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| Book         | Policy Manual  |
| Section      | 5000 Students  |
| Title        | ANTI-HARASSMENT; COMPLIANCE OFFICERS; COMPLAINT AND INVESTIGATION PROCEDURES |
| Code         | po5517   |
| Status       | Active   |
| Adopted      | May 1, 2002  |
| Last Revised | February 8, 2022   |

## 5517 - **ANTI-HARASSMENT; COMPLIANCE OFFICERS; COMPLAINT AND INVESTIGATION PROCEDURES**

### **A. Anti-Harassment Policy Generally**

1. It is the policy of the Board to maintain an educational and work environment that is free from all forms of unlawful harassment, including sexual harassment. This commitment applies to all District operations, programs, and activities. All students, administrators, teachers, staff, and all other school personnel share responsibility for avoiding, discouraging, and reporting any form of unlawful harassment. This policy applies to unlawful conduct occurring on property owned or operated by the Board or at another location if such conduct occurs during an activity sponsored by the Board.
2. The Board will vigorously enforce its prohibition against discriminatory harassment on the basis of race, color, national origin, sex (including sexual orientation, gender status, or gender identity), disability (including HIV, AIDS, or sickle cell trait), pregnancy, marital status, age (except as authorized by law), religion, military status, ancestry, or genetic information which are classes protected by State and/or Federal law (collectively, "protected classes") (hereinafter referred to as unlawful harassment), and encourages those within the School District community as well as Third Parties, who feel aggrieved to seek assistance to rectify such problems. The Board will investigate all allegations of unlawful harassment and in those cases where unlawful harassment is substantiated, the Board will take immediate steps to end the harassment, prevent its reoccurrence, and remedy its effects. Individuals who are found to have engaged in unlawful harassment will be subject to appropriate disciplinary action.
3. The District will offer counseling services to any student found to have been subjected to unlawful harassment, and, where appropriate, the individual(s) who committed the unlawful harassment.

Further, nothing in this policy shall be construed to abridge the rights of students or school employees that are protected by the First Amendment to the Constitution of the United States.

### **B. Other Violations of the Anti-Harassment Policy**

The Board will also take immediate steps to impose disciplinary action on individuals engaging in any of the following prohibited acts:

1. Retaliating against a person who has made a report or filed a complaint alleging unlawful harassment and/or retaliating against a person who has participated as a witness in a harassment investigation.
2. Filing a malicious or knowingly false report or complaint of unlawful harassment.
3. Disregarding, failing to investigate adequately, or delaying the investigation of allegations of unlawful harassment, when the responsibility for reporting and/or investigating unlawful harassment charges comprises part of one's supervisory duties.

### C. Definitions

For purposes of this policy, the following definitions shall apply:

#### 1. Complainant

The Complainant is the individual who alleges, or is alleged, to have been subjected to unlawful harassment, regardless of whether the person files a formal complaint or is pursuing an informal resolution to the alleged harassment.

#### 2. Respondent

The Respondent is the individual who has been alleged to have engaged in unlawful harassment, regardless of whether the reporting party files a formal complaint or is seeking an informal resolution to the alleged harassment.

#### 3. School District community

The School District community refers to students and Board employees (i.e., administrators, and professional and classified staff), as well as Board members, agents, volunteers, contractors, or other persons subject to the control and supervision of the Board.

#### 4. Third Parties

Third Parties include, but are not limited to, guests and/or visitors on School District property (e.g., visiting speakers, participants on opposing athletic teams, parents), vendors doing business with, or seeking to do business with, the Board, and other individuals who come in contact with members of the School District community at school-related events/activities (whether on or off District property).

#### 5. Day(s)

Unless expressly stated otherwise, the term "day" or "days" as used in this policy means business day(s) (i.e., a day(s) that the Board office is open for normal operating hours, Monday – Friday, excluding State-recognized holidays).

