

CHAPTER 5

5.21 Harassment, Bullying, Cyber-bullying or Intimidation (Approved May 22, 2007), (Amended April 26, 2011)

5.21.1 Purpose

The purpose of these regulations is to prevent racial, sexual, religious/ethnic harassment or violence; bullying, harassment, or intimidation; and assault, 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. Marshall County Schools finds that a safe and civil environment in school is necessary for students to learn and achieve high academic standards. Racial, sexual, religious/ethnic harassment or violence; bullying, harassment, intimidation; or assault, like other disruptive or violent behavior, is conduct that disrupts both a student's ability to learn and a school's ability to educate its students in a safe, non-threatening environment. It is the intent of the Marshall County Board of Education to ensure that the learning and working environments, which includes school property, a school bus, at a school bus stop or a school sponsored event are free from any type of harassment or violence

5.21.2 Application

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, including volunteers.

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 these agencies, shall engage in racial, sexual, religious/ethnic harassment or violence; bullying, harassment, or intimidation; or assault. Persons found to have violated this prohibition shall be subject to the penalties in the Agency Action and Reporting section.

Amorous relationships between staff members and students are prohibited, and staff members found to have violated this prohibition shall be subject to penalty.

5.21.3 Definitions

Bullying, Cyber-bullying, Harassment, and/or Intimidation - Bullying, harassment, and/or intimidation is an intentional gesture, or any intentional

electronic, written, verbal or physical act, communication, transmission or threat that is sufficiently inappropriate, severe, persistent, or pervasive that it creates an intimidating, threatening, or abusive educational environment or that a reasonable person under the circumstances should know the conduct will have the effect of any one or more of the following:

1. Physically harming a student;
2. placing a student in reasonable fear of harm to his/her person;
3. damaging a student's property; or
4. placing a student in reasonable fear of damage to his/her property.
5. is sufficiently severe, persistent or pervasive that it creates an intimidating, threatening or emotionally abusive educational environment for a student;
6. Disrupts or interferes with the orderly operation of the school. As used in this article, an electronic act, communication, transmission or threat includes but is not limited to one which is administered via telephone, wireless phone, computer, pager or any electronic or wireless device whatsoever, and includes but is not limited to transmission of any image or voice, email or text message using any such device.

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:

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
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
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 education environment.
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.

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

1. has the purpose or effect of creating an intimidating, hostile or offensive working or academic environment;
2. has the purpose or effect of substantially or unreasonably interfering with an individual's work or academic performance; or
3. otherwise adversely affects an individual's employment or academic opportunities.

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:

1. has the purpose or effect of creating an intimidating, hostile or offensive working or academic environment;
2. has the purpose or effect of substantially or unreasonably interfering with an individual's work or academic performance; or
3. otherwise adversely affects an individual's employment or academic opportunities.

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:

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;
 - 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.

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

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.

Assault - Assault is:

1. an act done with intent to cause fear in another of immediate bodily harm or death;
2. the threat to do bodily harm to another with the present ability to carry out the threat.

5.21.4 Complaint Procedures

Marshall County Schools shall develop procedures to assure that any person who believes he or she has been the victim of racial, sexual, religious/ethnic harassment or violence; bullying, harassment, or intimidation; or assault 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 racial, sexual, religious/ethnic harassment or violence; bullying, harassment, or intimidation; or assault 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 this policy: the Marshall County Title IX Coordinator at the county level, and the Principal or Assistant Principal at the school level.

All alleged incidents of racial, sexual, religious/ethnic harassment or violence; bullying, harassment, or intimidation; or assault observed by faculty or staff or reported to faculty or staff must be reported to the designated investigator and appropriate action should be taken as specified in the Investigation section and the Action and Reporting section. Failure to do so shall result in disciplinary action.

Nothing in this policy shall prevent any person from reporting racial, sexual, religious/ethnic harassment or violence; bullying, harassment, or intimidation; or assault 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.

