

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #5

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: West Virginia Board of Education TITLE NUMBER: 126

CITE AUTHORITY: W.Va. Const., Article XII, §2 and W.Va. Code §§18-2-5, 18-2-5a,
and 18-2-7b.

RULE TYPE: PROCEDURAL _____ INTERPRETIVE X

EXEMPT LEGISLATIVE RULE X

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

W.Va. Code §§29A-3B-1, et seq.; W.Va. Board of Education v. Hechler,
180 W.Va. 451; 376 S.E.2d 839 (1988)

AMENDMENT TO AN EXISTING RULE: YES _____, NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 18

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

IF NO, SERIES NUMBER OF NEW RULE BEING ADOPTED: _____

TITLE OF RULE BEING ADOPTED: _____

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS January 16, 1997.

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

12.80

EXECUTIVE SUMMARY

POLICY 2421

Racial, Sexual, Religious/Ethnic Harassment and Violence Policy

Public Comment Period Ended: November 15, 1996

Adopted: December 12, 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 to prevent 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:

This policy defines harassment and violence, outlines reporting procedures and requires the development of prevention programs.

Comments:

The policy has been on public comment since September 1996. Approximately 30 individuals submitted comments and extensive suggested changes or additions were made by the West Virginia Human Rights Commission. Most of the comments were requesting that the Department of Education develop examples of local policies and assist in staff development. The Human Rights Commission comments suggested that county boards of education should be encouraged to involve community agencies in local policy development and prevention programs. These suggested changes have been made in the revised policy.

Impact:

Each county board of education, RESA and the state department of education will need to develop: a harassment prevention plan; a reporting and investigation system; and a system to assess the effectiveness of their efforts. 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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TITLE 126
LEGISLATIVE RULES
BOARD OF EDUCATION

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

§126-18-1. General.

1.1. Scope. This rule 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. December 16, 1996

1.4. Effective Date. January 16, 1997

1.5. Repeal of former rule. -- None

§126-18-2. Purpose.

2.1. The purpose of these regulations is to prevent racial, sexual or religious/ethnic harassment or violence, 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. These regulations require county boards to design and implement prevention and response programs, to outline investigatory and reporting procedures and to delineate penalties for violations of this policy. To the extent possible, county boards will collaborate with other state and local agencies in carrying out the purpose of this rule. It is the intent of the State Board to ensure that the learning and working environments are 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. 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.

3.2. 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 those agencies, shall engage in sexual, racial or ethnic/religious harassment or violence. Persons found to have violated this prohibition shall be subject to the penalties in Section 8.1.

3.3. Amorous relationships between staff members and students are prohibited, and staff members found to have violated this prohibition shall be subject to the penalties outlined in Section 8.1.

§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:

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;

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.

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.

e. threatening or forcing exposure of intimate apparel or body parts by removal of clothing.

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. Planning by Local Boards of Education.

5.1. County boards of education, RESAs and the West Virginia Board of Education shall develop a plan or plans for the implementation of this policy. These plans shall reflect the particular needs of students to study and learn in an environment free from harassment and violence and the particular needs of staff members to work in an environment free from harassment and violence. To the maximum extent possible these plans shall be developed collaboratively with state and local agencies that share the purposes of this policy.

§126-18-6. Complaint Procedures.

6.1. County boards of education, RESAs, and the state department of education shall 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 of 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 the West Virginia Human Rights Commission, or to a law enforcement agency.

6.2. County Boards of Education, RESAs and the West Virginia Department of Education shall develop appropriate procedures for investigating, reporting, and responding to violations of this policy in a manner that promotes understanding and respect. The West Virginia Department of Education shall provide each agency with a list of resources to assist in developing these procedures.

6.3. All alleged 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 §126-18-7 and §126-18-8.

6.4. 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.

§126-18-7. Investigation.

7.1. 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, in accordance with this policy and the plan developed pursuant to Section 126-18-5.

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

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

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

7.5. 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.

7.6. 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.

7.7. 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 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.

7.8. 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.

§126-18-8. Agency Action and Reporting.

8.1. Upon receipt of a report substantiated by the investigation, the head of the agency or the agency's governing board will take appropriate action 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.

