

**SEXUAL HARASSMENT/
HARASSMENT BASED ON RACE, NATIONAL ORIGIN, DISABILITY AND RELIGION**

I. Policy Statement

The Nelson County School Division is committed to maintaining a learning/working environment free from sexual harassment and harassment based on race, national origin, disability or religion. Therefore, Nelson County School Division prohibits sexual harassment and harassment based on race, national origin, disability or religion of any student or school personnel at school or any school sponsored activity.

It shall be a violation of this policy for any student or school personnel to harass a student or school personnel sexually, or based on race, national origin, disability or religion. Further, it shall be a violation of this policy for any school personnel to tolerate sexual harassment or harassment based on a student's or employee's race, national origin, disability or religion by students, school personnel or third parties participating in, observing or otherwise engaged in school sponsored activities.

For the purpose of this policy, school personnel includes school board members, school employees, agents, volunteers, contractors or other persons subject to the supervision and control of the School Division.

The School Division shall: (1) promptly investigate all complaints, written or verbal, of sexual harassment and harassment based on race, national origin, disability or religion; (2) promptly take appropriate action to stop any harassment and (3) take appropriate action against any student or school personnel who violates this policy and take any other action reasonably calculated to end and prevent further harassment of school personnel or students.

II. Definitions

A. 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:

- (i) submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining or retaining employment or education; or
- (ii) submission to or rejection of the conduct or communication by an individual is used as a factor in decisions affecting that individual's employment or education; or
- (iii) that conduct or communication substantially or unreasonably interferes with an individual's employment or education, or creates an intimidating, hostile or offensive employment or educational environment (i.e. the conduct is sufficiently serious to limit a student's or employee's ability to participate in or benefit from the educational program or work environment).

Examples of conduct which may constitute sexual harassment if it meets the immediately preceding definition include:

- unwelcome sexual physical contact
- unwelcome ongoing or repeated sexual flirtation or propositions, or remarks.
- sexual slurs, leering, epithets, threats, verbal abuse, derogatory comments or sexually degrading descriptions.
- graphic comments about an individual's body.
- sexual jokes, notes, stories, drawings, gestures or pictures.
- spreading sexual rumors.
- touching an individual's body or clothes in a sexual way.
- displaying sexual objects, pictures, cartoons or posters.
- impeding or blocking movement in a sexually intimidating manner.

B. Harassment Based on Race, National Origin, Disability or Religion

Harassment based on race, national origin, disability or religion consists of physical or verbal conduct relating to an individual's race, national origin, disability or religion when the conduct:

- (i) creates an intimidating, hostile or offensive working or educational environment; or
- (ii) substantially or unreasonably interferes with an individual's work or education; or
- (iii) otherwise is sufficiently serious to limit an individual's employment opportunities or to limit a student's ability to participate in or benefit from the education program.

Examples of conduct which may constitute harassment based on race, national origin, disability or religion if it meets the immediately preceding definition include:

- graffiti containing racially offensive language.
- name calling, jokes or rumors.
- physical acts of aggression against a person or his property because of that person's race, national origin, disability or religion.
- hostile acts which are based on another's race, national origin, religion or disability.
- written or graphic material which is posted or circulated and which intimidates or threatens individuals based on their race, national origin, disability or religion.

III. Complaint Procedure

A. Formal Procedure

1. File

Any student or school personnel who believes he or she has been the victim of sexual harassment or harassment based on race, national origin, religion or disability by a student, school personnel or a third party should report the alleged harassment to one of the compliance officers designated in this policy or to any school personnel. The alleged harassment should be reported as soon as possible, and the report

generally should be made within fifteen (15) school days of the occurrence. Further, any student who has knowledge of conduct which may constitute prohibited harassment should report such conduct to one of the compliance officers designated in this policy or to any school personnel. Any school personnel who has notice that a student or other school personnel may have been a victim of prohibited harassment shall immediately report the alleged harassment to one of the compliance officers designated in this policy.

