

SECTION: PROGRAMS

TITLE: NONDISCRIMINATION/DISCRIMINATORY HARASSMENT - SCHOOL AND CLASSROOM PRACTICES

ADOPTED: JANUARY 11, 1999

REVISED: SEPTEMBER 5, 2002, DECEMBER 4, 2006, NOVEMBER 1, 2007, NOVEMBER 16, 2011, NOVEMBER 1, 2012, March 1, 2018, April 4, 2019

DERRY AREA SCHOOL DISTRICT

No. 103 NONDISCRIMINATION/DISCRIMINATORY HARASSMENT - SCHOOL AND CLASSROOM PRACTICES

Authority

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 schools without discrimination on the basis of race, color, age, creed, religion, sex, sexual orientation, ancestry, national origin, marital status, pregnancy or handicap/disability.[1][2][3][4] [5][6][7][8][9][10][11][12][13][14][15][16][17][18][19]

The district strives to maintain a safe, positive learning environment for all students that is free from discrimination. Discrimination is inconsistent with the educational and programmatic goals of the district and is prohibited on school grounds, at school-sponsored activities and on any conveyance providing transportation to or from a school entity or school-sponsored activity.

The district shall provide to all students, without discrimination, course offerings, counseling, assistance services, employment, athletics and extracurricular activities. The district shall make reasonable accommodations for identified physical and mental impairments that constitute handicaps and disabilities, consistent with the requirements of federal and state laws and regulations.

The Board encourages students and third parties who believe they or others have been subject to discrimination to promptly report such incidents to designated employees, even if some elements of the related incident took place or originated away from school grounds, school activities or school conveyances.

The Board directs that verbal and written complaints of discrimination shall be investigated promptly, and appropriate corrective or preventative action be taken when allegations are substantiated. The Board directs that any complaint of discrimination brought pursuant to this policy shall also be reviewed for conduct which may not be proven discriminatory under this policy but merits review and possible action under other Board policies.

Confidentiality

Confidentiality of all parties, witnesses, the allegations, the filing of a complaint and the investigation shall be handled in accordance with this policy and the district’s legal and investigative obligations.

Retaliation

The Board prohibits retaliation against any person for making a report of discrimination or participating in a related investigation or hearing, or opposing practices the person reasonably believes to be discriminatory. A complaint of retaliation shall be handled in the same manner as a complaint of discrimination.

Definitions

Discriminatory Harassment

Harassment by students, employees or third parties on the basis of race, color, age, creed, religion, sex, sexual orientation, ancestry, national origin, marital status, pregnancy, handicap/disability or for participation in reports or investigations of alleged discrimination is a form of discrimination and is subject to this policy. A person who is not necessarily an intended victim or target of such harassment but is adversely affected by the offensive conduct may file a report of discrimination on his/her own behalf.[20][21][22][23][24][25][26]

For purposes of this policy, harassment shall consist of unwelcome conduct such as graphic, written, electronic, verbal or nonverbal acts including offensive jokes, slurs, epithets and name-calling, ridicule or mockery, insults or put-downs, offensive objects or pictures, physical assaults or threats, intimidation, or other conduct that may be harmful or humiliating or interfere with a person's school or school-related performance and which relates to an individual's or group's race, color, age, creed, religion, sex, sexual orientation, ancestry, national origin, marital status, pregnancy or handicap/disability when such conduct is:

Sufficiently severe, persistent or pervasive; and a reasonable person in the complainant's position would find that it creates an intimidating, threatening or abusive educational environment such that it deprives or adversely interferes with or limits an individual or group of the ability to participate in or benefit from the services, activities or opportunities offered by a school.

