



FLOYD COUNTY BOARD OF EDUCATION
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Jeff Stumbo, Chair - District 3
Linda Gearheart, Vice-Chair - District 1
Dr. Chandra Varia, Member - District 2
Rhonda Meade, Member - District 4
Sherry Robinson, Member - District 5

Consent Agenda Item (Action Item): 1st reading of the revision to Board of Education policy 03.262 Harassment/Discrimination – Classified Personnel.

Applicable Statute or Regulation: KRS 162.90 Powers and duties of the local board.

Fiscal/Budgetary Impact: No budgetary impact.

History/Background: As now stated, BOE policy 03.262 does not allow for due process if a district employee is disciplined by the superintendent. By revising the policy to include full due process, we are providing our employees the opportunity to appeal a disciplinary action. Additionally, changes are marked in red.

Recommended Action: No action required on the First Reading.

Contact Person(s): Ted George
Human Resources Director

Director

Date: July 18, 2016

The Floyd County Board of Education does not discriminate on the basis of race, color, national origin, age, religion, marital status, sex, or disability in employment, educational programs, or activities as set forth in Title IX & VI, and in Section 504.

- CLASSIFIED PERSONNEL -**Harassment/Discrimination****DEFINITION**

Harassment/Discrimination of employees is unlawful behavior based on the race, color, national origin, age, religion, sex, genetic information or disability of an employee involving intimidation by threats of or actual physical violence; the creation, by whatever means, of a climate of hostility or intimidation, or the use of language, conduct, or symbols in such manner as to be commonly understood to convey hatred or prejudice. Discrimination based upon race, color, national origin, age, religion, sex, genetic information or disability can consist of harassment which creates a hostile environment. Examples of harassment/hostile environment include offensive conduct such as racial or ethnic slurs, racial or gender based "jokes", derogatory comments or other verbal or physical conduct based upon an individual's race, color, descent, national or ethnic origin, age, religion, sex, genetic information or disability. Prohibited discrimination also includes any distinction, exclusion, restriction or preference based on race, color, descent, national or ethnic origin, age, religion, sex, genetic information or disability of an employee which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise on an equal footing of employment opportunities, human rights and fundamental freedom.

PROHIBITION

Harassment/Discrimination of all types is prohibited at all times on school property and off school grounds during school-sponsored activities. This prohibition also applies to visitors to the school who may come into contact with employees and students. (Acts of harassment/discrimination based on sex may be committed by persons of the same or the opposite sex.)

The Superintendent shall provide for a prompt and equitable resolution of complaints concerning harassment/discrimination.

DISCIPLINARY ACTION

Employees who engage in harassment/discrimination of another employee or a student on the basis of any of the areas mentioned above shall be subject to disciplinary action including, but not limited to, termination of employment.

Failure by employees to report, notify, and/or initiate an investigation of alleged harassment/discrimination as required by this policy or to take corrective action shall be cause for disciplinary action up to and including termination of employment.

GUIDELINES

Employees who believe they or any other employee, student, or visitor is being or has been subjected to harassment/discrimination shall, as soon as reasonably practicable report it. Reports of harassment/discrimination shall be made directly to the Superintendent or to the District Harassment/Discrimination Coordinator. Reports of harassment/discrimination involving the Superintendent shall be made to the Chairperson of the Board of Education.

Employees who have observed incidents of harassment/discrimination involving students shall report it as soon as reasonably ~~practicable~~ practical to the building Principal, the Superintendent, or the District Harassment/Discrimination Coordinator.

Harassment/Discrimination**GUIDELINES (CONTINUED)**

In applicable cases, employees must report harassment/discrimination to appropriate law enforcement authorities in accordance with law.¹

Complaints of harassment/discrimination, whether verbal or written, shall lead to a documented investigation and a written report. All reports made to the Principal or Harassment/Discrimination Coordinator shall be communicated by them to the Superintendent, or where applicable to the Board Chairperson, in writing within one (1) working day of receipt. The term "REPORT" as used in this policy includes reports of harassment/discrimination which are made either orally or in writing.

The Superintendent or the Chairperson of the Board, as the case may be, shall provide for the following:

1. Investigation of allegations of harassment/discrimination to commence as soon as circumstances allow, but not later than three (3) working days of receipt of the report, whether it be oral or in writing. The investigation shall be performed by the Harassment/Discrimination Coordinator or another formally trained investigator acting under his direct supervision. The investigation of allegations involving the Superintendent shall be conducted by a formally trained investigator or attorney not employed by the School District. Investigations shall include the right of the complainant to present witnesses, documents and other evidence in support of the complaint, regardless of the manner in which the complaint is communicated to a District administrator. A written report of all findings of the investigation shall be completed within thirty (30) calendar days, unless additional time is necessary due to the matter being investigated by a law enforcement or governmental agency.

