

TITLE 126
LEGISLATIVE RULES
BOARD OF EDUCATION
SERIES 18

RACIAL, SEXUAL, RELIGIOUS/ETHNIC
HARASSMENT AND VIOLENCE POLICY (2421)

§126-18-1. General.

- 1.1. Scope. This rule sets the requirements for schools in West Virginia to be harassment and violence free.

1.2. Authority. W.Va. Constitution, Article XII, §2, and W.Va. Code §§18-2-5, 18-2-5a, and 18-2-7b.

1.3. Filing Date. December 16, 1996

1.4. Effective Date. January 16, 1997

1.5. Repeal of former rule. -- None

§126-18-2. Purpose.

2.1. The purpose of these regulations 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 educational institutions respond to harassment and/or violence incidents when they occur in a manner that effectively deters future incidents and affirms respect for individuals. These regulations require county boards to design and implement prevention and response programs, to outline investigatory and reporting procedures and to delineate penalties for violations of this policy. To the extent possible, county boards will collaborate with other state and local agencies in carrying out the purpose of this rule. It is the intent of the State Board to ensure that the learning and working environments are free from any type of harassment or violence.

§126-18-3. Application.

3.1. These regulations apply to any student, staff member or member of the public during any school related activity or during any education sponsored event whether in a building or other property used or operated by a county board of education, RESA or state

department of education or in another facility being used by any of those agencies. The

term "staff members", as used in these regulations, shall encompass all employees of the county board of education or other applicable local agency or facility.

3.2. No student, staff member or member of the public, during any school related activity or during any education sponsored event, whether in a building or other property used or operated by a county board of education, RESA or the West Virginia Department of Education or in another facility being used by any of those agencies, shall engage in sexual, racial or ethnic/religious harassment or violence. Persons found to have violated this prohibition shall be subject to the penalties in Section 8.1.

3.3. Amorous relationships between staff members and students are prohibited, and staff members found to have violated this prohibition shall be subject to the penalties outlined in Section 8.1.

§126-18-4. Definitions.

4.1. Sexual Harassment - Sexual harassment consists of unwelcome sexual advances, requests for sexual favors, sexually motivated physical conduct or other verbal or physical conduct or communication of a sexual nature when:

4.1.1. submission to the conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining or retaining employment, or of obtaining an education; or

4.1.2. 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

4.1.3. 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.

4.1.4. sexual harassment may include but is not limited to:

- a. unwelcome verbal harassment of a sexual nature or abuse;
- b. unwelcome pressure for sexual activity;
- c. unwelcome, sexually motivated or inappropriate patting, pinching or physical contact;
- d. unwelcome sexual behavior or words, including demands for sexual favors, accompanied by implied or overt threats concerning an individual's employment or educational status;
- e. unwelcome sexual behavior or words, including demands for sexual favors, accompanied by implied or overt promises of preferential treatment with regard to an individual's employment or educational status; or
- f. unwelcome behavior, verbal or written words or symbols directed at an individual because of gender.
- g. 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.

4.2. Racial Harassment - Racial harassment consists of physical, verbal or written conduct relating to an individual's race when the conduct:

4.2.1. has the purpose or effect of creating an intimidating, hostile or offensive working or academic environment;

4.2.2. has the purpose or effect of substantially or unreasonably interfering with an individual's work or academic performance; or

4.2.3. otherwise adversely affects an individual's employment or academic opportunities.

4.3. Religious/Ethnic Harassment - Religious/ethnic harassment consists of physical, verbal or written conduct which is related to an individual's religion or ethnic background when the conduct:

4.3.1. has the purpose or effect of creating an intimidating, hostile or offensive working or academic environment;

4.3.2. has the purpose or effect of substantially or unreasonably interfering with an individual's work or academic performance; or

4.3.3. otherwise adversely affects an individual's employment or academic opportunities.

4.4. 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:

4.4.1. sexual violence may include, but is not limited to:

a. touching, patting, grabbing or pinching another person's intimate parts, whether that person is of the same sex or the opposite sex;

b. coercing, forcing or attempting to coerce or force the touching of anyone's intimate parts;

c. coercing, forcing or attempting to coerce or force sexual intercourse or a sexual act on another;
or

d. threatening to force or coerce sexual acts, including the touching of intimate parts or intercourse, on another.

e. threatening or forcing exposure of intimate apparel or body parts by removal of clothing.

4.5. Racial Violence - Racial violence is a physical act of aggression or assault upon another because of, or in a manner reasonably related to, race.

4.6. Religious/Ethnic Violence - Religious/ethnic violence is a physical act of aggression or assault upon another because of, or in a manner reasonably related to, religion or ethnicity.

4.7. Assault - Assault is:

4.7.1. an act done with intent to cause fear in another of immediate bodily harm or death;

4.7.2. the threat to do bodily harm to another with present ability to carry out the threat.

§126-18-5. Planning by Local Boards of Education.

5.1. County boards of education, RESAs and the West Virginia Board of Education shall develop a plan or plans for the implementation of this policy. These plans shall reflect the particular needs of students to study and learn in an environment free from harassment and violence and the particular needs of staff members to work in an environment free from harassment and violence. To the maximum extent possible these plans shall be developed collaboratively with state and local agencies that share the purposes of this policy.

§126-18-6. Complaint Procedures.

6.1. County boards of education, RESAs, and the state department of education shall develop procedures to assure that any person who believes he or she has been the victim of religious/ethnic, racial or sexual harassment or violence by a pupil, teacher, administrator or other school personnel of the county board of education, or any person with knowledge or belief of conduct which may constitute religious/ethnic, racial or sexual harassment or violence toward a pupil, teacher, administrator or other school personnel has an identified mechanism to report the alleged acts immediately to an appropriate official designated by the agency's policy. Nothing in this policy shall prevent any person from reporting harassment or violence directly to the county superintendent, RESA executive director or the state superintendent, as appropriate, or to the West Virginia Human Rights Commission, or to a law enforcement agency.