Under certain circumstances, racial, sexual, religious/ethnic harassment or violence; bullying, harassment, or intimidation; or assault 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.

5.21.5 Investigation

The individual(s) designated by the policy to investigate, shall upon receipt of a report or complaint alleging racial, sexual, religious/ethnic harassment or violence; bullying, harassment, or intimidation; or assault, immediately undertake or authorize a thorough investigation. The investigation may be conducted by these individuals or by a third party designated by the superintendent, in accordance with this policy.

Investigators may take immediate steps, at their 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; bullying, harassment, or intimidation; or assault.

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.

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

In determining the appropriate response and/or punishment, the investigators 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.

The investigation will be completed as soon as practicable. The investigator shall make a written report to the Marshall County Schools Title IX coordinator or his or her designee upon completion of the investigation. If the complaint involves the superintendent, the report may be filed directly with the board of education. 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.

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 superintendent, or his or her designee, or, if the superintendent is the subject of the complaint, by the president of the board of education. The written report shall also be provided to the subject of the complaint or his/her legal guardian.

5.21.6 Discipline

In determining both the appropriate school or county response and/or the appropriate punishment for the perpetrator, 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 shall be considered. Whether a particular action or incident constitutes a violation of this policy requires a determination based on all the facts and surrounding circumstances.

If the results of the investigation support disciplinary action, appropriate disciplinary action may include, but is not limited to, warning, written reprimand, suspension, exclusion, expulsion, and/or termination, to be determined at the discretion of the designated investigator and/or the superintendent, as provided in this section. In matters where a student is the perpetrator, the principal shall determine the appropriate response and/or punishment after consulting with the superintendent, or his or her designee. In matters where the perpetrator is an employee of Marshall County Schools, the immediate supervisor shall forward his or her recommendations to the superintendent, who shall have final authority in determining the appropriate response and/or punishment.

Any staff member found to be in violation of this policy shall have the investigation report placed in his/her personnel file along with any and all records concerning action taken as a result of such violation of policy. Those same records shall be immediately transmitted to the State Superintendent of Schools.

5.21.7 Confidentiality

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.

Any information related to a reported incident of racial, sexual, religious/ethnic harassment or violence; bullying, harassment, or intimidation; or assault is exempt from disclosure under West Virginia Code §29B-1-1, et seq.

5.21.8 Action and Reporting

Upon receipt of a report substantiated by the investigation, the superintendent or the board of education 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.

The Superintendent or his or her designee shall immediately file a report with the West Virginia Department of Education of all reports of racial, sexual, religious/ethnic harassment or violence; bullying, harassment, or intimidation; or assault when investigation shows that it did occur and all action taken in response to the incident.

5.21.9 Reprisal

Disciplinary procedures will be taken against any pupil, teacher, administrator or other school personnel who retaliates against any person who reports alleged racial, sexual, religious/ethnic harassment or violence; bullying, harassment, or intimidation; or assault 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 racial, sexual, religious/ethnic harassment or violence; bullying, harassment, or intimidation; or assault. Retaliation includes, but is not limited to, any form of intimidation, reprisal or harassment. Appropriate disciplinary action will be taken against any pupil, teacher, or administrator or other school personnel who falsely reports racial, sexual, religious/ethnic harassment or violence; bullying, harassment, or intimidation; or assault.

5.21.10 Right To Alternative Complaint Procedures

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.

5.21.11 Dissemination of Policy and Training

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

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

Training will be developed and implemented for students and staff on these regulations, their implications and on means for effectively promoting the goals of this policy. The training, at a minimum must: raise awareness of the different types of harassment, intimidation, bullying, cyber-bullying, "sexting" or assault, how it manifests itself, the 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.

Legal Ref.: West Virginia Constitution, Art. XII §2; West Virginia Code §18-2-5, §18-2-5a, and §18-2-7b, §18-2-1, §18A-2C-2, §18A-2C-3 et seq., 49-6A-2, 29B-1-1 et seq., HB 3225.