8.2. The head of the agency or the agency's governing board shall also initiate such other action as is appropriate to ease tensions and to affirm the values of respect and understanding, in accordance with the agency's plan developed pursuant to §126-18-5.

8.3. The head of the agency shall immediately file a report with the West Virginia Department of Education of all reports of harassment or violence when investigation shows that harassment or violence did occur and all action taken in response to the incident.

§126-18-9. Reprisal.

9.1. 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. The agency will develop a discipline process to take appropriate action against any pupil, teacher, or administrator or other school personnel who falsely reports religious/ethnic, racial, or sexual harassment.

§126-18-10. Right To Alternative Complaint Procedures.

10.1. 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.

§126-18-11. Prevention Programs.

11.1. 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.

§126-18-12. Dissemination of Policy and Training.

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

12.2. 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.

12.3. The agency will develop and implement training for students and staff on these regulations and on means for effectively promoting the goals of this policy.

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

§126-18-13. Assessment of Effectiveness.

13.1. 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; action taken in response to incidents; training and staff development offered by the agencies; and agency reported numbers and types of multicultural education offerings.

Date Received	Individual/Organization	Comment	Action/Type	Rationale
11/15/96	<p>Herman H. Jones Executive Director WV Human Rights Commission 1321 Plaza East Room 104/106 Charleston, WV 25301-1400</p>	<p>tolerance for diversity. Students, faculty, and the community at large, are very attentive to how our schools respond to such incidents. Accordingly, we propose that the Purposes Section of the proposed rules be amended to include as a further purpose "to insure that our educational institutions respond to harassment and/or violence in a manner which affirms the values of respect and tolerance for diversity." We further suggest that other portions of the proposed rules be amended, as indicated below, in order to more fully carry out this additional purpose.</p> <p>We also believe that these problems, which are too often manifested in our schools, are rooted in community and social problems. While our schools must be part of the solution, we should not expect our schools to carry the entire burden or to act alone. Accordingly, we propose that the asserted purposes in these regulations also explicitly state the importance of a collaborative process for addressing incidents of harassment and violence.</p> <p><u>Encouraging Collaboration in Planning And in Action.</u> We encourage the State Department of Education to modify its proposed rule to more explicitly promote collaboration by local school boards in the design and implementation of a plan to respond to incidents of harassment and violence. We propose that local school boards be encouraged to include in their planning process the State Human Rights Commission, parents, local policy, civil groups, and civil (Con't)</p>		

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11/15/96	<p>Herman H. Jones Executive Director WV Human Rights Commission 1321 Plaza East Room 104/106 Charleston, WV 25301-1400</p>	<p>rights organizations. Local boards of educations should be encouraged to develop liaisons with those in the state and in their local communities who can assist them in responding more effectively to incidents. We would propose that in order to build in the goal of collaboration, the following sections of the proposed rules be amended to specifically address this goal:</p> <ul style="list-style-type: none"> a. Purpose. Section 2.1; b. Planning. Section 4B; c. Reporting Procedures. Section 5.1A; and d. Action. Section 7. <p><u>Prohibiting Language.</u> The regulations as drafted do not contain any provision prohibiting offending conduct. The proposed rules should contain a provision prohibiting the offending conduct. See § 126-18-4A.</p> <p>Action. The proposed rule contains a section entitled <u>County Board of Education Action</u> (Section 126-18-7) which addresses the punishment of individuals found to have violated this role or the county-level policy. While we believe that this is an important and necessary form of action to take in response to such violations, we suggest that in many instances this type of action may be only one part of what is needed. The type of instances which violate this rule very often are indicative of attitudes shared by other students, staff and community members. (Con't)</p>		

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11/15/96	<p>Herman H. Jones Executive Director WV Human Rights Commission 1321 Plaza East Room 104/106 Charleston, WV 25301-1400</p>	<p>If the incident is treated as nothing more than an isolated breach of discipline, the underlying conflicts may go unaddressed, only to result in other incidents. Often time, such violations raise underlying tensions and conflicts to the surface, and may present local schools with an opportunity to examine attitudes, affirm civic values, and build stronger communities.</p> <p>We believe it is important to promote effective response to these kind of opportunities. Accordingly, we propose that the Action Section of the proposed rules (Section 7), be amended to include an additional section (7.3) which requires the agency to take action, where appropriate, such as in-school programs, assemblies, extra curricular programs, PTA programs. These actions should be taken, where possible, in collaboration with other state and local agencies and organizations, in order to address any underlying tensions in the community. This type of action should not necessarily wait for the completion of investigation as punitive action appropriately must. (Although such programs may be similar to those pursued as "prevention" under Section 126-18-10, these programs would be invoked in response to a need which becomes apparent as a result of an incident).</p> <p>In order to be fully prepared to take this kind of responsive action, the local agency should be required, as part of its planning process, to anticipate and to plan for, this type of programmatic response. (Con't)</p>		

