

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

Do Not Mark In this Box

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AUG 26 2 31 PM '96

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: West Virginia Board of Education TITLE NUMBER: 126
RULE TYPE: Legislative; CITE AUTHORITY W.Va. Const., Article XII, §2;
W.Va. Code §§18-2-5, 18-2-5a and
AMENDMENT TO AN EXISTING RULE: YES NO 18-2-7b

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 18

TITLE OF RULE BEING PROPOSED: Racial, Sexual, Religious/Ethnic
Harassment and Violence Policy (2421)

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON October 18, 1996 AT 5:00 p.m.

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Lenore Zedosky
Office of Healthy Schools
West Virginia Department of Education
Building 6, Room 309
1900 Kanawha Boulevard, East
Charleston, WV 25305-0330

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

Cynthia E. Evans
Cynthia E. Evans
Director, Legal Services

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

4.20

EXECUTIVE SUMMARY

Racial, Sexual, Religious/Ethnic Harassment and Violence Policy

Series: 18

Policy: 2421

Comment Period Ends: October 18, 1996

Background:

Incidents of harassment against students and in some cases school personnel seem to be increasing. Student performance in school can be adversely affected when harassment of any kind is present. School staff should also be protected from any form of harassment. Educational institutions should play a significant role in the process of eliminating all types of harassment. In 1994, the U. S. Office of Civil Rights recognized the commonalities of sexual and racial/ethnic harassment and in 1992 the Supreme Court (Franklin vs. Gwinett County) held school districts legally responsible for protecting students from sexual harassment by their staff members. Schools also have a moral and legal responsibility for student to student harassment which occurs more often.

Purpose:

The purpose of these regulations is to assure that neither students nor staff are subjected to racial, sexual or religious/ethnic harassment or violence, to outline prevention programs and reporting procedures and to delineate penalties for violations of this policy. It is the intent of the West Virginia Board of Education to assure that the learning and working environment is free from any type of harassment or violence.

Contents:

- Definitions of Harassment and Violence
- Reporting Procedures
- Prevention Programs
- Assessment of Effectiveness

Impact:

Each county board of education, RESA and the state department of education will need to develop: a harassment policy; a reporting and investigation system; and a system to assess the effectiveness of their policies. In addition, each must develop an education program to explain the policies and procedures and to increase sensitivity and awareness of other races, cultures and religions as well as to help students and staff become more responsible in their behavior toward others.

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126CSR18

AUG 26 2 31 PM '96

TITLE 126
LEGISLATIVE RULES
BOARD OF EDUCATION

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 18
RACIAL, SEXUAL, RELIGIOUS/ETHNIC
HARASSMENT AND VIOLENCE POLICY (2421)

§126-18-1. General.

1.1. Scope. This policy sets the requirements for schools in West Virginia to be harassment and violence free.

1.2. Authority. West Virginia Constitution, Art XII §2 and West Virginia Code 18-2-5, 18-2-5a, and 18-2-7b.

1.3. Filing Date.

1.4. Effective Date. January 1, 1997

1.5. Repeal of former rule. -- None

§126-18-2. Purpose.

2.1. The purpose of these regulations is to assure that neither students nor staff are subjected to racial, sexual or religious/ethnic harassment or violence, to outline prevention programs and reporting procedures and to delineate penalties for violations of this policy. It is the intent of the West Virginia Board of Education to assure that the learning and working environment is free from any type of harassment or violence.

§126-18-3. Application.

3.1. 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.

§126-18-4. Definitions.

4.1. 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:

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4.1.1. 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

4.1.2. 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

4.1.3. 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 educational environment.

4.1.4. 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, other than necessary restraint of pupil(s) by teachers, administrators or other school personnel to avoid physical harm to persons or property;

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.

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

4.2.1. has the purpose or effect of creating an intimidating, hostile or offensive working or academic environment;

4.2.2. has the purpose or effect of substantially or unreasonably interfering with an individual's work or academic performance; or

4.2.3. otherwise adversely affects an individual's employment or academic opportunities.

4.3. 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:

4.3.1. has the purpose or effect of creating an intimidating, hostile or offensive working or academic environment;

4.3.2. has the purpose or effect of substantially or unreasonably interfering with an individual's work or academic performance; or

4.3.3. otherwise adversely affects an individual's employment or academic opportunities.

4.4. 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:

4.4.1. 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; or

d. threatening to force or coerce sexual acts, including the touching of intimate parts or intercourse, on another.

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

4.6. 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.

4.7. Assault - Assault is:

4.7.1. an act done with intent to cause fear in another of immediate bodily harm or death;

4.7.2. the threat to do bodily harm to another with present ability to carry out the threat.

§126-18-5. Reporting Procedures.

5.1. County boards of education, RESAs, and the state department of education must develop procedures to assure that any person who believes he or she has been the victim of religious/ethnic, racial or sexual harassment or violence by a pupil, teacher, administrator or other school personnel of the county board of education, or any person with knowledge or belief or conduct which may constitute religious/ethnic, racial or sexual harassment or violence 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 the agency's policy. Nothing in this policy shall prevent any person from reporting harassment or violence directly to the county superintendent, RESA executive director or the state superintendent as appropriate or to a law enforcement agency.