The Superintendent/designee may take interim measures to protect complainants during the investigation.

2. A process to be developed and implemented to communicate requirements of this policy to all staff, which may include, but not be limited to, the following:

written notice provided in publications such as handbooks, staff memoranda, and/or pamphlets;

postings in the same location as are documents that must be posted according to state/federal law; and/or

such other measures as determined by the Superintendent/designee.

Method(s) used shall provide a summary of this policy, along with information concerning how individuals can access the District's complete policy.

3. Annual training explaining prohibited behaviors and the necessity for prompt reporting of alleged harassment/discrimination; and
4. Development of alternate methods of filing complaints for individuals with disabilities and others who may need accommodation.

Harassment/Discrimination**PROHIBITED CONDUCT**

Depending on the circumstances and facts of the situation, and within the definition of harassment/discrimination contained in this policy, examples of conduct and/or actions that could be considered a violation of this policy include, but are not limited to:

1. Any nicknames, slurs, stories, jokes, written materials or pictures that are lewd, vulgar, or profane and relate to any of the protected categories listed in the definition of harassment/discrimination contained in this policy;
2. Unwanted touching, sexual advances, requests for sexual favors and spreading sexual rumors;
3. Instances involving sexual violence;
4. Causing an employee to believe that he or she must submit to unwelcome sexual conduct in order to maintain employment or that a personnel decision will be based on whether or not the employee submits to unwelcome sexual conduct;
5. Implied or overt threats of physical violence or acts of aggression or assault based on any of the protected categories;
6. Seeking to involve individuals with disabilities in antisocial, dangerous or criminal activity where they, because of disability, are unable to comprehend fully or consent to the activity; and
7. Destroying or damaging an individual's property based on any of the protected categories.

CONFIDENTIALITY

District employees involved in the investigation of complaints shall respect, as much as possible, the privacy and anonymity of all parties involved.

WRITTEN REPORT

Upon the completion of the investigation, the investigator(s) shall submit a preliminary written report, including the names and addresses of those interviewed and a summary of the information obtained, to the Superintendent who shall prepare a final written report containing the facts obtained as a result of the investigation and his/her conclusions as to whether harassment/discrimination has occurred **as well as any disciplinary action.** ~~as well as specific remedies designed to correct the situation and prevent its reoccurrence, including but not limited to, disciplinary action where appropriate. In cases involving District employees, there shall be no appeal from the Superintendent's finding, conclusions and remedies, including any disciplinary action taken.~~ In the event that the Superintendent's alleged conduct was the subject of the investigation, the Board shall consider the preliminary written report in executive session and prepare and adopt by majority vote a final written report containing the facts obtained as a result of the investigation and its conclusions as to whether harassment/discrimination occurred as well as specific remedies designed to correct the situation and prevent its reoccurrence, including but

not limited to, disciplinary action where appropriate. The findings and conclusions of Board, as well as the remedies contained in the final report, shall be final.

Harassment/Discrimination**NOTIFICATION**

Upon completion, the written report shall be furnished to the interested parties, including the complainant, by personal delivery or by registered or certified mail, return receipt requested.

RETALIATION PROHIBITED

No one shall retaliate against an employee or student because s/he submits a grievance, assists or participates in an investigation, proceeding, or hearing regarding the charge of harassment/discrimination of an individual or because s/he has opposed language or conduct that violates this policy.

Upon the resolution of allegations, the Superintendent shall take steps to protect employees and students against retaliation.

OTHER CLAIMS

When a complaint is received that does not appear to be covered by this policy, administrators shall review other policies that may govern the allegations, including but not limited to, 03.212, 03.2325 and/or 09.422.

REFERENCES:

¹KRS 158.156

42 USC 2000e, Civil Rights Act of 1964, Title VII; KRS Chapter 344

29 C.F.R. 1604.11, Equal Employment Opportunity Commission (EEOC) Regulations
Implementing Title VII

20 U.S.C. 1681, Education Amendments of 1972, Title IX

34 C.F.R. 106.1-106.71, U. S. Department of Education Office for Civil Rights
Regulations Implementing Title IX

Genetic Information Nondiscrimination Act of 2008

RELATED POLICIES:

03.212, 03.2325, 03.26, 09.2211, 09.422, 09.42811

Adopted/Amended: 8/24/2015

Order #: 18802