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11/15/96	<p>Herman H. Jones Executive Director WV Human Rights Commission 1321 Plaza East Room 104/106 Charleston, WV 25301-1400</p>	<p>Accordingly, we would propose that the rules be amended to add a section (Section 126-18-4B) addressed to planning. This Section should require collaboration with state and local agencies and organizations, planning for programmatic response, as well as, planning for reporting, investigation and a punitive response. In addition, reference to programmatic response should be included in Section 2.1 (Purpose) and Section 12 (Assessment of Effectiveness).</p> <p>Sexual Harassment. The proposed regulations fail to reflect the often significant distinction between sexual harassment of an employer of the county board of education and sexual harassment of a student. Under Federal law, sexual harassment of school employees is addressed by Title VII of the Civil Rights Act of 1964. Sexual harassment of students is addressed under Title IX. Differing definitions and standards are used. These regulations should be modified to direct county boards of education to take these differences into account. (Sec § 126-18-4B). Ideally, the structure of the regulations should be modified, especially the definitional section, in order to help counties make this distinction when they create their policy.</p> <p>Policies regarding sexual harassment of employees should be included in employee handbooks. Policies regarding sexual harassment of students should be included in student handbooks. (Con't)</p>		

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11/15/96	<p>Herman H. Jones Executive Director WV Human Rights Commission 1321 Plaza East Room 104/106 Charleston, WV 25301-1400</p>	<p>In addition, we believe it is critical that the rules include a prohibition of amorous relationships between teachers and students. Regardless of the age of the student, and regardless of apparent "consent", such relationships are always unequal by nature. Amorous relationships between teachers and students should never be tolerated. Such relationships may have the effect of undermining the atmosphere of trust on which the educational process depends. Implied in any idea of professionalism is the recognition by those in positions of authority that in their relationship with students there is always an element of power. It is incumbent upon those with authority not to abuse, nor seem to abuse, the power with which they are entrusted.</p> <p><u>Permissible Physical Conduct</u>. Section 4.1.4c provides that sexual harassment may include, but is not limited to:</p> <p>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.</p> <p>While it appears that the intent of the latter portion of this definition is to explicitly exclude from the definition of sexual harassment forms of physical contact which may be a necessary part of that person's responsibilities. (Con't)</p>		

Date Received	Individual/Organization	Comment	Action/Type	Rationale
11/15/96	<p>Herman H. Jones Executive Director WV Human Rights Commission 1321 Plaza East Room 104/106 Charleston, WV 25301-1400</p>	<p>This Section as drafted, is confusing, and suggests that "unwelcome, sexually motivated or inappropriate patting and pinching" by school personnel, may be permissible when it is engaged in as "necessary restraint". We would suggest that the portion of the section after the words "physical contact" simply be eliminated. Such "necessary restraint" will never be "sexually motivated", and is therefore already excepted. However, if it must be included, we would propose that the section be modified to read as follows:</p>		
		<p>unwelcome, sexually motivated or inappropriate patting, pinching or physical contact; provided however, that physical conduct of pupils by teachers, administrators or other school personnel, necessary to restrain the pupil to avoid physical harm to persons or property shall not be considered sexual harassment.</p>		
		<p><u>Inclusion of Sexual Orientation and Disability.</u> We note that incidents where victims are targeted for harassment or violence because of actual or perceived sexual orientation or disability are not included in the proposed regulation. We believe that like sexual, racial, ethnic and religious harassment, harassment based upon sexual orientation or disability can, and does, cause serious disruption of an educational environment.</p> <p>(Con't)</p>		