The reporting party should use the form, Report of Harassment, GBA-F/JFHA-F, to make complaints of harassment. However, oral reports and other written reports shall also be accepted. The complaint should be filed with either the building principal or one of the compliance officers designated in this policy. The principal shall immediately forward any report of alleged prohibited harassment to the compliance officer. Any complaint that involves the compliance officer or principal shall be reported to the superintendent.

The complaint, and identity of the complainant and alleged harasser, will be disclosed only to the extent necessary to fully investigate the complaint and only when such disclosure is required or permitted by law. Additionally, a complainant who wishes to remain anonymous shall be advised that such confidentiality may limit the School Division's ability to fully respond to the complaint.

2. Investigation

Upon receipt of a report of alleged prohibited harassment, the compliance officer shall immediately authorize or undertake an investigation. The investigation may be conducted by school personnel or a third party designated by the school division. The investigation shall be completed as soon as practicable, which generally should be not later than 14 calendar days after receipt of the report by the compliance officer. Upon receiving the complaint, the compliance officer shall acknowledge receipt of the complaint by giving written notice that the complaint has been received to both the person complaining of harassment and the person accused of harassment. Also upon receiving the complaint, the compliance officer shall determine whether interim measures should be taken pending the outcome of the investigation. Such interim measures may include, but are not limited to, separating the alleged harasser and the complainant and, in cases involving potential criminal conduct, determining whether law enforcement officials should be notified. If the compliance officer determines that more than 14 days will be required to investigate the complaint, the complainant and the accused shall be notified of the reason for the extended investigation and of the date by which the investigation will be concluded. If the alleged harassment may also constitute child abuse, then it must be reported to the Department of Social Service in accordance with Policy JHG.

The investigation may consist of personal interviews with the complainant, the alleged harasser, and any others who may have knowledge of the alleged harassment or the circumstances giving rise to the complaint. The investigation may also consist of the inspection of any other documents or information deemed relevant

by the investigator. The school division shall take necessary steps to protect the complainant and others pending the completion of the investigation.

In determining whether alleged conduct constitutes a violation of this policy, the division shall consider, at a minimum: (1) the surrounding circumstances; (2) the nature of the behavior; (3) past incidents or past or continuing patterns of behavior; (4) the relationship between the parties; (5) how often the conduct occurred; (6) the identity of the alleged perpetrator in relation to the alleged victim (i.e. whether the alleged perpetrator was in a position of power over the alleged victim); (7) the location of the alleged harassment; (8) the ages of the parties and (9) the context in which the alleged incidents occurred. Whether a particular action or incident constitutes a violation of this policy requires a case by case determination based on all of the facts and circumstances revealed after a complete and thorough investigation.

The compliance officer shall issue a written report to the superintendent upon completion of the investigation. If the complaint involves the superintendent, then the report shall be sent to the School Board. The report shall include a determination of whether the allegations are substantiated, whether this policy was violated and recommendations for corrective action, if any.

All employees shall cooperate with any investigation of alleged harassment conducted under this policy or by an appropriate state or federal agency.

3. Action by Superintendent

Within 5 calendar days of receiving the compliance officer's report, the Superintendent or designee shall issue a decision regarding whether this policy was violated. This decision must be provided in writing to the complainant and the alleged perpetrator. If the Superintendent or designee determines that prohibited harassment occurred, the Nelson County School Division shall take prompt, appropriate action to address and remedy the violation as well as prevent any recurrence. Such action may include discipline up to and including expulsion or discharge. Whether or not the Superintendent or designee determines that prohibited harassment occurred, the Superintendent or designee may determine that school-wide or division-wide training be conducted or that the complainant receive counseling.

4. Appeal

If the Superintendent or designee determines that no prohibited harassment occurred, the employee or student who was allegedly subjected to harassment may appeal this finding to the School Board within 5 calendar days of receiving the decision. Notice of appeal must be filed with the superintendent who shall forward the record to the School Board. The School Board shall make a decision within 30 calendar days of receiving the record. The School Board may ask for oral or written argument from the aggrieved party and the superintendent and any other individual the School Board deems relevant.

