment (as defined below) are forms of unlawful discrimination and are expressly prohibited under this policy.

The Board encourages students, employees, and third parties who have been subject to discrimination to promptly report such incidents to designated employees.

The Board directs that complaints of discrimination shall be investigated promptly, and corrective action be taken when allegations are substantiated.

The Board recommends that any District staff member who observes acts of harassment based on race, color, age, creed, religion, gender, sexual orientation, ancestry, national origin or handicap/disability intervene to stop the harassment unless circumstances would make such intervention dangerous.

Nondiscrimination

2. Definitions

29 CRF §
1606.8(a);
62 Fed. Reg.
12033 (3/13/97);
66 Fed. Reg.
5512 (1/19/01)

No reprisals or retaliation may be taken against any person for making any report of discrimination or filing any complaint under this policy in good faith, or for providing truthful information as a witness in any investigation under this policy or in any related proceeding. Any such reprisal or retaliation is in itself unlawful discrimination prohibited by this policy and constitutes an independent violation of this policy.

A. Harassment

For purposes of this policy, "harassment" shall consist of verbal, written, graphic, or physical conduct relating to an individual's race, color, national origin/ethnicity, ancestry, gender, age, disability/handicap, sexual orientation, religion, creed, or any other legally protected classification when such conduct:

1. Is sufficiently severe, persistent, or pervasive that it affects an individual's ability to participate in or benefit from an educational program or activity or to perform job functions, or creates an intimidating, threatening, or abusive educational or work environment.
2. Has the purpose or effect or substantially or unreasonably interfering with an individual's academic or work performance.
3. Otherwise adversely affects an individual's learning or employment opportunities.

The term "harassment" also includes all activity which constitutes "sexual harassment."

B. Sexual Harassment

For purposes of this policy, "sexual harassment" shall consist of unwelcome sexual advances, requests for sexual favors, and other inappropriate verbal, written, graphic, or physical conduct of a sexual nature when:

1. Submission to such conduct is made explicitly or implicitly a term or condition of a student's academic status or an individual's employment.
2. Submission to or rejection of such conduct is used as the basis for academic or employment decisions affecting the individual.

- 3. Such conduct deprives a student of educational aid, benefits, services, or treatment.
- 4. Such conduct is sufficiently severe, persistent, or pervasive that it has the purpose or effect of substantially interfering with a student's school performance or on employee's job performance, or creating an intimidating, hostile, or offensive educational or working environment.

Examples of conduct that may constitute sexual harassment include, but are not limited to, sexual flirtations, advances, touching or propositions; verbal abuse of a sexual nature; graphic or suggestive comments about an individual's dress or body; sexually degrading words to describe an individual; jokes; pin-ups; calendars; objects; graffiti; vulgar statements; abusive language; innuendoes; references to sexual activities; overt sexual conduct; or any conduct that has the effect of unreasonably interfering with a student's ability to work or learn or creates an intimidating, hostile, or offensive leaning or working environment.

This policy covers, without limitation, sexual harassment by a student to another student; a student to an employee; an employee to a student; an employee to an employee; a third party to a student or employee; a student or employee to a third party; a male to a male; a female to a female; a male to a female; and a female to a male.

C. Racial Harassment

Racial harassment is harassment of a person due to race, color or national origin. A racially hostile environment may be created by oral, written, graphic or physical conduct related to an individual's race, color or national origin that is sufficiently pervasive, persistent or severe so as to limit the ability of an individual to participate in or benefit from the District's programs or activities.

Examples of racial harassment include racially motivated physical attacks, racial epithets, either verbal or in written form, or organized hate activities directed due to race.

In order to maintain a program of nondiscrimination practices and a learning and working environment that is in compliance with applicable laws and regulations, the Board designates the Superintendent as the District's Compliance Officer to serve as the coordinator and/or compliance official for purposes of Title IX of the Educational Amendments Act of 1972, the Americans with Disabilities Act of 1990, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and all other nondiscrimination statutes and regulations.

The Compliance Officer shall publish and disseminate a notice of this policy and complaint procedure at least annually to students, parents/guardians, employees, and the public, together with either a copy of this policy or a statement how to obtain a copy of this policy. A copy of this policy will be distributed to all buildings and facilities within the district, and included or referenced in all student or employee handbooks. Nondiscrimination statements shall include the position, office address and telephone number of the Compliance Officer.