Date Received	Individual/Organization	Comment	Action/Type	Rationale
11/15/96	<p>Herman H. Jones Executive Director WV Human Rights Commission 1321 Plaza East Room 104/106 Charleston, WV 25301-1400</p>	<p>Accordingly, we propose that the definition of included violence and harassment be expanded to include incidents motivated by the victim's sexual orientation or disability. This would involve modification of the rules in Sections 2.1, 5.1, 6.1 and 8.1.</p> <p>Reporting. Under the proposed rule, the reporting of incidents is addressed in Section 126-18-7.2, under the heading of <u>County Board of Education Action</u>. We propose that the functions of "action" and "reporting" be addressed in separate sections. We further propose that the local agency be directed to report to the State Department of Education all reports of harassment or violence, regardless of what the investigation ultimately shows, along with the results of the investigation and (eventually) a report of action taken. Proper oversight by the State Department of Education, will require that the State Department be in a position of reviewing all reports of violations and not just those which the local board found to be violations.</p> <p>Clear Distinction Between State Regulation and Local Policies. The proposed regulation contains some ambiguity with regard to the distinction between the State Board of Education Regulation (which is sometimes referred to in the regulations as a "policy") and the policies of local agencies which are required by the State Regulation. (Con't)</p>		

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11/15/96	<p>Herman H. Jones Executive Director WV Human Rights Commission 1321 Plaza East Room 104/106 Charleston, WV 25301-1400</p>	<p>For example, the term "this policy" is used in Sections 11.1, 11.2 and 11.3, and it is not entirely clear whether the term refers to the State Regulation or local policy. In Section 6.1 the term "the policy" is used, presumably to mean the local policy. We suggest that the term regulation or rule be used to refer to the action of the State Board of Education, and the term "policy" be reserved for the corresponding action of the local boards.</p>		
Section II - Purpose				
10/7/96	<p>Kathy M. Finsley Ohio County Schools 2203 National Road Wheeling, WV 26003</p>	<p>2.1. - Add "The purpose of these regulations is to assure <u>to the maximum extent possible</u> neither students nor staff are..."</p>	NA, -	Qualifier not needed.
10/21/96	<p>Minnie English 400 Maple Avenue Fairmont, WV 26554</p>	<p>Purpose and intent are well stated.</p>	A, +	Supportive Comment.
10/21/96	<p>Blackshere Elementary School 77 Blackshere Drive Mannington, WV 26582</p>	<p>The purpose and intent are well stated.</p>	A, +	Supportive Comment.
10/21/96	<p>Debra S. Brady Frametown Elementary School Route 4, Box 61D Frametown, WV 26623</p>	<p>This is a powerful policy. As a teacher, I realize that some of my students deal daily with harassment or violence in their homes. It is difficult to help these children because they are afraid to confide. If we can remove these behaviors from the educational setting, then maybe students will feel empowered enough to not allow it anywhere!</p>	A, +	Supportive Comment.

Date Received	Individual/Organization	Comment	Action/Type	Rationale
Section III - Application				
10/7/96	Kathy M. Finsley Ohio County Schools 2203 National Road Wheeling, WV 26003	Member of the public? Does this mean that they are not subject to harassment or that we assure none of them will be the harasser?	A, 0	They are not to subject student or staff to any form of harassment.
10/10/96	Donna Kuhn RESA VIII P. O. Box 213 Petersburg, WV 26847	Does this apply to a community event held on school property?	A, 0	Yes, if school sponsored or school personnel supervise the event.
10/21/96	Blacksheere Elementary School 77 Blacksheere Drive Mannington, WV 26582	Good, covers all employees across the board and students.	A, +	Supportive Comment.
10/21/96	Debra S. Brady Frametown Elementary School Route 4, Box 61D Frametown, WV 26623	The fact that this policy includes all individuals in any education sponsored event is excellent.	A, +	Supportive Comment.
Section IV - Definitions				
9/17/96	Chuck Polan Department of Administration Cabinet Secretary State Capitol Charleston, WV 25305	4.1.1. - Should include, "or participation in extracurricular activities, i.e.; ball teams, majorettes, cheerleaders etcetera."	A, +	Change made
10/7/96	Kathy M. Finsley Ohio County Schools 2203 National Road Wheeling, WV 26003	4.4.1.a. - touching, patting, grabbing, or pinching - are offensive and may create a hostile environment but are they violent?	A, 0	To be delivered by investigator.
10/10/96	Donna Kuhn RESA VIII P. O. Box 213 Petersburg, WV 26847	Very specific.	A, +	Supportive Comment.