#### 6. Bullying

As addressed in Policy 5517.01 – Bullying and Harassment, bullying rises to the level of unlawful harassment when one or more persons systematically and chronically inflict physical hurt or psychological distress on one (1) or more students or employees and that bullying is based upon sex, race (including anti-Semitism), color, national origin, religion, or disability, that is, characteristics that are protected by Federal civil rights laws. It is defined as any unwanted and repeated written, verbal, or physical behavior, including any threatening, insulting, or dehumanizing gesture, by an adult or student, that is severe or pervasive enough to create an intimidating, hostile, or offensive educational environment; cause discomfort or humiliation; or unreasonably interfere with the individual's school performance or participation; and may involve:

- a. teasing;
- b. threats;
- c. intimidation;
- d. stalking;
- e. cyberstalking;
- f. cyberbullying;
- g. physical violence;
- h. theft;
- i. sexual, religious, or racial harassment;
- j. public humiliation; or
- k. destruction of property.

#### 7. Harassment

Harassment means any threatening, insulting, or dehumanizing gesture, use of data or computer software, or written, verbal or physical conduct directed against a student or school employee that:

- a. places a student or school employee in reasonable fear of harm to his/her person or damage to his/her property;
- b. has the effect of substantially interfering with a student's educational performance, opportunities, or benefits; or
- c. has the effect of substantially disrupting the orderly operation of a school.

#### 8. Sexual Harassment

- a. Investigations of Sexual Harassment that fall under the scope of Title IX are addressed solely in Policy 2266 – Nondiscrimination on The Basis of Sex in Education Programs and Activities, according to the corresponding definitions under the Title IX Federal Regulations.
- b. For purposes of this policy only and consistent with Title VII of the Civil Rights Act of 1964, "sexual harassment" is defined as:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, when:

- i. Submission to such conduct is made either implicitly or explicitly a term or condition of an individual's employment, or status in a class, educational program, or activity.
- ii. Submission or rejection of such conduct by an individual is used as the basis for employment or educational decisions affecting such individual.
- iii. Such conduct has the purpose or effect of interfering with the individual's work or educational performance; of creating an intimidating, hostile, or offensive working, and/or learning environment; or of interfering with one's ability to participate in or benefit from a class or an educational

program or activity.

- c. Sexual harassment may involve the behavior of a person of any gender against a person of the same or another gender.
- d. Prohibited acts that constitute sexual harassment may take a variety of forms. Examples of the kinds of conduct that may constitute sexual harassment include, but are not limited to:
  - i. Unwelcome sexual propositions, invitations, solicitations, and flirtations.
  - ii. Physical and/or sexual assault.
  - iii. Threats or insinuations that a person's employment, wages, academic grade, promotion, classroom work or assignments, academic status, participation in athletics or extra-curricular programs or events, or other conditions of employment or education may be adversely affected by not submitting to sexual advances.
  - iv. Unwelcome verbal expressions, including graphic sexual commentaries about a person's body, dress, appearance, or sexual activities; the unwelcome use of sexually degrading language, profanity, jokes, or innuendoes; unwelcome suggestive or insulting sounds or whistles; obscene telephone calls.
  - v. Sexually suggestive objects, pictures, graffiti, videos posters, audio recordings, or literature, placed in the work or educational environment, that may reasonably embarrass or offend individuals.
  - vi. Unwelcome and inappropriate touching, patting, or pinching; obscene gestures.
  - vii. Asking about, or telling about, sexual fantasies, sexual preferences, or sexual activities.
  - viii. Speculations about a person's sexual activities or sexual history, or remarks about one's own sexual activities or sexual history.
  - ix. Giving unwelcome personal gifts such as lingerie that suggest the desire for a romantic relationship.
  - x. Leering or staring at someone in a sexual way, such as staring at a person's breasts, buttocks, or groin.
  - xi. A pattern of conduct, which can be subtle in nature, that has sexual overtones and is intended to create or has the effect of creating discomfort and/or humiliation to another.
  - xii. Verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping that does not involve conduct of a sexual nature.
  - xiii. Inappropriate boundary invasions by a District employee or other adult member of the School District community into a student's personal space and personal life.
- e. Not all behavior with sexual connotations constitutes unlawful sexual harassment. Sex-based or gender-based conduct must be sufficiently severe, pervasive, and persistent such that it adversely affects, limits, or denies an individual's education, or such that it creates a hostile or abusive educational environment, or such that it is intended to, or has the effect of, denying or limiting a student's ability to participate in or benefit from the educational program or activities.
- f. NOTE: Any teacher, administrator, coach, or other school authority who engages in sexual conduct with a student may also be guilty of a crime. The issue of consent is irrelevant in regard to such criminal charge and/or with respect to the application of this policy to District employees or other adult members

of the School District community.

