

PENDLETON COUNTY BOARD OF EDUCATION

P. PERSONNEL – PROFESSIONAL AND SERVICE

File: P.21. Racial, Sexual, Religious, Ethnic Harassment and Violence

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Last Review:

August, 2014

The purpose of this policy and the regulations that follow is to prevent racial, sexual or religious/ethnic harassment or violence, toward students and staff, to protect the academic environment, and to assure that our employees respond to harassment and/or violence incidents when they occur in a manner that effectively deters future incidents and affirms respect for individuals.

Racial, sexual, religious/ethnic harassment and violence is a form of discrimination which violates Sections 703 of title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000C, et. seq., Title IX of the Educational Amendments of 1972, 20 U.S.C. §1681, et. seq., WV Code §5-11-1, §18-2-5, §18-2-5a and §18-2-7b, et. seq., West Virginia Constitution, Art. XII, §2, SBP 4373, and the West Virginia Human Rights Act.

It shall be a violation of this policy for any student, volunteer, outside group, or third party using school facilities, or any employee of the Pendleton County School District to harass a student, any person, or an employee through conduct or communication of a racial, sexual or religious/ethnic nature. School facility shall include any building or property used or operated by the Pendleton County Board of Education.

Pendleton County Schools will investigate all complaints of harassment or violence and discipline any student or employee who harasses a student or employee of Pendleton County Schools. Penalties for members of the public shall be in compliance with the laws of West Virginia and the policies of the school system.

(P) P.21.1. Policy Implementation Procedures

Definitions:

- ❖ **Sexual Harassment:** Unwelcome sexual advances, request for sexual favors, sexually motivated physical conduct or communication of a sexual nature when:
 - Submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining or retaining employment, or of obtaining an education; or
 - Submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's employment or education; or
 - That conduct or communication has the purpose or effect of substantially or unreasonably interfering with an individual's employment or education, or creating an intimidating, hostile, or offensive employment or educational environment.
- Sexual harassment may include but is not limited to:
 - Verbal harassment or abuse (i.e. graphic verbal commentary relating to an individual's body, sexual prowess or sexual deficiencies);
 - Unwelcome or inappropriate letters, telephone calls, e-mails, pictures, cartoons, computer images, or other materials of a sexual nature;
 - Sexual teasing, jokes, remarks, or questions;
 - Commenting upon an individual's body or clothing in a sexually offensive manner;
 - Sexually suggestive looks or gestures;

- Pressure, subtle or overt, for sexual activity;
 - Unwelcome or inappropriate patting, pinching, or contact;
 - Intentionally brushing against another's body;
 - Attempted or actual rape or sexual assault;
 - Requesting or demanding sexual favors accompanied by implied or overt threats concerning an individual's employment or education status;
 - Requesting or demanding sexual favors accompanied by implied or overt promises of preferential treatment with regard to an individual's employment or educational status;
 - The use of authority to emphasize the sexuality of a student in a manner that prevents or impairs that student's full enjoyment of educational benefits, climate or opportunities; or
 - Any unwelcome sexually motivated touching.
- ❖ **Sexual Violence:** Sexual violence is a physical act of aggression or force or the threat thereof which involves the touching of another's intimate parts, or forcing a person to touch any person's intimate parts. Intimate parts include the primary genital area, groin, inner thigh, buttocks or breast, as well as the clothing covering these areas;
- Touching, patting, grabbing or pinching another person's intimate parts, whether that person is of the same sex or the opposite sex;
 - Coercing, forcing or attempting to coerce or force the touching of anyone's intimate parts;
 - Coercing, forcing or attempting to coerce or force sexual intercourse or sexual act on another;
 - Threatening to force or coerce sexual acts, including the touching of intimate parts or intercourse on another; or
 - Threatening or forcing exposure of intimate apparel or body parts by removal of clothing.
- ❖ **Racial or Religious/Ethnic Harassment:** Racial and religious/ethnic harassment consists of physical, verbal or written conduct relating to an individual's race, religious background, or ethnic background when the conduct:
- Has the purpose or effect of creating an intimidating, hostile, or offensive working or academic environment (i.e. degrading words to describe an individual's race, age, sex, religion, ancestry or disability);
 - Has the purpose or effect of substantially or unreasonably interfering with an individual's work or academic performance; or
 - Otherwise adversely affects an individual's employment or academic opportunities.
- ❖ **Racial or Religious/Ethnic Violence:** Racial or religious/ethnic violence is a physical act of aggression or assault upon another because of race, or in a matter reasonably related to, race, religion, or ethnicity.
- ❖ **Assault is:**
- An act done with intent to cause fear in another of immediate bodily harm or death;
 - The threat to do bodily harm to another by a person possessing the ability to carry out the threat.
- ❖ **Amorous Relationships:** Amorous relationships between staff members and non-adult students of the educational agencies served by Pendleton County Schools are prohibited. Staff members found to have violated this prohibition shall be subject to the disciplinary actions outlined in these procedures.