Sexual Harassment

Sexual harassment is a form of discrimination on the basis of sex and is subject to this policy. For purposes of this policy, sexual harassment shall consist of unwelcome sexual advances; requests for sexual favors; and other inappropriate verbal, nonverbal, written, graphic or physical conduct of a sexual nature when:

Submission to such conduct is made explicitly or implicitly a term or condition of a student's status in any educational or other programs offered by a school; or

Submission to or rejection of such conduct is used as the basis for educational or other program decisions affecting a student; or

Such conduct deprives a student or group of individuals of educational aid, benefits, services or treatment; or

No. 103 NONDISCRIMINATION/DISCRIMINATORY HARASSMENT - SCHOOL AND CLASSROOM PRACTICES

Such conduct is sufficiently severe, persistent or pervasive that a reasonable person in the complainant's position would find that it unreasonably interferes with the complainant's performance in school or school-related programs, or otherwise creates an intimidating, hostile, or offensive school or school-related environment such that it unreasonably interferes with the complainant's access to or participation in school or school-related programs.

Federal law declares sexual violence a form of sexual harassment. Sexual violence means physical or sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to the victim's use of drugs or alcohol. An individual may also be unable to give consent due to an intellectual or other disability. Sexual violence includes but is not limited to rape, sexual assault, sexual battery and sexual coercion.

Delegation of Responsibility

In order to maintain a program of nondiscrimination practices that is in compliance with applicable laws and regulations, the Board designates the Superintendent as the district's Compliance Officer. All nondiscrimination notices or information shall include the position, office address, telephone number and email address of the Compliance Officer.

The Compliance Officer shall publish and disseminate this policy and complaint procedure at least annually to students, parents, employees and the public to notify them of where and how to initiate complaints under this policy.

The Compliance Officer is responsible to ensure adequate nondiscrimination procedures are in place, to recommend new procedures or modifications to procedures and 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.
3. Resources – Maintain and provide information to staff on resources available to alleged victims in addition to the school complaint procedure, such as making reports to the police, available assistance from domestic violence or rape crisis programs and community health resources including counseling resources.
4. 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.
5. District Support - Assurance that like aspects of the school program receive like support as to staffing and compensation, facilities, equipment, and related matters.
6. Student Evaluation - Review of tests, procedures and guidance and counseling materials for stereotyping and discrimination.

No. 103 NONDISCRIMINATION/DISCRIMINATORY HARASSMENT - SCHOOL AND CLASSROOM PRACTICES

Complaints – Monitor and provide technical assistance to building principals or designee in processing complaints.

The building principal or designee shall be responsible to promptly complete the following duties upon receipt of a report of discrimination and retaliation from a student, employee or third party:

1. If the building principal is the subject of the complaint, refer the student to the Compliance Officer to carry out these responsibilities.
2. Inform the complainant about this policy including the right to an investigation of both oral and written complaints of discrimination.
3. Seek to obtain consent from parents/guardians to initiate an investigation where the complainant or alleged victim is under age eighteen (18). Inform parents/guardians of the complainant that the complainant may be accompanied by a parent/guardian during all steps of the complaint procedure. When a parent/guardian requests confidentiality and will not consent to the alleged victim's participation in an investigation, explain that the school shall take all reasonable steps to investigate and respond to the complainant consistent with that request for confidentiality as long as doing so does not preclude the school from responding effectively to the discrimination and preventing discrimination of other students.
4. Provide relevant information on resources available in addition to the school complaint procedure, such as making reports to the police, available assistance from domestic violence or rape crisis programs and community health resources including counseling resources.
5. Immediately notify the Compliance Officer of the complaint. The Compliance Officer shall assess whether the investigation should be conducted by the building principal, another district employee, the Compliance Officer or an attorney and shall promptly assign the investigation to that individual. When a parent/guardian has requested confidentiality and will not consent to the alleged victim's participation in an investigation, the compliance officer shall provide the parent/guardian with a letter containing information related to the district's legal obligations to conduct an investigation and address violations of this policy, and any other information appropriate to the specific complaint.
6. After consideration of the allegations and in consultation with the Compliance Officer and other appropriate individuals, promptly implement interim measures as appropriate to protect the complainant and others as necessary from violation of this policy during the course of the investigation.