#### 9. Sexual Cyberharassment

Pursuant to Florida law, "sexual cyberharassment" means to publish a sexually explicit image of a person that contains or conveys the personal identification information of the depicted person to an Internet website without the depicted person's consent, for no legitimate purpose, with the intent of causing substantial emotional distress to the depicted person. Sexual cyberharassment may be a form of sexual harassment.

#### 10. Race/Color Harassment (Including Anti-Semitism)

- a. Prohibited racial harassment occurs when unwelcome physical, verbal, or nonverbal conduct is based upon an individual's race or color and when the conduct has the purpose or effect of interfering with the individual's work or educational performance; of creating an intimidating, hostile, or offensive working, and/or learning environment; or of interfering with one's ability to participate in or benefit from a class or an educational program or activity. Such harassment may occur where conduct is directed at the characteristics of a person's race or color, such as racial slurs, nicknames implying stereotypes, epithets, and/or negative references relative to racial customs.
- b. Prohibited anti-Semitism harassment occurs when unwelcome physical, verbal, or nonverbal conduct is based upon an individual's Jewish heritage and when the conduct has the purpose or effect of interfering with the individual's work or educational performance; of creating an intimidating, hostile, or offensive working, and/or learning environment; or of interfering with one's ability to participate in or benefit from a class or an educational program or activity. Such harassment may occur where conduct is based upon a certain perception of the Jewish people, which may be expressed as hatred toward Jewish people, rhetorical and physical manifestations of anti-Semitism directed toward a person, his/her property, or toward Jewish community institutions or religious facilities.

#### 11. Religious (Creed) Harassment

Prohibited religious harassment occurs when unwelcome physical, verbal, or nonverbal conduct is based upon an individual's religion or creed and when the conduct has the purpose or effect of interfering with the individual's work or educational performance; of creating an intimidating, hostile, or offensive working and/or learning environment; or of interfering with one's ability to participate in or benefit from a class or an educational program or activity. Such harassment may occur where conduct is directed at the characteristics of a person's religious tradition, clothing, or surnames, and/or involves religious slurs.

#### 12. National Origin Harassment

Prohibited national origin harassment occurs when unwelcome physical, verbal, or nonverbal conduct is based upon an individual's national origin and when the conduct has the purpose or effect of interfering with the individual's work or educational performance; of creating an intimidating, hostile, or offensive working and/or learning environment; or of interfering with one's ability to participate in or benefit from a class or an educational program or activity. Such harassment may occur where conduct is directed at the characteristics of a person's national origin, such as negative comments regarding customs, manner of speaking, language, surnames, or ethnic slurs.

#### 13. Disability Harassment

Prohibited disability harassment occurs when unwelcome physical, verbal, or nonverbal conduct is based upon an individual's disability and when the conduct has the purpose or effect of interfering with the individual's work or educational performance; of creating an intimidating, hostile, or offensive working and/or learning environment; or of interfering with one's ability to participate in or benefit from a class or an educational program or activity. Such harassment may occur where conduct is directed at the characteristics of a person's disability, such as negative comments about speech patterns, movement, physical impairments or defects/appearances, or the like.

#### 14. Pregnancy Harassment

Prohibited pregnancy harassment occurs when unwelcome physical, verbal, or nonverbal conduct is based upon an individual's pregnancy and when the conduct

has the purpose or effect of interfering with the individual's work or educational performance; of creating an intimidating, hostile, or offensive working and/or learning environment; or of interfering with one's ability to participate in or benefit from a class or an educational program or activity. Such harassment may occur where conduct is directed at the characteristics of a person's pregnancy and condition of pregnancy.