Date Received	Individual/Organization	Comment	Action/Type	Rationale
10/16/96	<p>Karen Huffman Braxton County High Schools 200 Jerry Burton Drive Sutton, WV 26601</p>	<p>Students/teachers should receive a copy of the complaint form along with student handbook or staff manual. Can the agency be responsible for policing itself? If there is intent to really address the problem then some funding and mandate for establishment of an "internal affairs" - type division to receive complaints would have to be established. Some companies use a team approach - once there is a report it is investigated by someone inside the company, along with someone who is not an employer of the company.</p>	A, 0	<p>WVDE will work on providing necessary technical assistance.</p>
10/16/96	<p>Debbie Nile Jefferson Elementary</p>	<p>4.1.4.c. - Communication with students occurs non-verbally as well as verbally. This fact, of course, is the reason 4.1.4.c. is included in this policy. The intent of the communication can occasionally be misinterpreted. For example: If I, as a teacher, sense a child's discouragement, or even pride, and I place my hand; on his or her shoulder and smile, this act can have a powerfully positive effect. However, occasionally a child might interpret this in a negative manner. Although the teacher had the best of intentions, the child could possible interpret this physical contact as "inappropriate" and not "welcome it". I am concerned that in a well intended attempt to prevent harassment, we could also prevent opportunities to meet children's emotional needs. We are, after all, educating young humans with feelings. And if these feelings aren't satisfied, academic progress suffers and we reduce the chances of preparing children for success.</p>	A, 0	<p>Definitions and possible investigations should clarify misunderstandings.</p>

Date Received	Individual/Organization	Comment	Action/Type	Rationale
10/18/96	Abra Lynn Elkins 1293 Van Vorin Road, Apt. D Morgantown, WV 26505	Very Comprehensive. Is violence from outside also controlled?	A, +	External violence is controlled to the degree possible.
10/18/96	Musselman Middle School Route 2, Box 119 Bunker Hill, WV 25413	4.1. - Further define "com. Of a sexual nature". 4.1.3. - Further define "offensive". 4.1.4. - Rewrite "is not limited to". 4.1.4.c. - Add "contact of intimate body parts". 4.1.4.d. - Add "whether or not they are accompanied by threats". 4.4.1. - add e. Threatening or forcing exposure of intimate apparel or body parts by removal of clothing.	NA, - NA NA NA NA A, +	4.1. - see 4.1.1 - 4.1.4. See 4.1.4.a. Change made
10/21/96	Blackshere Elementary School 77 Blackshere Drive Mannington, WV 26582	4.4.1.a. - touching - any "part" of a person without their permission, excluding a pat on the back.	NA, -	Too vague, as stated would include handshake, etc.
10/21/96	Jack L. Reger RR03 304 High Street Belington, WV 26250	4.1.4.f. - This is too broad. Has the potential to lead to frivolous complaints. E.g. "This school needs a male principal, not a woman!" "Men aren't sensitive enough to teach early childhood, it should only be women!" Although such statements are offensive they do not constitute sexual harassment. If gender is an issue, it becomes a matter of discrimination!	NA, -	Not what definition addresses.
10/21/96	Robert W. Minney Route #4, Box 374 Fairmont, WV 26554	4.1.4.c. - The last part of the sentence is not needed. The part about restraint should be put into a policy about maintaining discipline. If the intent is to list what is not harassment you need to address all the touching involved in coaching sports, directing plays in drama classes, etc. It is better to leave it all out.	?	