Reporting Procedures:

Any person who believes he or she has been victim of harassment or violence by a student or an employee of Pendleton County Schools, or any third person with knowledge or belief of conduct which may constitute harassment, should report the alleged acts immediately to an appropriate official as designated by these procedures. Pendleton County Schools encourages the reporting party or complainant to use the report form available from the Human Rights Officer.

❖ In Each School Building

The building principal is the person responsible for receiving oral or written reports of sexual harassment at the building level. Upon receipt of a report, the principal must notify the Board's Human Rights Officer immediately without screening or investigating the report. A written report will be forwarded simultaneously to the Human Rights Officer. If the report was given to the building principal verbally, he/she shall reduce it to written form before the close of the next working day and forward it to the Human Rights Officer. Failure to forward any sexual harassment report or complaint as provided herein will result in disciplinary action. If the complaint involves the building principal, the complaint shall be made directly to the Human Rights Officer.

For school buildings/facilities that do not have a building principal, the Director of such building or facility will be the person responsible for receiving oral or written reports of sexual harassment. All other provisions of the paragraph above apply to such situations, except that the term "Director" shall be substituted for the term "building principal".

❖ District-Wide

The Board designates its Title IX Coordinator as the Human Rights Officer to receive reports or complaints of sexual harassment from any individual, employee or victim of sexual harassment and also from the building principals as outlined above. If the complaint involves the Human Rights Officer, the complaint or report shall be filed directly with the Superintendent, who shall then be responsible for the investigation and recommendation described in these procedures. The name of the Human Rights Officer, including mailing address and telephone number, shall be conspicuously posted in the office of each school building and in other buildings to which employees of the Board are assigned to work.

❖ Submission of a Complaint or Report

Submitting a complaint or report concerning sexual harassment will not affect the future employment, grades, or work assignments of the person who submits the complaint or report. The use of formal reporting forms is not mandatory. Pendleton County Schools will respect the confidentiality of the complainant and the individuals against whom the complaint is filed as much as possible, consistent with the agency's legal obligations and the necessity to investigate allegations of harassment and violence and take disciplinary action when the conduct has occurred.

- ❖ Under certain circumstances, sexual harassment may constitute child and/or sexual abuse under Chapter 49 of the West Virginia Code. In such situations, the county board of education shall comply with the provisions of law for reporting such abuse.

Investigation and Recommendations:

By authority of the Board, the Human Rights Officer, upon receiving a written report or complaint alleging racial, sexual, religious/ethnic harassment or violence will immediately authorize an investigation. Upon receipt of a complaint alleging racial, sexual, religious, ethnic harassment or violence; the Human Rights Officer will inform the affected parties of the investigative procedures that will occur. The investigation may be conducted by officials of the school district or by third parties designated by the Superintendent of Schools. In the event the alleged complaint involves a school employee, the Human Rights Officer will inform such employee that a third party investigative official will be authorized to investigate and report. Additionally, the rights of such employee will be fully explained by the Human Rights Officer. The investigating party will provide a written report of the status of the investigation within ten working days to the Superintendent and the Human Rights Officer. If the Superintendent is the subject of the complaint, the report will be submitted to the Human Rights Officer and the President of the Board.

In determining whether alleged conduct constitutes harassment or violence, consideration will be given to the surrounding circumstances, the nature of the racial, sexual, religious/ethnic advances, relationships between the parties involved, and the context in which the alleged incidents occurred.

The investigation must at a minimum consist of personal interviews with the complainants, the individuals against whom the complaints are filed, and others who may have knowledge of the alleged incidents or circumstances generating the complaints. Signed statements shall be obtained from witnesses or other persons having pertinent information about the incident. The investigation may also consist of any other methods and documents deemed pertinent by the investigators.

In addition, school officials may, in their discretion, take immediate steps to protect the complainant, students, and employees pending completion of an investigation of alleged harassment and violence.