#### **D. Reports and Complaints of Harassing Conduct**

1. Board employees are required to promptly report incidents of unlawful harassing conduct to an administrator, supervisor, or other School District official so that the Board may address the conduct before it becomes severe, pervasive, or persistent.
2. Students and all other non-employee members of the School District community, as well as Third Parties, are encouraged to promptly report incidents of unlawful harassing conduct to a teacher, administrator, supervisor, or other School District employee or official so that the Board may address the conduct before it becomes severe, pervasive, or persistent. Any teacher, administrator, supervisor, or other District employee or official who receives such a report shall file it with the District's Compliance Officer within two (2) business days of receiving the report of harassment.
3. Members of the School District community, which includes students and Third Parties, who believe they have been unlawfully harassed are entitled to utilize the Board's complaint process that is set forth below. Initiating a complaint, whether formally or informally, will not adversely affect the Complainant's employment or participation in educational or extra-curricular programs unless the complaining individual makes the complaint maliciously or with knowledge that it is false. While there are no time limits for initiating complaints of harassment 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.
4. If, during an investigation of reported act of bullying and/or harassment in accordance with Policy 5517.01 – Bullying and Harassment, the Principal or designee believes that the reported misconduct may have created a hostile learning environment and may have constituted unlawful discriminatory harassment based on sex, race, color, national origin, religion, or disability, the Principal or designee will report the act of bullying and/or harassment to one of the Compliance Officers who shall investigate the allegation in accordance with this policy. If the alleged harassment involves Sexual Harassment as defined by Policy 2266, the matter will be handled in accordance with the grievance process and procedures outlined in Policy 2266. While the Compliance Officer investigates the allegation, or while the matter is being addressed pursuant to Policy 2266, the Principal or designee shall suspend the Policy 5517.01 investigation to await the Compliance Officer's written report or the determination of responsibility pursuant to Policy 2266. The Compliance Officer shall keep the Principal or designee informed of the status of the Policy 5517 investigation and provide the Principal or designee with a copy of the resulting written report. Likewise, the Title IX Coordinator will provide the Principal or designee with the determination of responsibility that results from the Policy 2266 grievance process.

#### **E. Anti-Harassment Compliance Officers**

1. School Compliance Officers. The "Anti-Harassment Compliance Officer" for each school is the school Principal or designee. They are hereinafter referred to as a "School Compliance Officer," collectively "School Compliance Officers." The school Principal or designee may designate other persons to act in this capacity on his/her behalf as the demands of the institution dictate. Nevertheless, all written complaints may be properly directed to the Principal or designee of the institution alleged to be in violation of Title IX, the Florida Education Equity Act ("FEEA"), Section 504 of the Rehabilitation Act of 1973 ("Section 504"), or the Americans with Disabilities Act Amendments Act of 2008 ("ADA"). The name and contact information for the School Compliance Officer for each school shall be placed on the school's website.
2. District Compliance Officers. The following individuals serve as "Anti-Harassment Compliance Officers" for the District. They are hereinafter referred to as a "District Compliance Officer," collectively "District Compliance Officers."
  - a. Student, Exceptional Education/504, Title IX, or the Public contact:

District Title IX Coordinator  
District Compliance Officer – Students  
2700 Judge Fran Jamieson Way  
Melbourne, Florida 32940  
(321) 633-1000, Ext. 11438

csc@brevardschools.org

b. Employees or Job Applicants contact:

Director of Human Resources & Labor Relations  
District Compliance Officer – Employees  
2700 Judge Fran Jamieson Way  
Melbourne, Florida 32940  
(321) 633-1000 Ext. 11265  
csc@brevardschools.org

3. The titles and contact information for the District Compliance Officers shall be consistently maintained on the District's website, on each individual school's website, and published annually in the Code of Student Conduct and other publications, such as, but not limited to, the following: parent/legal guardian handbooks, employee handbooks, and the District's Annual Report to the public.
4. The District Compliance Officers will be available during regular school/work hours to discuss concerns related to unlawful harassment, to assist students, other members of the School District community, and third parties who seek support or advice when informing another individual about "unwelcome" conduct, or to intercede informally on behalf of the student.
5. Any Board employee who directly observes unlawful harassment of a student is obligated, in accordance with this policy, to report such observations to one of the Compliance Officers within two (2) business days. Thereafter, the Compliance Officer or designee must contact the Complainant, if age eighteen (18) or older, or the Complainant's parents/legal guardians if under the age of eighteen (18), within two (2) business days to advise them of the Board's intent to investigate the alleged misconduct, including the obligation of the Compliance Officer or designee to conduct an investigation following all the procedures outlined for a formal complaint.
6. Compliance Officers – Generally. Both School Compliance Officers and District Compliance Officers are assigned to accept complaints of unlawful harassment directly from any member of the School District community or a visitor to the District, or to 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 Compliance Officer will begin either an informal or formal process (depending on the request of the member of the School District community alleging harassment or the nature of the alleged harassment), or the Compliance Officer will designate a specific individual to conduct such a process. In the case of a formal complaint, the Compliance Officer will prepare recommendations for the Superintendent or designee or will oversee the preparation of such recommendations by a designee. All members of the School District community must report incidents of harassment that are reported to them to the Compliance Officer within two (2) business days of learning of the incident.