If the Superintendent or designee determines that prohibited harassment occurred and discipline is imposed, the disciplined person may appeal the disciplinary sanction in the same manner as any other such sanction would be appealed.

Employees may choose to pursue their complaints under this policy through the relevant employee grievance procedure instead of the complaint procedure in this policy.

5. Compliance Officer and Alternate Compliance Officer

The Nelson County School Board has designated Ms. Shannon T. Irvin, Assistant Superintendent of Administration, at 84 Courthouse Square, P O Box 276, Lovingston, Virginia 22949, (434) 263-7100, as the Compliance Officer responsible for identifying, preventing and remedying prohibited harassment. Complaints of harassment may also be made to the Alternate Compliance Officer Dr. Roger D. Collins, Division Superintendent, at 84 Courthouse Square, P O Box 276, Lovingston, Virginia 22949, (434) 263-7100.

Note: this individual must be of the opposite gender of the Compliance Officer. The Compliance Officer shall:

- receive reports or complaints of harassment;
- oversee the investigation of any alleged harassment;
- assess the training needs of the school division in connection with this policy;
- arrange necessary training to achieve compliance with this policy;
- insure that any harassment investigation is conducted by an impartial investigator who is trained in the requirements of equal employment/education opportunity, including the authority to protect the alleged victim and others during the investigation.

B. Informal Procedure

If the complainant and the person accused of harassment agree, the student's principal or designee may arrange for them to resolve the complaint informally with the help of a counselor, teacher, or administrator.

If the complainant and the person accused of harassment agree to resolve the complaint informally, they shall each be informed that they have the right to abandon the informal procedure at any time in favor of the initiation of the Formal Procedures set forth herein. The principal or designee shall notify the complainant and the person accused of harassment in writing when the complaint has been resolved. The written notice shall state whether prohibited harassment occurred.

IV. Retaliation

Retaliation against students or school personnel who report harassment or participate in any related proceedings is prohibited. The School Division shall take appropriate action against students or school personnel who retaliate against any student or school personnel who reports alleged harassment or participates in related proceedings.

V. Right to Alternative Complaint Procedure

Nothing in this policy shall deny the right of any individual to pursue other avenues of recourse to address concerns relating to prohibited harassment including initiating civil action, filing a complaint with outside agencies or seeking redress under state or federal law.

VI. Prevention and Notice of Policy

Training to prevent sexual harassment and harassment based on race, national origin, disability and religion should be included in employee and student orientations as well as employee in-service training.

This policy shall be (1) displayed in prominent areas of each division building in a location accessible to students, parents and school personnel, (2) included in the student and employee handbooks; and (3) sent to parents of all students within 30 calendar days of the start of school. Further, all students, and their parents/guardians, and employees shall be notified annually of the names and contact information of the compliance officers.

VII. False Charges

Students or school personnel who knowingly make false charges of harassment shall be subject to disciplinary action as well as any civil or criminal legal proceedings.

Adopted: April 13, 2000

Revised: July 11, 2002; April 22, 2004; August 11, 2011

Legal Refs: 20 *U.S.C.* §§ 1681-1688.
 29 *U.S.C.* § 794.
 42 *U.S.C.* §§ 2000d-2000d-7.
 42 *U.S.C.* §§ 2000e-2000e-17.

34 C.F.R. part 106.

Cross Refs: AC Nondiscrimination
 AD Educational Philosophy
 GB Equal Employment Opportunity/Nondiscrimination
 JB Equal Educational Opportunities/Nondiscrimination
 JFC Student Conduct
 JFC-R Standards of Student Conduct
 GCPD Professional Staff Members: Contract Status and Discipline
 GDPD Support Staff Members: Contract Status and Discipline
 JHG Child Abuse and Neglect Reporting
 KKA Service Animals in Public Schools

