

**MONTGOMERY
COUNTY
INTERMEDIATE
UNIT #23**

SECTION: PROGRAMS

TITLE: NONDISCRIMINATION/
DISCRIMINATORY HARASSMENT –
EMPLOYMENT PRACTICES

ADOPTED: OCTOBER 28, 2009

REVISED: JANUARY 27, 2021

<p>1. Authority 43 P.S. Sec. 336.3 43 P.S. Sec. 951 et seq 20 U.S.C. Sec. 1681 et seq 29 U.S.C. Sec. 206 29 U.S.C. Sec. 621 et seq, Sec. 794 42 U.S.C. Sec. 1981, Sec. 2000e et seq, Sec. 2000ff et seq</p> <p>Pol. 317.1, 806</p>	<p>104. NONDISCRIMINATION/DISCRIMINATORY HARASSMENT – EMPLOYMENT PRACTICES</p> <p>The Board declares it to be the policy of the Intermediate Unit to provide to all persons equal access to all categories of employment in this Intermediate Unit, regardless of race, color, age, creed, religion, sex, sexual orientation, ancestry, national origin, marital status, genetic information, pregnancy or handicap/disability. The Intermediate Unit shall make reasonable accommodations for identified physical and mental impairments that constitute disabilities, consistent with the requirements of federal and state laws and regulations.</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 Board encourages employees and third parties who believe they or others have been subject to discrimination to promptly report such incidents to designated employees.</p> <p>The Board directs that verbal and written complaints of discrimination shall be investigated promptly, and appropriate corrective 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>42 U.S.C. Sec. 2000ff et seq 29 CFR 1604.11 29 CFR 1606.8</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><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, genetic information, 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 work performance and which relates to an individual's or group's race, color, age, creed, religion, sex, sexual orientation, ancestry, national origin, marital status, genetic information, pregnancy or handicap/disability when such conduct is:</p> <ol style="list-style-type: none">1. Sufficiently severe, persistent or pervasive; and2. 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>
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<p>3. Delegation of Responsibility</p>	<p>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 an employee's status;2. Submission to or rejection of such conduct is used as the basis for employment-related decisions affecting an employee; or3. 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 at work or otherwise creates an intimidating, hostile, or offensive working environment such that it alters the complainant's working conditions. <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 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.</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 modifications to procedures and to monitor the implementation of the Intermediate Unit's nondiscrimination procedures in the following areas:</p> <ol style="list-style-type: none">1. Review - Review of personnel practices and actions for discriminatory bias and compliance with laws against discrimination to include monitoring and recommending corrective measures when appropriate to written position qualifications, job descriptions and essential job functions; recruitment materials and practices; procedures for screening applicants; application and interviewing practices for hiring and promotions; school designed performance evaluations; review of planned employee demotions, non-renewal of contracts, and proposed employee disciplinary actions up to and including termination.
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<p>4. Guidelines</p>	<ol style="list-style-type: none"> 2. Training - Provision of training for supervisors and staff to prevent, identify and alleviate problems of employment 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 violence or rape crisis programs, and community health resources including counseling resources. 4. Complaints - Monitor and provide technical assistance to building administrators, program supervisors or designees in processing complaints. <p>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 employees or third parties:</p> <ol style="list-style-type: none"> 1. Immediately notify the Compliance Officer of the complaint. <ol style="list-style-type: none"> 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. 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. 2. Inform the employee or third party about this policy including the right to an investigation of both verbal and written complaints of discrimination. 3. Provide relevant information on resources available in addition to the school complaint procedure such as making reports to the police, available assistance from domestic violence and rape crisis programs, and community health resources including counseling resources. 4. 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 – Employee/Third Party</u></p> <p>Step 1 – Reporting</p> <p>An employee 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</p>
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encouraged to immediately report the incident to the building administrator or 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.

If the building administrator or program supervisor is the subject of a complaint, the employee or third party 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 additional 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 reporting the alleged discrimination, 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 any other violation of law or Board policy which may warrant further action by the Intermediate Unit, 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 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, including the recommended disposition within a reasonable time of the submission of the written report. 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 law or Board 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, 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:

20 U.S.C. 1681 et seq

29 U.S.C. 206, 621 et seq, 794

42 U.S.C. 1981 et seq, 12101 et seq, 2000e et seq, 2000ff et seq

43 P.S. 336.3, 951 et seq

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

29 CFR 1604.11

29 CFR 1606.8

EEOC Enforcement Guidance on Harris v. Forklift Sys., Inc., November 9, 1993

EEOC Enforcement Guidance on Vicarious Employer Liability for Unlawful
Harassment by Supervisors, June 18, 1999

EEOC Policy Guidance on Current Issues of Sexual Harassment, March 19, 1990

18 Pa. C.S.A. 2709

16 PA Code 44.1 et seq

28 CFR Part 35.140

28 CFR Part 41

34 CFR Parts 1600-1691

Board Policies 317.1, 806