#### **F. General Investigation and Complaint Procedures**

1. Except for Sexual Harassment falling under the scope of Title IX that is covered by Policy 2266 – Nondiscrimination on the Basis of Sex in Education Program or Activities, any student who believes that they have been subjected to unlawful harassment may seek resolution of the complaint through the procedures described below. The formal complaint process involves an investigation of the Complainant's claims of harassment of retaliation and a process for rendering a decision regarding whether the charges are substantiated.
2. Due to the sensitivity surrounding complaints of unlawful harassment, the timelines are flexible for initiating the complaint process; however, individuals should make every effort to file a complaint within thirty (30) business days after the conduct occurs while the facts are known and potential witnesses are available. Once the formal complaint process has begun, the investigation will be completed in a timely manner (ordinarily, within fifteen (15) business days of the complaint being received).
3. The procedures set forth below are not intended to interfere with the rights of a student to pursue a complaint of unlawful harassment with the United States Department of Education, Office for Civil Rights, the Florida Civil Rights Commission, or the Equal Employment Opportunity Commission.

## G. Informal Complaint Procedures

1. The goal of the informal complaint procedure is to promptly stop inappropriate behavior and to facilitate resolution through an informal means, if possible. The informal complaint procedure is provided as a less formal option for a student who alleges unlawful harassment or retaliation. This informal procedure is not required as a precursor to the filing of a formal complaint.
2. Students, other members of the School District community, or Third Parties who believe that they have been unlawfully harassed or retaliated against, may initiate their complaint through this informal complaint process, but are not required to do so. The informal process is only available in those circumstances where the Complainant and the Respondent mutually agree to participate in it.
3. The Complainant may proceed immediately to the formal complaint process and individuals who seek resolution through the informal procedure may request that the informal process be terminated at any time to move to the formal complaint process.
4. However, all complaints of harassment involving a District employee or any other adult member of the School District community against a student will be formally investigated.
5. As an initial course of action, if a Complainant feels comfortable and safe in doing so, the individual may tell or otherwise inform the Respondent as soon as practical that the alleged harassing conduct is unwelcome and must stop. The Compliance Officers are available to support and counsel individuals when taking this initial step or to intervene on behalf of the Complainant if requested to do so. In certain circumstances, particularly with regard to forms of sexual harassment and/or threats of violence, the Compliance Officer may advise against the use of this initial step, which is not a prerequisite to making a report or filing a complaint. A Complainant who is uncomfortable or unwilling to directly approach the Respondent about the allegedly inappropriate conduct may proceed to report the harassing conduct.
6. A Complainant may make a report, either orally or in writing: (a) to a teacher, other employee, or building administrator in the school the student attends; (b) to the Superintendent or designee or other District-level employee; and/or (c) directly to one of the Compliance Officers. A reporting form provided by the school may be used but no specific form is required to make a report.
7. All reports must be forwarded to the Compliance Officers who will either facilitate an informal resolution as described below or appoint another individual to facilitate an informal resolution.
8. The District's informal complaint procedure is designed to provide students, other members of the School District community, and Third Parties who believe they are being unlawfully harassed by a student with a range of options designed to bring about a resolution of their concerns. Depending upon the nature of the complaint and the wishes of the Complainant, informal resolution may involve, but not be limited to, one or more of the following:
  - a. Advising the Complainant about how to communicate the unwelcome nature of the behavior to the Respondent.
  - b. Distributing a copy of this policy as a reminder to the individuals in the school building or office where the Respondent works or attends.
  - c. If both parties agree, the Compliance Officers may arrange and facilitate a meeting or a mediation between the Complainant and the Respondent to work out a mutual resolution.
9. While there are no set time limits within which an informal complaint must be resolved, the Compliance Officers or designee is directed to attempt to resolve all informal complaints within fifteen (15) business days of receiving the informal complaint. If the Complainant is dissatisfied with the results of the informal complaint process, the Complainant may proceed to file a formal complaint. And, as stated above, either party may request that the informal process be terminated at any time to move to the formal complaint process.
10. All materials generated as part of the informal complaint process shall be retained by the School Compliance Officer or designee in accordance with the State's records retention schedules.

