

**MONTGOMERY
COUNTY
INTERMEDIATE
UNIT #23**

SECTION: PROGRAMS

TITLE: NONDISCRIMINATION/
DISCRIMINATORY HARASSMENT -
EDUCATIONAL PROGRAMS/SERVICES

ADOPTED: OCTOBER 28, 2009

REVISED: JANUARY 27, 2021

<p>1. Authority Title 22 Sec. 4.4, 12.1, 12.4, 15.1 et seq 24 P.S. Sec. 1301, 1310, 5004 43 P.S. Sec. 951 et seq 20 U.S.C. Sec. 1681 et seq 29 U.S.C. Sec. 794 42 U.S.C. Sec. 1981, Sec. 2000d et seq, Sec. 12101 et seq Policy 218, 249</p>	<p>103. NONDISCRIMINATION/DISCRIMINATORY HARASSMENT – EDUCATIONAL PROGRAMS/SERVICES</p> <p>The Board declares it to be the policy of the Intermediate Unit to provide an equal opportunity for all students to achieve their maximum potential through the programs offered by the Intermediate Unit 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 Board also declares it to be the policy of this Intermediate Unit to comply with federal law and regulations under Title IX prohibiting sexual harassment, which is a form of unlawful discrimination on the basis of sex. Such discriminatory harassment is referred to as Title IX sexual harassment. All allegations of sexual harassment and discrimination on the basis of sex shall be first evaluated under Policy 102, Nondiscrimination on the Basis of Sex. If the sexual harassment or discrimination on the basis of sex alleged does not fit the definition of Title IX sexual harassment or Title IX sex discrimination, the allegations may still be investigated under this policy. If the allegations include Title IX discrimination or Title IX sexual harassment and discrimination or harassment on the basis of another protected status, a joint, concurrent investigation under this policy and Policy 102 will be conducted.</p> <p>The Intermediate Unit 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 Intermediate Unit and is prohibited on Intermediate Unit or 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 Intermediate Unit shall provide programs and services to all eligible students without discrimination. The Intermediate Unit 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</p>
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<p>2. Definitions</p> <p>29 CFR 1604.11 29 CFR 1606.8</p>	<p>employees, even if some elements of the related incident took place or originated away from Intermediate Unit or 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> <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 Intermediate Unit's legal and investigative obligations.</p> <p>If a request for confidentiality is received, the Intermediate Unit will evaluate any such request in the context of its responsibility to provide a safe and nondiscriminatory environment for all students. A request for confidentiality may limit the Intermediate Unit's ability to respond.</p> <p>All incidents that are required by law to be reported to law enforcement and/or ChildLine will be made accordingly.</p> <p><u>Retaliation</u></p> <p>The Board prohibits retaliation against any person for making a report of discrimination, 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> <p>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</p>
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<p>3. Delegation of Responsibility</p>	<p>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:</p> <ol style="list-style-type: none"> 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. <p><u>Sexual Harassment Not Covered Under Policy 102</u></p> <p>The following definition of sexual harassment applies only to allegations that the Title IX Coordinator has determined do not fit the definition of “Title IX sexual harassment” as stated in Policy 102 and that will be investigated pursuant to this policy.</p> <p>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:</p> <ol style="list-style-type: none"> 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 3. Such conduct deprives a student or group of individuals of educational aid, benefits, services or treatment; or 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>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 Executive</p>
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Director as the Intermediate Unit's Compliance Officer. All nondiscrimination notices or information shall include the position, office address, telephone number and email address of the Compliance Officer.

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.

The Compliance Officer is responsible to ensure adequate nondiscrimination procedures are in place, to recommend new procedures or modifications to procedures and to monitor the implementation of the Intermediate Unit's nondiscrimination procedures in the following areas:

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 complaint procedure, such as making reports to the police, available assistance from domestic violence or rape crisis programs and community health resources including counseling resources.
4. Student Access - Review of programs, activities and services to ensure that all students have equal access and are not segregated except when permissible by law or regulation.
5. Support - Assurance that like aspects of the educational 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 administrators and program supervisors in processing complaints.

The building administrator or program supervisor 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. Immediately notify the Compliance Officer of the complaint.
 - a. The Compliance Officer shall evaluate whether allegations of discrimination on the basis of sex and/or sexual harassment are being alleged, and, if so, will be referred to the Title IX Coordinator for a determination of whether the investigation should be conducted pursuant to Policy 102 or this policy.