Guidelines

Complaint Procedure - Student/Third Party

Step 1 - Reporting

A student or third party who believes s/he has been subject to conduct by any student, employee or third party that constitutes a violation of this policy is encouraged to immediately report the incident to the building principal. Any person with knowledge of conduct that may violate this policy, is encouraged to immediately report the matter to the building principal.

A school employee who suspects or is notified that a student has been subject to conduct that constitutes a violation of this policy shall immediately report the incident to the building principal, as well as properly making any mandatory police or child protective services reports required by law.[27]

If the building principal is the subject of a complaint, the student, third party or employee shall report the incident directly to the Compliance Officer.

The complainant or reporting employee is encouraged to use the report form available from the building principal, or Compliance Officer, or to put the complaint in writing; however, oral complaints shall be accepted, documented and the procedures of this policy implemented. The person accepting the verbal or written complaint may provide factual information on the complaint and the investigative process, the impact of choosing to seek confidentiality and the right to file criminal charges. In all other respects, the person accepting the complaint shall handle the report objectively, neutrally and professionally, setting aside personal biases that might favor or disfavor the complainant or those accused of a violation of this policy.

Step 2 - Investigation

The Compliance Officer shall ensure that the individual assigned to investigate the complaint has an appropriate understanding of the relevant laws pertaining to discrimination issues and this policy and how to conduct investigations.

The investigator shall work with the Compliance Officer to assess the anticipated scope of the investigation, who needs to be interviewed and what records may be relevant to the investigation.

The investigator shall conduct an adequate, reliable and impartial investigation. The complainant and the accused may suggest additional witnesses and provide other evidence during the course of the investigation. When the initial complaint involves allegations relating to conduct which took place away from school property, school-sponsored activities or school conveyances, the investigation may include inquiries related to these allegations to determine whether they resulted in continuing effects such as harassment in school settings.

The investigation may consist of individual interviews with the complainant, the accused, and others with knowledge relative to the allegations. The investigator may also evaluate any other information and materials relevant to the investigation. The person making the report, parties, parents/guardians and witnesses shall be informed of the prohibition against retaliation for anyone's participation in the process and that conduct believed to be retaliatory should be reported. All individuals providing statements or other information or participating in the investigation shall be instructed to keep the matter confidential and to report any concerns about confidentiality to the investigator.

If the investigation reveals that the conduct being investigated may involve a violation of criminal law, the investigator shall promptly notify the Compliance Officer, who shall promptly inform law enforcement authorities about the allegations.[27][28][29]

The obligation to conduct this investigation shall not be negated by the fact that a criminal or child protective services investigation of the incident is pending or has been concluded. The investigator should coordinate with any other ongoing investigations of the allegations, including agreeing to requests for a short delay in fulfilling the district's investigative responsibilities during the fact-finding portion of a criminal or child protective services investigation. Such delays shall not extend beyond the time necessary to prevent interference with or disruption of the criminal or child protective services investigation.

Step 3 - Investigative Report

The investigator shall prepare and submit a written report to the Compliance Officer within twenty (20) days of the initial report of alleged discrimination, unless the nature of the allegations, anticipated extent of the investigation and the availability of witnesses requires the investigator and the Compliance Officer to establish a different due date. The parties shall be notified of the anticipated date the investigative report will be completed and of any changes to the anticipated due date during the course of the investigation.

The report shall include a summary of the investigation, a determination of whether the complaint has been substantiated as factual, the information and evaluation that formed the basis for this determination, whether the conduct violated this policy and of any other violations of law or Board policy which may warrant further district action, and a recommended disposition of the complaint. An investigation into discriminatory harassment or sexual harassment shall consider the record as a whole and the totality of circumstances in determining whether a violation of this policy has occurred, recognizing that persistent and pervasive conduct, when taken together, may be a violation even when the separate incidents are not severe.