Upon completion of the investigation, the Board's Human Rights Officer will issue a report to the Superintendent. The report will include a recommendation concerning the validity of the complaint. If the Superintendent is the subject of the complaint, the report will be made to the President of the Board.

❖ **Action**

Upon receipt of a recommendation that the complaint is valid, officials of the Pendleton County Schools will take such action as appropriate based on the results of the investigation. The results of the investigation of each complaint filed under these procedures will be reported in writing to the complainant or his/her legal guardian by the Superintendent of Schools or, if the Superintendent is the subject of the complaint, by the President of the Board. The report will document any disciplinary action taken as a result of the complaint.

The Superintendent (or the President of the Board if the Superintendent is the subject of the complaint) shall immediately file a report with the West Virginia Department of Education when an investigation shows that harassment or violence did occur and all actions taken in response to the incident.

❖ **Reprisal**

The Pendleton County Board of Education will discipline any individual who retaliates against any person who reports alleged harassment or violence or who retaliates against any person who testifies, assists, or participates in an investigation proceeding or hearing relating to a harassment or violence complaint. Retaliation includes, but is not limited to, any form of intimidation, reprisal or harassment.

❖ **Non-Harassment**

The Board recognizes that not every advance or comment of a racial, sexual, or religious/ethnic nature constitutes harassment. Whether a particular action or incident is a personal, social relationship without a discriminatory employment effect requires a determination based on all the facts and surrounding circumstances. False accusations of harassment can have a serious detrimental effect on innocent parties and students and employees who falsely report religious/ethnic, racial, or sexual harassment shall also face appropriate disciplinary actions.

The confidentiality of complainants, subjects, witnesses, and investigators will be vigorously protected and only persons essential to the investigation will be given information about it.

Right to Alternative Complaint Procedures:

These procedures do not deny the right of any individual to pursue other avenues of recourse that may include filing charges with the West Virginia Human Rights Commission, filing an employee grievance under WV Code §18-29-1, et. seq., filing a citizen's appeal under West Virginia Board of Education Policy 7211, filing a Title IX grievance under the appropriate procedures, initiating civil action, or seeking redress under state criminal statutes and/or federal law.

Disciplinary Actions:

Disciplinary action taken pursuant to these procedures for students may include, but are not limited to, warning, suspension or expulsion depending upon the severity of the offenses.

Disciplinary actions for employees may include, but are not limited to warning, suspension, immediate discharge and revocation of licensure.

Special note: If an investigation reveals that an employee or student making the complaint has falsely (and in bad faith or out of malice) accused another employee or student of harassment as defined in this policy, the complaining individual shall be subject to discipline, including but not limited to oral or written reprimand, suspension, termination of employment, and/or discipline under the Student Code of Conduct.

Parents and/or other members of the public who falsely (and in bad faith or out of malice) accuse an employee or student of harassment as defined in this policy, are advised that they may be subject to civil action in the court system and may be referred to the appropriate law enforcement agency for possible criminal action.

Dissemination of Regulations:

These regulations or a summary of them shall be posed in each of the agency facilities in areas accessible to students and staff members.

- ❖ A complete copy of these regulations can be found in the Pendleton County Schools Policy Manual.
- ❖ Pendleton County Schools will develop and implement training for students and staff on these regulations and on means of effectively promoting them.
- ❖ Prevention programs that develop training and awareness of racial, sexual, religious/ethnic harassment and violence will be presented annually through the Pendleton County Schools Staff Development Program.

Prevention Programs:

For each programmatic level, K-5, 6-8, 9-12, adult students, faculty and staff, the Superintendent or his/her designee shall develop prevention programs that, at a minimum, raise awareness of the different types of discrimination, how it maintains itself, its devastating emotional and educational consequences and its legal consequences.

In addition, the Superintendent or his/her designee shall develop and implement multi-cultural education programs for faculty, staff and students that foster an attitude of understanding and acceptance of individuals from a variety of cultural, ethnic, racial and religious backgrounds and national origins.

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(P) P.21.2. Obscene, Anonymous, Harassing and Threatening Communications

Legislation has now made certain inappropriate acts while using electronic communication devices criminal acts (WVC §61-3C-14a). It is unlawful for any person, with the intent to harass or abuse another person, to use a computer or other electronic devices to:

- ❖ Make contact with another without disclosing his or her identity with the intent to harass or abuse;
- ❖ Make contact with a person after being requested by the person to desist from contacting them;
- ❖ Threaten to commit a crime against any person or property; or
- ❖ Cause obscene material to be delivered or transmitted to a specific person after being requested to desist from sending such material.