6.2. County Boards of Education, RESAs and the West Virginia Department of Education shall develop appropriate procedures for investigating, reporting, and responding to violations of this policy in a manner that promotes understanding and respect. The West Virginia Department of Education shall provide each agency with a list of resources to assist in developing these procedures.

6.3. All alleged incidents of harassment or violence observed by faculty or staff must be reported to the designated investigator and appropriate action should be taken as specified in §126-18-7 and §126-18-8.

6.4. 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.

§126-18-7. Investigation.

7.1. The individual(s) designated by the policy to investigate, shall upon receipt of a report or complaint alleging religious/ethnic, racial or sexual harassment or violence, immediately undertake or authorize an investigation. The investigation may be conducted by agency officials or by a third party designated by the agency, in accordance with this policy and the plan developed pursuant to Section 126-18-5.

7.2. The investigation must at a minimum consist of personal interviews with the complainant, the individual(s) against whom the complaint is filed, and others who may have knowledge of the alleged incident(s) or circumstances giving rise to the complaint. The investigation may also consist of any other methods and review of circumstances deemed pertinent by the investigator.

7.3. The agency shall determine whether the alleged conduct constitutes a violation of this policy.

7.4. In determining the appropriate response and/or punishment, the agency should consider the surrounding circumstances, the nature of the behavior, past incidents or past or continuing patterns of behavior, the relationships between the parties involved and the context in which the alleged incidents occurred. Whether a particular action or incident constitutes a violation of this policy requires a determination based on all the facts and surrounding circumstances.

7.5. The agency may take immediate steps, at its discretion, to protect the complainant, pupils, teachers, administrators or other personnel pending completion of an investigation of alleged religious/ethnic, racial or sexual harassment or violence.

7.6. The investigation will be completed as soon as practicable. The investigator shall make a written report to the head of the agency upon completion of the investigation. If the complaint involves the head of the agency, the report may be filed directly with the agency's governing board. The report shall include a determination of whether the allegations have been substantiated as factual and whether they appear to be violations of this policy.

7.7. The result 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 head of the agency, or, if the head of the agency is the subject of the complaint, by the president of the agency's governing board.

7.8. Confidentiality of the filing of complaints, the identity of subjects and witnesses of any complaint and of any action taken as a result of such complaint is essential to the effectiveness of this policy. Only those individuals necessary for the investigation and resolution of the complaint

shall be given information about it. Therefore, the right of

confidentiality of complainants, subjects, witnesses, and investigators will be vigorously protected and violations of such confidentiality may itself be grounds for disciplinary action.

§126-18-8. Agency Action and Reporting.

8.1. Upon receipt of a report substantiated by the investigation, the head of the agency or the agency's governing board will take appropriate action against those found to have violated this policy. Such action may include, but is not limited to, warning, suspension, exclusion, expulsion, termination and revocation of licensure.

8.2. The head of the agency or the agency's governing board shall also initiate such other action as is appropriate to ease tensions and to affirm the values of respect and understanding, in accordance with the agency's plan developed pursuant to §126-18-5.

8.3. The head of the agency shall immediately file a report with the West Virginia Department of Education of all reports of harassment or violence when investigation shows that harassment or violence did occur and all action taken in response to the incident.

§126-18-9. Reprisal.

9.1. The agency will develop discipline procedures to take appropriate action against any pupil, teacher, administrator or other school personnel who retaliates against any person who reports alleged religious/ethnic, racial or sexual harassment or violence or any person who testifies, assists or participates in an investigation, or who testifies, assists or participates in a proceeding or hearing relating to such harassment or violence. Retaliation includes, but is not limited to, any form of intimidation, reprisal or harassment. The agency will develop a discipline process to take appropriate action against any pupil, teacher, or administrator or other school personnel who falsely reports religious/ethnic, racial, or sexual harassment.

§126-18-10. Right To Alternative Complaint Procedures.

10.1. These procedures do not deny the right of any individual to pursue other avenues of recourse which may include filing charges with the West Virginia Human Rights Commission, initiating civil action or seeking redress under the state criminal statutes and/or federal law.

§126-18-11. Prevention Programs.

11.1. Each agency must develop and implement an education program for each programmatic level, K-4, 5-8, and 9-12, as well as a program for all faculty and staff. The programs, at a minimum must: raise awareness of the different types of harassment, how it manifests itself, its devastating emotional and educational consequences, and its legal consequences. In addition, multicultural education programs must be developed and implemented for faculty, staff and students to foster an attitude of understanding and acceptance of individuals from a variety of cultural, ethnic, racial and religious backgrounds.

§126-18-12. Dissemination of Policy and Training.

12.1. This policy or a summary shall be conspicuously posted throughout each agency's facilities in areas accessible to pupils and staff members.

12.2. This policy shall appear in the student and staff handbooks and if no handbook is available, a copy will be distributed to all students, faculty, and staff.

12.3. The agency will develop and implement training for students and staff on these regulations and on means for effectively promoting the goals of this policy.

12.4. The agency policy shall be reviewed at least bi-annually for compliance with state and federal law and state board of education policy.

§126-18-13. Assessment of Effectiveness.

13.1. The West Virginia Department of Education will prepare an annual report to the West Virginia Board of Education to include: reported and substantiated incidences of harassment and/or violence; action taken in response to incidents; training and staff development offered by the agencies; and agency reported numbers and types of multicultural education offerings.