2. Delegation of Responsibility

The Compliance Officer is responsible to monitor the implementation of nondiscrimination procedures in the following areas:

1. Curriculum and Materials - Review of curriculum guides, textbooks and supplemental materials for discriminatory bias.
2. Training - Provision of training for students and staff to identify and alleviate problems of discrimination and unlawful harassment. Provision of training to all building principals to investigate complaints under this policy.
3. Student Access - Review of programs, activities, and practices to ensure that all students have equal access and are not segregated except when permissible by law or regulation.
4. District Support -- Assurance that like aspects of the school program receive like support as to staffing and compensation, facilities, equipment, and related matters.
5. Student Evaluation - Review of tests, procedures, and guidance and counseling materials for stereotyping and discrimination.
6. Employment Relations -
 - a. Development of position qualifications, job descriptions and essential job functions.
 - b. Recruitment materials and practices.
 - c. Procedures for screening, interviewing and hiring.
 - d. Promotions.
 - e. Disciplinary actions, up to and including terminations.
7. Reports and Complaints - Administration of the reporting and complaint procedure provided in this policy.

Each employee shall be responsible to maintain a learning and working environment free from all forms of unlawful discrimination and harassment, and to report all incidents of unlawful discrimination or harassment which he/she observes or is informed about to the building principal or Compliance Officer.

4. Complaint Procedure

Each student shall be responsible to respect the rights of their fellow students and district employees and to ensure an environment free from all forms of unlawful discrimination and harassment, and to report all incidents of unlawful discrimination or harassment which he/she observes or is informed about to the building principal or Compliance Officer.

A. Reporting Violations; Filing Complaints

A student (or his/her parent/guardian), employee, or third party who believes he/she has been subject to conduct that constitutes a violation of this policy is encouraged to report the incident to the building principal or Compliance Officer as soon as possible. A student may also report incidents/violations to any teacher, coach/advisor, counselor, or administrator.

Any school employee who suspects or is notified that a student has been subject to conduct that constitutes a violation of this policy, shall report the incident to the building principal or Compliance Officer as soon as possible (not later than twenty- four (24) hours unless extenuating circumstances justify a reasonable extension of that deadline). If it is not possible to contact the building principal in a timely fashion, the school employee shall report the incident to the Compliance Officer or another building principal as soon as possible.

If the building principal is the subject of the complaint or otherwise not impartial, the student, third party, or employee shall report the incident directly to the Compliance Officer. If the Compliance Officer is also a subject of the complaint or otherwise not impartial, the report shall be made to another building principal.

All complaints by a student (or his/her parent/guardian), employee, or third party who asserts that he/she has been subject to conduct that constitutes a violation of this policy shall be made in writing on the form attached to this policy (which will be made available by the building principal or Compliance Officer). If the incident was initially reported orally, the building principal or Compliance Officer shall inform the student, parent/guardian, employee, or third party of the right to file a complaint and the complaint procedure, and shall promptly provide all necessary forms and assistance to enable the complainant to file an appropriate written complaint if he/she so desires.

Complaints shall be filed within thirty (30) calendar days after any incident alleged to constitute a violation of this policy or they shall be deemed untimely, unless special circumstances exist which justify a later filing.

Even if no formal written complaint has been filed by or on behalf of a person who alleges he/she has been subjected to conduct that constitutes a violation of this policy, any building principal or Compliance Officer who receives a report of a possible violation of this policy shall cause an informal investigation to be made, and take all necessary interim actions reasonably calculated to prevent any violations during the period before the completion of informal and formal procedures under this policy. If this informal investigation suggests that there has been a violation of this policy, the Compliance Officer shall be informed. The Compliance Officer shall review the matter, conduct such further investigation as he/she deems appropriate, and, if he/she concludes that there has been a violation of this policy, the Compliance Officer shall take prompt, corrective action to ensure that conduct violating this policy ceases and will not recur, and to remedy any effects of the violation for which the District is responsible. The Compliance Officer shall also initiate such disciplinary procedures as he/she deems appropriate.

B. Appointment of Initial Investigator

Upon receiving a written complaint of discrimination, the building principal shall be immediately notify the Compliance Officer. (If the Compliance Office is the subject of the complaint or otherwise not impartial, the building principal shall notify the District Solicitor.) The Compliance Officer (or Solicitor) shall authorize the building principal to investigate the complaint, unless the building principal is the subject of the complaint, is otherwise not impartial, or is unable to conduct the investigation. In the later case, the Compliance Officer or Solicitor shall authorize another building principal or administrator who is not the subject of the complaint and who is impartial to conduct the initial investigation. If no administrators are able to conduct the investigation, the Solicitor shall designate a qualified and willing administrator from the Luzerne Intermediate Unit No. 18 or school district within that Intermediate Unit to conduct the initial investigation.