5.2. All incidents of harassment or violence observed by faculty or staff must be reported to the designated investigator and appropriate action should be taken as specified in §126-18-6.

5.3. Under certain circumstances, sexual harassment 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.

§126-18-6. Investigation.

6.1. The individual(s) designated by the policy to investigate, shall upon receipt of a report or complaint alleging religious/ethnic, racial or sexual harassment or violence, immediately undertake or authorize an investigation. The investigation may be conducted by agency officials or by a third party designated by the agency.

6.2. 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 complainant. The investigation may also consist of any other methods and review of circumstances deemed pertinent by the investigator.

6.3. In determining whether the alleged conduct constitutes a violation of this policy, the agency 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.

6.4. The agency may take immediate steps, at its 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.

6.5. The investigation will be completed as soon as practicable. The investigator shall make a written report to the head of the agency upon completion of the investigation. If the complaint involves the head of the agency, the report may be filed directly with the agency's governing board. 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.

6.6. The result of the investigation of each complaint filed under these procedures will be reported in writing to the complainant by the head of the agency, or, if the head of the agency is the subject of the complaint, by the President of the agency's governing board.

6.7. 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.

§126-18-7. County Board of Education Action.

7.1. Upon receipt of a report substantiated by the investigation, the head of the agency or the agency's governing board will take appropriate action. Such action may include, but is not limited to, warning, suspension, exclusion, expulsion or termination.

7.2. The head of the agency shall immediately file a report with the State Department of Education of all reports of harassment or violence when investigation shows that harassment or violence did occur.

§126-18-8. Reprisal.

8.1. The agency will develop discipline procedures to take appropriate action against any pupil, teacher, administrator or other school personnel who retaliates against any person who reports alleged religious/ethnic, racial or sexual harassment or violence 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 harassment or violence. Retaliation includes, but is not limited to, any form of intimidation, reprisal or harassment.

§126-18-9. Right To Alternative Complaint Procedures.

9.1. 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.

§126-18-10. Prevention Programs.

10.1. Each agency must develop and implement an education program for each programmatic level, K-4, 5-8, and 9-12, as well as a program for all faculty and staff. The programs, at a minimum must: raise awareness of the different types of harassment, how it manifests itself, its 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.

§126-18-11. Dissemination of Policy and Training.

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

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

11.3. The agency will develop and implement training for students and staff on the regulations and procedures contained in this policy.

11.4. The agency policy shall be reviewed at least bi-annually for compliance with state and federal law and state board of education policy.

§126-18-12. Assessment of Effectiveness.

12.1. The West Virginia Department of Education will prepare an annual report to the West Virginia Board of Education to include: reported and substantiated incidences of harassment and/or violence; training and staff development offered by the agencies; and agency reported numbers and types of multicultural education offerings.

FISCAL NOTE WORKSHEET

(Submit 4 Copies)

HL NO _____ DRAFT NO _____ BILL NO _____ RESOLUTION NO _____

SUBJECT Racial, Sexual, Religious/Ethnic Harassment and Violence FUND _____

SOURCE OF REVENUE: GENERAL FUND SPECIAL OTHER (SPECIFY) _____

COST OF ESTIMATE BASED ON: AN ORIGINAL ESTIMATE BUDGET BILL OTHER (SPECIFY) _____

INCOME ESTIMATE BASED ON: AN ORIGINAL ESTIMATE BUDGET BILL OTHER (SPECIFY) _____

SHOW OVER-ALL EFFECT IN ITEMS 1 AND 2 & GIVE EXPLANATION OF BREAKDOWN BY FISCAL YEAR INCLUDING LONG-RANGE EFFECT

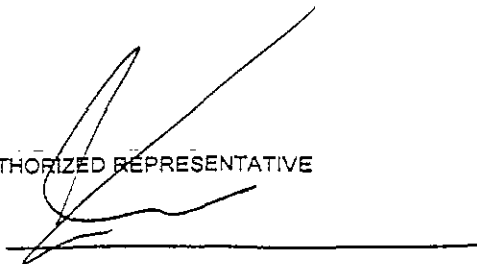
EFFECT OF PROPOSAL	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
1. ESTIMATED TOTAL COST	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
PERSONAL SERVICES CURRENT EXPENSES REPAIRS/ALTERATIONS EQUIPMENT OTHER	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
2. ESTIMATED TOTAL REVENUES	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0

EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

AGENCY

West Virginia Department of Education

AUTHORIZED REPRESENTATIVE



COMMENT LOG

Racial, Sexual, Religious/Ethnic Harassment and Violence Policy

Directions: Please use this form in commenting on the proposed policy and regulations on Racial, Sexual, Religious/Ethnic Harassment and Violence Policy.

Name of Individual/Organization: _____

Address: _____

Proposed Policy	Comment(s)
Section II - Purpose	
Section III - Applications	
Section IV - Definitions	
Section V - Reporting Procedures	
Section VI - Investigation	

Section VII - Action	
Section VIII - Reprisal	
Section IX - Rights	
Section X - Effectiveness	
Section XI - Prevention Programs	
Section XII - Dissemination and Training	

Please submit comments by October 18, 1996 to:

Lenore Zedosky
WV Department of Education
Office of Healthy Schools
Building 6, Room 309
1900 Kanawha Boulevard, East
Charleston, WV 25305-0330