## H. Formal Complaint Procedures

1. If a complaint is not resolved through the informal complaint process, if one of the parties has requested that the informal complaint process be terminated to move to the formal complaint process, or the Complainant, from the outset, elects to file a formal complaint, or the Compliance Officer determines the allegations are not appropriate for resolution through the informal process, the formal complaint process as described below shall be implemented.
2. All formal complaints must include the following information to the extent known: the identity of the Respondent; a detailed description of the facts upon which the complaint is based (i.e., when, where, and what occurred); and a list of potential witnesses and the resolution sought by the complainant.
3. If the complainant is unwilling or unable to provide a written statement including the information set forth above, the Compliance Officer shall ask for such details in an oral interview. Thereafter, the Compliance Officer 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.
4. Upon receiving a formal complaint, the School Compliance Officer or designee will consider whether any action should be taken in the investigatory phase to protect the Complainant from further harassment or retaliation including but not limited to a change of class schedule for the Complainant and/or the Respondent, or possibly a change of school for either or both of the parties. In making such a determination, the Compliance Officer should consult the Complainant to assess whether the individual agrees to any action deemed appropriate. If the Complainant is unwilling to consent to any change that is deemed appropriate by the Compliance Officer, the Compliance Officer may still take whatever actions deemed appropriate in consultation with the Superintendent or designee and/or Board Attorney.
5. Within two (2) business days of receiving a formal complaint, the Compliance Officer shall:
  - a. inform the Respondent that a formal complaint has been received. The Respondent will be informed about the nature of the allegations and a copy of any relevant policies and/or administrative procedures and the Board's anti-harassment policy shall be provided to the Respondent at that time. The Respondent must also be informed of the opportunity to submit a written response to the complaint within five (5) business days.
  - b. Within two (2) business days of receiving the complaint, the Compliance Officer or a designee will initiate a formal investigation to determine whether the Complainant has been subject to offensive conduct/harassment. The Principal or designee will not conduct an investigation unless directed to do so by the Compliance Officer.
6. Although certain cases may require additional time, the School Compliance Officer or designee will attempt to complete an investigation into the allegations of harassment within fifteen (15) 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 evidence presented by the Complainant, Respondent, or any other witness which is reasonably believed to be relevant to the allegations.
7. At the conclusion of the investigation, the Compliance Officer or designee shall prepare and deliver a written report to the Superintendent or designee which summarizes the evidence gathered during the investigation and provides recommendations based on the evidence and the definition of unlawful harassment as provided in Board policy and State and Federal law as to whether Respondent engaged in unlawful harassment/retaliation of the Complainant. In determining if discriminatory harassment or retaliation occurred, a preponderance of evidence standard will be used. The Compliance Officer's recommendations must be based upon the totality of the circumstances, including the ages and maturity levels of those involved. The Compliance Officer may consult with the Board Attorney before finalizing the report to the Superintendent or designee.

8. Absent extenuating circumstances, within five (5) business days of receiving the report of the Compliance Officer or designee, the Superintendent or designee must either issue a written decision regarding whether or not the complaint of harassment has been substantiated or request further investigation. A copy of the Superintendent's or designee's final decision will be delivered to both the Complainant and the Respondent.
9. If the Superintendent or designee requests additional investigation, the Superintendent or designee must specify the additional information that is to be gathered, and such additional investigation must be completed within five (5) business days. At the conclusion of the additional investigation, the Superintendent or designee must issue a final written decision as described above.
10. The decision of the Superintendent or designee shall be final.
11. The Board reserves the right to investigate and resolve a complaint or report of unlawful harassment regardless of whether the member of the School District community or Third Party alleging the unlawful harassment 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.
12. The parties may be represented, at their own cost, at any of the above-described meetings/hearings.
13. The right of a person to prompt an 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, the filing of charges with local law enforcement, or the filing of a civil action in court. Use of this internal complaint process is not a prerequisite to the pursuit of other remedies.
14. All materials generated as part of the formal complaint process will be retained by the School Compliance Officer or designee in accordance with the State's records retention schedules.