District employees and officials shall ensure that the initial investigator shall be appointed and initiate a formal investigation within forty-eight (48) hours after the filing of a written complaint under this policy, unless extenuating circumstances justify a reasonable extension of that deadline.

In the event the person designated to conduct the initial investigation shall be unable to complete the investigation in a timely manner, the Compliance Officer (or Solicitor) shall authorize another appropriate person to complete the initial investigation

C. Rights During Complaint Procedure

The building principal or other person designated to conduct the initial investigation shall be responsible to:

1. Provide the opportunity for participation by the parents/guardian of a minor student and representation by counsel at any conference, meeting, or hearing with a student and in presenting information.
2. Permit an employee to be accompanied by a representative at any conference, meeting, or hearing with the employee.
3. Provide an opportunity for the complainant and the accused to present witnesses and other evidence.
4. Take all necessary interim actions reasonably calculated to prevent any other violations of this policy prior to the completion of the complaint procedure.
5. Comply with the confidentiality requirements of this policy.
6. Notify the complainant and the accused of the status of the investigation and complaint procedure on a periodic basis and at appropriate stages of the procedure.
7. Insure that when a complaint of sexual harassment has been filed by or on behalf of a female student or employee, a female counselor shall be present at all discussions and meetings with the student or employee (unless waived by the student or employee); and that when a complaint of sexual harassment has been filed by or on behalf of a male student or employee, a male counselor shall be present at discussions and meetings with the student or employee (unless waived by the student or employee).

After the initial investigation has been completed, the Compliance Officer shall be responsible to implement the above requirements until the conclusion of the complaint procedure.

D. Investigation

The formal investigation shall include individual interviews with the complainant, the accused, and others with knowledge relative to the incident. The investigator may also evaluate any other information and materials relevant to the investigation, and shall consider all information presented by the complainant and the accused. Every attempt will be made to conduct and complete the investigation as thoroughly and speedily as possible. The District will apply a preponderance of the evidence standard to all investigations performed under this policy.

The obligation to conduct this investigation shall not be negated by the fact that a criminal or insurance investigation of the incident is pending or has been concluded.

E. Investigative Report

The building principal or other person designated to conduct the initial investigation shall prepare a written report within fifteen (15) calendar days after commencing the investigation, unless additional time to complete the investigation is required. In that case, the investigator shall report on the status of the investigation to the complainant, the accused, and the Compliance Officer at the expiration of the fifteen (15) day period and every five (5) calendar days thereafter. Although the District may extend the investigation when necessary, it must insure that the completion provides a prompt and equitable resolution.

The written report shall include: (1) the name, race, and national origin of the alleged victim and, if different, the name and race of the person reporting the allegation; (2) the nature of the allegation, a description of the incident, and the date and time (if known) of the alleged incident; (3) the names and races of all persons alleged to have committed the alleged harassment, if known; (4) the names and races of all known witnesses to the alleged incident; (5) any written statements of the reporter, the victim (if different from the reporter), the accused student (s), and any known witnesses; (6) the outcome of the investigation; and (7) the response of school personnel and, if applicable, District-level officials, including the date any incident was reported to the police.

Copies of the report shall be provided to the complainant, the accused, and the Compliance Officer. Any such copies shall be redacted as necessary to comply with the confidentiality requirements of this policy.

F. Appeal

If the complainant is not satisfied with any finding or recommended corrective action proposed in the investigative report, he/she may submit a written appeal to the Compliance Officer within fifteen (15) calendar days after receipt of the investigative report. If the Compliance Officer is the subject of the complaint or otherwise not impartial, the appeal shall be submitted to the District Solicitor who shall designate another administrator to conduct the appeal. If an appropriate administrator cannot be designated, the District Solicitor shall designate a qualified and willing administrator from the Luzerne Intermediate Unit No. 18 or a school district within that Intermediate Unit to conduct the appeal.

An appeal may also be initiated by the Compliance Officer if he/she does not accept without further review the recommended corrective action proposed in the investigative report. In that event, the Compliance Officer shall notify the complainant and the accused that an appeal will be conducted and shall discuss alternative corrective actions with the complainant. (The Compliance Officer may not initiate an appeal if he/she is the subject of the complaint or is otherwise not impartial.)

