

EPHRATA AREA SCHOOL DISTRICT

SECTION: PROGRAMS

TITLE: NONDISCRIMINATION IN
SCHOOL AND CLASSROOM
PRACTICES

ADOPTED: October 25, 2004

REVISED: March 19, 2018

<p>1. Authority 22 PA Code 12.1, 12.4, 15.1 et seq, 4.4 24 P.S. 1301-A, 1310, 1601-C et seq, 5004 20 U.S.C. 1681 et seq 29 U.S.C. 794 42 U.S.C. 12101 et seq, 1981 et seq, 2000d et seq 43 P.S. 951 et seq Pol. 103.1, 218, 247, 249 U.S. Const. Amend. XIV, Equal Protection Clause</p>	<p style="text-align: center;">103. NONDISCRIMINATION IN SCHOOL AND CLASSROOM PRACTICES</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p>
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<p>2. Definitions</p> <p>29 CFR 1604.11, 1606.8</p> <p>Davis v. Monroe County Board of Education, 526 U.S. 629 (1999)</p> <p>Franklin v. Gwinnett County Public Schools, 503 U.S. 60 (1992)</p> <p>Office for Civil Rights – Harassment Guidance: Harassment of Student by School Employees, Other Students or third Parties (Jan. 2001)</p> <p>Office for Civil Rights – guidance on Schools’ Obligations to</p>	<p><u>Confidentiality</u></p> <p>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.</p> <p><u>Retaliation</u></p> <p>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.</p> <p><u>Discriminatory Harassment</u></p> <p>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.</p>
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Protect
Students from
Student-on-
Student
Harassment
on the Basis
of Sex; Race,
Color, &
National
Origin; and
disability
(Oct. 26,
2010)

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:

1. Sufficiently severe, persistent, or pervasive; and
2. 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:

1. 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
2. Submission to or rejection of such conduct is used as the basis for educational or other program decisions affecting a student; or

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<p>3. Delegation of Responsibility</p>	<p>3. Such conduct deprives a student or group of individuals of educational aid, benefits, services, or treatment; or</p> <p>4. 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.</p> <p>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.</p> <p>In order to maintain a program of nondiscrimination practices that is in compliance with applicable laws and regulations, the Board designates the Assistant Superintendent for Elementary 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.</p> <p>The Compliance Officer shall publish and disseminate this policy and complaint procedure at least annually to students, parents/guardians, employees, and the public to notify them of where and how to initiate complaints under this policy.</p> <p>The Compliance Officer is responsible to ensure adequate nondiscrimination procedures are in place, to recommend new procedures or modification to procedures, and to monitor the implementation of the district’s nondiscrimination procedures in the following areas:</p> <ol style="list-style-type: none">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 prevent, 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 or rape crisis programs, and community health resources including counseling resources.
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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 areas.
6. Student Evaluation - Review of tests, procedures, and guidance and counseling materials for stereotyping and discrimination.
7. 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 or 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 student or third party about this policy including the right to an investigation of both oral and written complaints of discrimination.
3. Obtain consent for parents/guardians to initiate an investigation where the complainant or alleged victim is under age eighteen (18). Inform parents/guardians and students who are complainants or accused of violating this policy that s/he may be accompanied by a parent/guardian during all steps of the complaint procedure.
4. Provide relevant information on resources available in addition to the school complaint procedure, such as making reports to the police, available assistant 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.
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.

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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.

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

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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, including the recommended disposition within a reasonable time of the submission of the written report. They accused shall not be notified of the individual remedies offered or provided to the complainant.

Step 4 – District Action

If the investigation results in a finding that some or all of the allegations of the complaint are 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 Code of Student Conduct, Board policies and administrative regulations, 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 recommended corrective action, 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

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complainant, the accused, and the investigator who conducted the initial investigation.

References:

School Code – 24 P.S. 1301-A, 1310, 1601-C et seq

State Board of Education Regulations – 22 PA Code 4.4, 12.1, 12.4, 15.1 et seq

Unfair Educational Practices – 24 P.S. 5004

Pennsylvania Human Relations Act – 43 P.S. 951 et seq

Section 504 of the Rehabilitation Act – 29 U.S.C. 794

Americans With Disabilities Act – 42 U.S.C. 12101 et seq, 1981 et seq

Federal Anti-Discrimination and Civil Rights Laws – 20 U.S.C. 1681 et seq, 42 U.S.C. 2000d et seq

Federal Anti-Discrimination and Civil Rights Regulations – 29 CFR 1604.11, 1606.8

Board Policy – 103.1, 218, 247, 249, 806, 815

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U.S. Const. Amend. XIV, Equal Protection Clause

Davis v. Monroe County Board of Education, 526 U.S. 629 (1999)

Franklin v. Gwinnett County Public Schools, 503 U.S. 60 (1992)

Office of Civil Rights – Harassment Guidance: Harassment of Students by School Employees, Other Students, or third Parties (Jan. 2001)

Office for Civil Rights – Guidance on Schools’ Obligations to Protect Students from Student-on-Student Harassment on the Basis of Sex; Race, Color, & National Origin; and Disability (Oct. 26, 2010)