#### **I. Anti-Harassment and Non-Discrimination Appeal Procedures**

If the student and/or parent/legal guardian of the student believes that an action or inaction by the school, school representative, school employee, or decision of the School Compliance Officer has violated his/her rights under this policy, Policy 5507.01 – Bullying and Harassment, the FEEA, or Section 504/ADA, the student is encouraged to seek a resolution through the steps outlined in Policy 2260.01 – Anti-Harassment and Non-Discrimination Appeal Procedures. Likewise, the procedure for appeals of Title IX determinations are outlined in the grievance process set out in Policy 2266 – Nondiscrimination on The Basis of Sex in Education Programs and Activities.

#### **J. Privacy/Confidentiality**

1. The District will employ all reasonable efforts to protect the rights of the Complainant, the Respondent, 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 and related administrative procedures shall be maintained as confidential to the extent permitted by law. Confidentiality cannot be guaranteed, however. Additionally, the Respondent must be provided the Complainant's identity.
2. During the course of a formal investigation, the Compliance Officer or designee will instruct all members of the School District community and third parties who are interviewed about the importance of maintaining confidentiality. Any individual who is interviewed as part of a harassment investigation is expected not to disclose any information that is learned or provided during the course of the investigation.
3. All public records created as a part of an investigation of a complaint of harassment will be maintained by the Compliance Officer in accordance with the Board's records retention policy. Any records which are considered student records in accordance with the *Family Educational Rights and Privacy Act* (FERPA) will be maintained in a manner consistent with the provisions of the Federal law.

#### **K. Sanctions and Monitoring**

1. The Board shall vigorously enforce its prohibitions against unlawful harassment/retaliation by taking appropriate action reasonably calculated to stop the harassment and prevent further such harassment. 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 or designee 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 harassment 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).
2. Where the Board becomes aware that a prior remedial action has been taken against a member of the School District community, all subsequent sanctions imposed by the Board and/or Superintendent or designee shall be reasonably calculated to end such conduct, prevent its reoccurrence, and remedy its effects.

#### **L. Retaliation**

1. Retaliation against a person who makes a report or files a complaint alleging unlawful harassment/retaliation or participates as a witness in an investigation is prohibited. Neither the Board nor any other person may intimidate, threaten, coerce 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 exercised, enjoyed, aided or encouraged any other person in the exercise or enjoyment of any right granted or protected by those laws and/or this policy.
2. Retaliation against a person for making a report of discrimination, filing a formal complaint, or participating in an investigation or meeting is a serious violation of this policy that can result in imposition of disciplinary sanctions/consequences and/or other appropriate remedies.
3. Formal complaints alleging retaliation may be filed according to the internal complaint process set forth above.
4. The exercise of rights protected under the First Amendment of the United States Constitution does not constitute retaliation prohibited under this policy.

#### **M. Allegations Constituting Criminal Conduct: Child Abuse/Sexual Misconduct**

1. State law requires any teacher or school employee who knows or suspects that a child with a disability under the age of twenty-one (21) or that a child under the age of eighteen (18) is a victim of child abuse or neglect to immediately report that knowledge or suspicion to the Department of Children and Family Services. If, during the course of a harassment investigation, the Compliance Officer or designee has reason to believe or suspect that the alleged conduct reasonably indicates abuse or neglect of the complainant, a report of such knowledge must be made in accordance with State law and Board policy.
2. If the Compliance Officer or designee has reason to believe that the Complainant has been the victim of criminal conduct as defined under Florida law, such knowledge should be reported to local law enforcement.
3. Any reports made to the local child protection service or to local law enforcement shall not terminate the Compliance Officer's or designee's obligation and responsibility to continue to investigate a complaint of harassment. While the Compliance Officer or designee may work cooperatively with outside agencies to conduct concurrent investigations, in no event shall the harassment investigation be inhibited by the involvement of outside agencies without good cause after consultation with the Superintendent or designee.