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10/28/96	<p>Jim Bailey Diversity Education Council Wood County Board of Education 1210 Thirteenth Street Parkersburg, WV 26101</p>	<p>4.4.4.c. - We question the use of "sexual harassment" and "violence" in the same way. We also believe that it is important to not include the idea of "necessary restraint" under "sexual harassment". 4.4. - Substitute the word "assault" rather than "threat".</p>		
Section V - Reporting Procedures				
9/9/96	<p>Jeanne Moore WV Dept. of Education Building 6, Room 330 1900 Kanawha Blvd., East Charleston, WV 25305</p>	<p>5.1. - First sentence is unclear and too long.</p>	NA, -	Sentence OK as is
10/7/96	<p>Kathy M. Finsley Ohio County Schools 2203 National Road Wheeling, WV 26003</p>	<p>5.2. - Should read all <u>alleged</u> incidents must be reported - you can't know or conclude it is harassment or violence <u>unless</u> it is first investigated.</p>	A, +	Change made
10/10/96	<p>Donna Kuhn RESA VIII P. O. Box 213 Petersburg, WV 26847</p>	<p>Reporting forms should be consistent statewide.</p>	A, +	WVDE will consider development of a standardized form.
10/16/96	<p>Divide Elementary Faculty Senate PO Box 180 Lookout, WV 25868</p>	<p>5.2. - Should be reported toward pupils, adults should use their own judgement and convictions.</p>	A, +	Change made.
10/18/96	<p>Bill Courtney Kanawha County Schools 200 Elizabeth Street Charleston, WV 25311-2119</p>	<p>Your policy establishes a rigid, formal procedure which will work for serious problems. Minor problems are often better handled informally and a formal procedure may discourage people from coming forward. I recommend that you consider adding language authorizing informal resolution procedures for minor problems.</p>		Check 5.2.

Date Received	Individual/Organization	Comment	Action/Type	Rationale
10/21/96	Minnie English 400 Maple Avenue Fairmont, WV 26554	What circumstances? Are they explained in Chapter 4.9., if not give example.	A, 0	Yes, are currently in WV Code.
10/21/96	Blacksheere Elementary School 77 Blacksheere Drive Mannington, WV 26582	5.3. - (certain circumstances) <u>example of what?</u>	A, 0	See WV Code, Chapter 49.
10/21/96	Debra S. Brady Frametown Elementary School Route 4, Box 61D Frametown, WV 26623	I believe that reporting procedures should be developed at the state level and passed on to the local level. A policy this important needs to be implemented as soon as possible.	A, +	Will consider WVDE model procedures.
10/28/96	Jim Bailey Diversity Education Council Wood County Board of Education 1210 Thirteenth Street Parkersburg, WV 26101	5.2. - "designated investigator" is unclear.		
Section VI - Investigation				
9/9/96	Jeanne Moore WV Dept. of Education Building 6, Room 330 1900 Kanawha Blvd., East Charleston, WV 25305	6.2 - Next to last word in line 2 should be complaint rather than complainant. It all sounds good, but we must recognize that the findings of any investigation by a single investigator are not always objective and may be limited by the investigator's biases.	A, +	Change made.

Date Received	Individual/Organization	Comment	Action/Type	Rationale
9/27/96	Patricia P. Hubbard Title IX Coordinator Jefferson County Schools P. O. Box 987 Charles Town, WV 25414	Investigations of all complaints should be made. Most often this responsibility falls on the classroom teacher. Principals do not have time to investigate each complaint. Consequences for students' actions often times must be immediate to be effective. It would be an impossible situation for a teacher to write up every incident as a result of this policy. Many disciplinary incidents revolve around student/student conflict and some type of verbal altercation. A record keeping "nightmare" would result from this policy. (Sexual harassment complaints are documented and reported to the Principal, Title IX Coordinator and the Superintendent.	NA, -	Records must be kept of action taken to assure protection of individual's rights and proper follow up.
10/7/96	Kathy M. Finsley Ohio County Schools 2203 National Road Wheeling, WV 26003	6.7. - Confidentiality rights will be vigorously protected to the extent possible. You have already said information may be released if needed as part of the investigation.	NA	Statement is clear.
10/10/96	Donna Kuhn RESA VIII P. O. Box 213 Petersburg, WV 26847	Any involvement of individuals outside the agency?	A, 0	If action is against student or staff, yes.
10/16/96	Karen Huffman Braxton County High Schools 200 Jerry Burton Drive Sutton, WV 26601	6.1. - The individual(s) designated by the policy to investigate, shall ... immediately coordinate an investigation. The investigation must be conducted by a third party designated by the agency, with the appropriate individual designated by the policy and another individual not associated with the agency.	NA, -	To be determined at local level.
10/18/96	Abra Lynn Elkins 1293 Van Vorrin Road, Apt. D Morgantown, WV 26505	Immediately may need defined as "hours". 6.3. - Should be at an outside agency discretions.	NA, -	To be determined at local level.