For purposes of this policy, "obscene material" means material that:

- ❖ An average person, applying contemporary adult community standards, would find, taken as a whole, appeals to the prurient interest, is intended to appeal to the prurient interest, or is pandered to a prurient interest;
- ❖ An average person, applying contemporary adult community standards, would find, depicts or describes, in a patently offensive way, sexually explicit conduct consisting of an ultimate sexual act, normal or perverted, actual or simulated, an excretory function, masturbation, lewd exhibition of the genitals, or sadomasochistic sexual abuse; and
- ❖ A reasonable person would find, taken as a whole, lacks literary, artistic, political or scientific value.

It is unlawful for any person to knowingly permit a computer under his or her control to be used for any purpose prohibited by this policy and state code. Any offense committed under this policy may be determined to have occurred at the place at which the contact originated or the place at which the contact was received or intended to be received.

Any person who violates a provision of this policy is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars or confined in a county or regional jail not more than six months, or both. For a second or subsequent offense, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars or confined in a county or regional jail for not more than one year, or both.

(WVC §61-3C-14a)

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(P) P.21.3. Issuing Subpoenas to Aid in Criminal Investigations Involving Certain Crimes against Minors

For criminal investigations involving certain criminal sexual offenses against minors, new sections of the West Virginia Code authorize the Magistrate and Circuit Court judges to issue subpoenas upon reasonable suspicion that an electronic communications system or service, or a remote computing service, has been used in the commission of such a crime. The Pendleton County Board of Education recognizes its responsibility to protect the well-being of its employees and students in this technological age and it once again cautions all of its employees and students to refrain from any activities that would fall into this or any other category of criminal offenses related to electronic communications.

Definitions:

- ❖ "Electronic communication" means any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature transmitted, in whole or in part, by a wire, radio, electromagnetic, photoelectronic or photooptical system.
- ❖ "Electronic communication" does not include:
 - Any oral communication;
 - Any communication made through a tone-only paging device;
 - Any communication from a tracking device; or
 - Electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds.
- ❖ "Electronic communications service" means any service which provides for users the ability to send or receive wire or electronic communications.
- ❖ "Electronic communications system" means any wire, radio, electromagnetic, photooptical or photoelectronic facilities for the transmission of wire or electronic communications, and any computer facilities or related electronic equipment for the electronic storage of the communication.

- ❖ "Electronic service provider" means a person or entity engaged in the business of providing computer communications through which a consumer may obtain access to the internet.
- ❖ "Electronic service provider" does not include a common carrier if it provides only telecommunications service.
- ❖ "Sexual offense against a minor" means:
 - A violation or attempted violation of WVC §61-8B-5 code;
 - A sexual offense or attempted sexual offense committed against a minor in violation of WVC §61-8B;
 - The distribution and display or attempted distribution and display of obscene materials to a minor in violation of WVC §61-8A-2;
 - The use or attempted use of obscene matter with the intent to seduce a minor in violation of WVC §61-8A-4;
 - The employment or use or the attempted employment or use of a minor to produce obscene materials in violation of WVC 61-8A-5;
 - The solicitation of a minor by use of a computer in violation of WVC §61-14B-3c; or
 - The use of a minor in filming sexually explicit conduct in violation of WVC §61-8C-2 and §61-8C-3.
- ❖ "Remote computing service" means the provision to the public of computer storage or processing services by means of an electronic communications system.

The form by which a law enforcement agency applies for such a subpoena shall be approved by the West Virginia Supreme Court of Appeals and shall include, if available, the IP address, email address, telephone number, or other identifier suspected of being used in the commission of the offense.

In response to the subpoena, an electronic communications system or service, or a remote computing service, may be required to produce names, addresses, telephone connections, session records, subscriber identifiers, and means and sources of payment for services. However, a law enforcement agency may not examine the contents of electronic communications without a warrant

The Code prohibits the recipient of the subpoena from disclosing to the account holder the existence of the subpoena and the response to the subpoena. The code also limits the liability of the systems and services to which subpoenas are directed, and it permits them to charge a fee to the law enforcement agency, not to exceed the actual cost for providing the information (WVC § 62-1G-2)

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