#### **N. Mandatory Reporting of Misconduct by Certificated Employees**

The Superintendent or designee is required by State law and Board Policy 8141 – Mandatory Reporting of Misconduct by Certificated Employees to report alleged misconduct by certificated employees of the District that affects the health, safety, or welfare of a student. In accordance with Board policy and State law, the Superintendent or designee or designee shall investigate each allegation of such conduct and, if confirmed, shall report such misconduct pursuant to Policy 8141 – Mandatory Reporting of Misconduct by Certificated Employees.

#### **O. 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 School District community related to the implementation of this policy and shall provide training for District students and staff where appropriate. All training, as well as all information provided regarding this policy and harassment in general will be age and content appropriate.

#### **P. Retention of Investigatory Records and Materials**

1. The Compliance Officer is responsible for overseeing retention of all records that must be maintained pursuant to this policy. All individuals charged with conducting investigations under this policy shall retain all information, documents, electronically stored information ("ESI"), and electronic media (as defined in Policy 8315) created and received as part of an investigation, including but not limited to:
  - a. all written reports/allegations/complaints/statements;
  - b. narratives of all verbal reports/allegations/complaints/statements;
  - c. a narrative of all actions taken by District personnel or individuals contracted or appointed by the Board to fulfill its responsibilities;
  - d. any written documentation of actions taken by District personnel;
  - e. written witness statements;
  - f. narratives of, notes from, or audio, video, or digital recordings of witness statements;
  - g. all documentary evidence;
  - h. e-mails, texts, or social media posts pertaining to the investigation;
  - i. contemporaneous notes in whatever form made (e.g., handwritten, keyed into a computer or tablet, etc.) pertaining to the investigation;
  - j. written disciplinary sanctions issued to students or employees and a narrative of verbal disciplinary sanctions issued to students or employees for violations of the policies and procedures prohibiting discrimination or harassment;
  - k. dated written determinations to the parties;
  - l. dated written descriptions of verbal notifications to the parties;
  - m. written documentation of any supportive measures offered and/or provided to the Complainant and/or the Respondent, including no contact orders issued to both parties, the dates issued, and the dates the parties acknowledged receipt;
  - n. documentation of all actions taken, both individual and systemic, to stop the discrimination or harassment, prevent its recurrence, eliminate any hostile environment, and remedy its discriminatory effects;
  - o. documentation of any supportive measures offered and/or provided to the Complainant and/or the Respondent, including no contact orders issued to both parties, the dates the no contact orders were issued, and the dates the parties acknowledged receipt of the no contact orders;
  - p. copies of the Board policy and/or procedures/guidelines used by the District to conduct the investigation, and any documents used by the District at the time of the alleged violation to communicate the Board's expectations to students and staff with respect to the subject of this policy (e.g., Student Code of Conduct and/or Employee Handbooks);

- q. copies of any documentation that memorializes any formal or informal resolutions to the alleged discrimination or harassment; and
  - r. documentation of any training provided to District personnel related to this policy, including but not limited to, notification of the prohibitions and expectations of staff set forth in this policy and the role and responsibility of all District personnel involved in enforcing this policy, including their duty to report alleged violations of this policy and/or conducting an investigation of an alleged violation of this policy.
2. The information, documents, ESI, and electronic media (as defined in Policy 8315) retained may include public records and records exempt from disclosure under Federal and/or State law (e.g., student records).
  3. The information, documents, ESI, and electronic media (as defined in Policy 8315) created or received as part of an investigation shall be retained in accordance with Policy 8310, Policy 8315, Policy 8320, and Policy 8330 for not less than three (3) years, but longer if required by the District's records retention schedule.

Revised 7/22/14  
Revised 9/24/19  
Revised 2/8/22

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Legal

- F.S. 110.1221
- F.S. 784.049
- F.S. 1000.05
- F.S. 1006.07
- 20 U.S.C. 1400 et seq., The Individuals with Disabilities Improvement Act of 2004, as amended (commonly known as The Individuals with Disabilities Act)
- 20 U.S.C. 1681 et seq.
- 29 U.S.C. 621 et seq., Age Discrimination in Employment Act of 1967
- 29 U.S.C. 794, Rehabilitation Act of 1973
- 29 U.S.C. 6101, The Age Discrimination Act of 1975
- 42 U.S.C. 2000d et seq.
- 42 U.S.C. 2000e et seq.
- 42 U.S.C. 12101 et seq., Americans with Disabilities Act of 1990, as amended
- 42 U.S.C. 1983