The Compliance Officer (or other designated appeal official) shall review the investigation and the investigative report and may also conduct a reasonable supplemental investigation.

The Compliance Officer (or other designated appeal official) shall prepare a written determination with respect to the appeal within fifteen (15) calendar days after initiation of the appeal, unless additional time to complete a supplemental investigation is required. In that case, the appeal officer shall report on the status of the supplemental investigation to the complainant and the accused at the expiration of the fifteen (15) day period and every five (5) calendar days thereafter. Although the District may extend the investigation when necessary, it must insure that the completion provides a prompt and equitable resolution.

The written determination shall include a summary of any supplemental investigation; findings of fact and an explanation of the evidence in support of such findings (including a determination with respect to the factual allegations of the complaint); conclusions whether there have been any violations of this policy based on the factual findings and a discussion of the reasons for such conclusions; and a recommended disposition of the complaint, including any recommended district action.

Copies of the determination on appeal shall be provided to the complainant, the accused, and the person who conducted the initial investigation. Any such copies shall be redacted as necessary to comply with the confidentiality requirements of this policy.

G. District Action

If the investigation or appeal results in a finding that the complaint is factual and constitutes a violation of this policy, the District shall take prompt, corrective action reasonably calculated to ensure that such conduct ceases and will not recur, and to remedy any effects of the violation for which the District is responsible. District action within the authority of administration shall be implemented as recommended in the investigation and appeal process. Recommendations for District action which require Board approval and/or the approval of persons or entities other than the District or its officers or employees shall not be implemented unless so approved.

Any student or employee who is found to have engaged in conduct constituting unlawful discrimination or harassment in violation of this policy shall be subject to discipline up to and including expulsion from school or termination of employment. Disciplinary actions and procedures shall be consistent with the Student Code of Conduct, Board policies and district procedures, applicable collective bargaining agreements, the Public School Code, and other applicable state and federal laws, rules, regulations, and constitutional requirements.

The District will offer counseling and/or academic services to any person found to have been subjected to harassment in violation of this policy, and, where appropriate, counseling services to the person(s) who committed the harassment.

H. Confidentiality

Confidentiality of all parties shall be maintained with respect to the filing, investigation, and disposition of all complaints under this policy, consistent with the District's legal and investigative obligations. The District shall not disclose the name of a complainant (or the student on whose behalf a complaint has been filed) to an alleged violator/perpetrator/harasser if the complainant or the parent/guardian of a minor student so requests, but the scope of a reasonable response to the complaint may be limited as a result (*e.g.*, disciplinary action against an accused individual may be limited or precluded).

Notwithstanding anything to the contrary in this policy, while a complainant has the right to learn the outcome of his/her complaint (*i.e.*, to learn whether the complaint was investigated and whether discrimination/harassment was found), the District shall not disclose to a complainant any sanction or discipline recommended or imposed upon a student or employee to the extent such disclosure is prohibited by the Family Educational Rights and Privacy Act (FERPA) or other applicable laws, regulations, rules, constitutional requirements, or orders. (An exception may apply, for example, in the case of a sanction that directly relates to the victim, such as an order that a violator/perpetrator/harasser stay away from the victim.)

Wilkes Barre Area School District

Form for Complaint of Unlawful Discrimination or Harassment

Name of Complainant: _____

Address: _____

Daytime Telephone: _____ Evening Telephone: _____

I am: (circle as appropriate) Student Parent/Guardian of Student Employee

Other

Basis for allegation: (circle all which apply) Race Color Age Religion/Creed

Sex/Gender Sexual Orientation Ancestry National Origin

Disability/Handicap Familial Status Other

Name(s) of person(s) you believe violated the School's nondiscrimination policy:

If the alleged discrimination/harassment was directed against another person(s), identify the other person(s):

When and where the incident occurred:

List any witnesses who were present:

Describe the incident as clearly as possible, including any verbal threats, remarks, comments, etc., and any actions or activities. Attach additional pages if necessary:

This complaint is based on my honest belief that the individual(s) complained of above has/have discriminated against/harassed me or another person. I certify that the information provided in this complaint is true, correct, and complete to the best of my knowledge, information, and belief.

Received by: _____

Date: _____

Complainant's Signature

Date

(5/16/14)