The complainant and the accused shall be informed of the outcome of the investigation, for example, whether the investigator believes that allegations to be founded or unfounded, within a reasonable time of the submission of the written report to the extent authorized by the Family Educational Rights and Privacy Act (FERPA) and other applicable laws. The accused shall not be notified of the individual remedies offered or provided to the complainant.[30][31][32]

Step 4 - District Action

If the investigation results in a finding that some or all of the allegations of the complaint and established and constitute a violation of this policy, the district shall take prompt, corrective action designed to ensure that such conduct ceases and that no retaliation occurs. The district shall promptly take appropriate steps to prevent the recurrence of the prohibited conduct and to address the discriminatory effect the prohibited conduct had on the complainant and the school or school program environment. District staff shall document the corrective action taken and, where not prohibited by law, inform the complainant. The Compliance Officer shall follow up by assessing the effectiveness of the corrective action at reasonable intervals.

If an investigation results in a finding that a different policy was violated separately from or in addition to violations of this policy, or that there are circumstances warranting further action, such matters shall be addressed at the conclusion of this investigation or through disciplinary or other appropriate referrals where further evaluation or investigation is necessary.

Disciplinary actions shall be consistent with the Student Code of Conduct, Board policies, administrative regulations, and district procedures, applicable collective bargaining agreements, and state and federal laws.

Appeal Procedure

1. If the complainant or the accused is not satisfied with a finding made pursuant to the policy or with the corrective action recommended in the investigative report, s/he may submit a written appeal to the Compliance Officer within fifteen (15) days. If the Compliance Officer investigated the complaint, such appeal shall be made to the Superintendent.
2. The individual receiving the appeal shall review the investigation and the investigative report and may also conduct or designate another person to conduct a reasonable supplemental investigation to assess the sufficiency and propriety of the prior investigation.
3. The person handling the appeal shall prepare a written response to the appeal within twenty (20) days. Copies of the response shall be provided to the complainant, the accused and the investigator who conducted the initial investigation.

Legal References

1. 20 U.S.C. 1681 et seq
2. 22 PA Code 12.1
3. 22 PA code 12.4
4. 22 PA Code 15.1 et seq
5. 22 PA Code 4.4
6. 24 P.S. 1301
7. 24 P.S. 1310
8. 24 P.S. 1601-C et seq
9. 24 P.S. 5004
10. 29 U.S.C. 794

No. 103 NONDISCRIMINATION/DISCRIMINATORY HARASSMENT - SCHOOL AND CLASSROOM PRACTICES

11. 42 U.S.C. 12101 et seq
12. 42 U.S.C. 1981 et seq
13. 42 U.S.C. 2000d et seq
14. 43 P.S. 951 et seq
15. Pol. 103.1
16. Pol. 218
17. Pol 247
18. Pol. 249
19. U.S. Const. Amend. XIV, Equal Protection Clause
20. 29 CFR 1604.11
21. 29 CFR 1606.8
22. David v. Monroe County Board of Education, 526 U.S. 629 (1999)
23. Franklin v. Gwinnett County Public Schools, 503 U.S. 60 (1992)
24. Office for Civil Rights – Guidance on Schools’ Obligations to Protect Students from Student-on-Student Harassment on the Basis of Sex; Race, Color and National Origin; and Disability (Oct. 26, 2010)
25. Office for Civil Rights – Resources for Addressing Racial Harassment
26. Office for Civil Rights – Revised Harassment Guidance: Harassment of Student by School Employees, Other Students or Third Parties Title IX (January 2001)
27. Pol. 806
28. 18 Pa. C.S.A. 2709
29. Pol. 815
30. Pol. 216
31. 20 U.S.C. 1232g
32. 34 CFR Part 99
33. 28 CFR Part 35
34. 28 CFR Part 41
35. 34 CFR Part 100
36. 34 CFR Part 104
37. 34 CFR Part 106
38. 34 CFR Part110
39. Pol. 113
40. Pol. 122
41. Pol. 123
42. Pol. 138
43. Pol. 701