<p>4. Guidelines</p>	<ul style="list-style-type: none"> b. For all complaints not investigated pursuant to Policy 102, the Compliance Officer shall assess whether the investigation should be conducted by the building administrator or program supervisor, another Intermediate Unit employee, the Compliance Officer, or an attorney and shall promptly assign the investigation to that individual. c. When a parent/guardian has requested confidentiality and will not consent to the alleged victim’s participation in an investigation, the Compliance Office shall provide the parent/guardian with a letter containing information related to the Intermediate Unit’s legal obligations to conduct an investigation and address violations of this policy, and any other information appropriate to the specific complaint. <ol style="list-style-type: none"> 2. Inform the complainant about this policy including the right to an investigation of both oral and written complaints of discrimination. 3. Seek to obtain consent from parents/guardians to initiate an investigation where the complainant or alleged victim is under age eighteen (18). Inform parents/guardians of the complainant that the complainant may be accompanied by a parent/guardian during all steps of the complaint procedure. When a parent/guardian requests confidentiality and will not consent to the alleged victim’s participation in an investigation, explain that the Intermediate Unit shall take all reasonable steps to investigate and respond to the complaint consistent with that request for confidentiality as long as doing so does not preclude the Intermediate Unit from responding effectively to the discrimination and preventing discrimination of other students. 4. Under the guidance of the Compliance Officer and/or Title IX Coordinator, as appropriate, provide relevant information on resources available in addition to the complaint procedure, such as making reports to the police, available assistance from domestic violence or rape crisis programs, and community health resources including counseling resources. 5. 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. <p><u>Complaint Procedure – Student/Third Party</u></p> <p>Step 1 – Reporting</p> <p>A student or third party who believes s/he has been subject to conduct by any student, employee or third party that constitutes a violation of this policy is encouraged to immediately report the incident to the building administrator or</p>
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program supervisor. Any person with knowledge of conduct that may violate this policy is encouraged to immediately report the matter to the building administrator or program supervisor.

An Intermediate Unit employee who suspects or is notified that a student has been subject to conduct that constitutes a violation of this policy shall immediately report the incident to the building administrator or program supervisor, as well as properly making any mandatory police or child protective services reports required by law.

If the building administrator or program supervisor is the subject of a complaint, the student, third party or employee shall report the incident directly to the Compliance Officer.

The complainant or reporting employee may be encouraged to use the Intermediate Unit's report form, available from the building administrator, program supervisor or Compliance Officer, or to put the complaint in writing; however, oral complaints shall be accepted, documented and the procedures of this policy implemented. The person accepting the verbal or written complaint may provide factual information on the complaint and the investigative process, the impact of choosing to seek confidentiality and the right to file criminal charges. In all other respects, the person accepting the complaint shall handle the report objectively, neutrally and professionally, setting aside personal biases that might favor or disfavor the complainant or those accused of a violation of this policy.

Step 2 – Investigation

The Compliance Officer shall ensure that the individual assigned to investigate the complaint has an appropriate understanding of the relevant laws pertaining to discrimination issues and this policy and how to conduct investigations.

The investigator shall work with the Compliance Officer to assess the anticipated scope of the investigation, who needs to be interviewed and what records may be relevant to the investigation.

The investigator shall conduct an adequate, reliable and impartial investigation. The complainant and the accused may suggest witnesses and provide other evidence during the course of the investigation. When the initial complaint involves allegations relating to conduct which took place away from Intermediate Unit or school property, school-sponsored activities or school conveyances, the 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. To the extent permitted, by law, 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 allegations 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 Intermediate Unit'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) school days of the initial report of alleged discrimination, unless the nature of the allegations, anticipated extent of the investigation or 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, the information and evaluation that formed the basis for this determination, whether the conduct violated this policy and/or any other violations of law or Board policy which may warrant further Intermediate Unit action, and a recommended disposition of the complaint. An investigation conducted pursuant to this policy 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 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, for example, whether the investigator believes the allegations to be founded or unfounded, within a reasonable time of the submission of the written report to the extent authorized by the Family Educational Rights and Privacy Act (FERPA) and other applicable laws. The accused shall not be notified of the individual remedies offered or provided to the complainant.

Step 4 – Intermediate Unit 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 Intermediate Unit shall take prompt, corrective action designed to ensure that such conduct ceases and that no retaliation occurs. The Intermediate Unit 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 program environment. Intermediate Unit 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, Intermediate Unit 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 recommended corrective action, s/he may submit a written appeal to the Compliance Officer within fifteen (15) school days. If the Compliance Officer investigated the complaint, such appeal shall be made to the Executive Director.
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) school days. Copies of the response shall be provided to the complainant, the accused and the investigator who conducted the initial investigation.

References:

22 PA Code 4.4, 12.1, 12.4, 15.1 et seq
24 P.S. 1301, 1310, 5004
20 U.S.C. 1232g
20 U.S.C. 1681 et seq
29 U.S.C. 794
42 U.S.C. 1981 et seq, 12101 et seq, 2000d et seq
43 P.S. 951 et seq
U.S. Const. Amend. XIV, Equal Protection Clause
29 CFR 1604.11
29 CFR 1606.8
Davis v. Monroe County Board of Education, 526 U.S. 629 (1999)
Franklin v. Gwinnett County Public Schools, 503 U.S. 60 (1992)
Office for Civil Rights - Guidance on Schools' Obligations to Protect Students from Student-on-Student Harassment on the Basis of Sex; Race, Color and National Origin; and Disability (Oct. 26, 2010)
Office for Civil Rights - Resources for Addressing Racial Harassment
Office for Civil Rights - Revised Harassment Guidance: Harassment of Students by School Employees, Other Students or Third Parties Title IX (January 2001)
18 Pa. C.S.A. 2709
28 CFR Part 35
28 CFR Part 41
34 CFR Part 99
34 CFR Part 100
34 CFR Part 104
34 CFR Part 106
34 CFR Part 110
Board Policies 113.1, 216, 218, 249, 806