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10/18/96	Musselman Middle School Route 2, Box 119 Bunker Hill, WV 25413	6.2. - Remove last sentence. 6.3. - Clarify who makes this determination - should include others besides the investigator. 6.6. - Results need to be sent to guardian, also.	NA, - NA, - A, +	May need to review written materials, etc. Local policy decision. Change made.
10/21/96	Blacksheere Elementary School 77 Blacksheere Drive Mannington, WV 26582	Will the boards pull out (stop) their investigation if the victims report to a local law agency? (or) ?	NA, -	Determined based on circumstances.
10/21/96	Jack L. Reger RR03 304 High Street Belington, WV 26250	What if the charges are found to be false. What if a situation is fabricated by a complainant?	NA, 0	Determined by individual situation.
10/21/96	Robert W. Minney Route #4, Box 374 Fairmont, WV 26554	6.2. - The last sentence should be changed to limit the method of investigation to methods deemed appropriate by the courts -- not what an untrained school "investigator" deemed pertinent.	NA, -	Guidelines published by US Department of Education are helpful.
10/21/96	Debra S. Brady Frametown Elementary School Route 4, Box 61D Frametown, WV 26623	Will there be some type of checks and balance to this process. If BOE's are too soft on consequences will someone investigate them?	A, +	Individual has right to pursue further.
10/28/96	Jim Bailey Diversity Education Council Wood County Board of Education 1210 Thirteenth Street Parkersburg, WV 26101	6.1. - "individual(s) designated by the policy" is unclear.		
Section VII - County Board of Education Action				
9/9/96	Jeanne Moore WV Dept. of Education Building 6, Room 330 1900 Kanawha Blvd., East Charleston, WV 25305	7.1 - Add: revocation of certification. 7.2 - With whom is the report to be filed?	A, + N, 0	Change made To be determined by county policy.

Date Received	Individual/Organization	Comment	Action/Type	Rationale
9/24/96	John W. Rose Jefferson Co. Brd. of Education P. O. Box 987 Charles Town, WV 25414	Reporting every incident will be very time consuming for principals and county administrators. Postage costs will be substantial.	NA, -	Only substantiated reports need to be reported.
9/27/96	Patricia P. Hubbard Title IX Coordinator Jefferson County Schools P. O. Box 987 Charles Town, WV 25414	While none of these complaints are or should be taken lightly, no county board of education has the necessary personnel to report every incident to the Department of Education. Teachers and administrators currently deal with these types of complaints in the most effective manner. Writing up and reporting every confirmed incident will not improve the situation but will prevent educators from having time to teach and deal with students.	NA, -	State Board needs to have data to make future policy/education decisions.
10/7/96	Kathy M. Finsley Ohio County Schools 2203 National Road Wheeling, WV 26003	7.2. - Is this for data collection or oversight?	N, 0	Data is collected for both purposes.
10/10/96	Donna Kuhn RESA VIII P. O. Box 213 Petersburg, WV 26847	Detention for students during, after or Saturday.	N, 0	Local decision.
10/16/96	Karen Huffman Braxton County High Schools 200 Jerry Burton Drive Sutton, WV 26601	Does this proposed policy assume that in a school system the superintendent will handle this matter unless it has been referred directly to the local board of education? Again, is there not an inherent reason for a school system to avoid finding legitimate complaints in order to avoid appearing that the system has excessive internal problems to report to WVDE according to 126-18-7?	NA, -	Follow up always possible.

Date Received	Individual/Organization	Comment	Action/Type	Rationale
10/18/96	Abra Lynn Elkins 1293 Van Voorin Road, Apt. D Morgantown, WV 26505	Different ranges of actions should be delineated for age groups.	N, 0	Local decision.
10/18/96	Musselman Middle School Route 2, Box 119 Bunker Hill, WV 25413	7.1. - Delete "warning" change to "detention". 7.2. - Add "and disposition of said cases".	N, 0 N, 0	Local decision. May be part of report.
10/21/96	Jack L. Reger RR03 304 High Street Belington, WV 26250	Actions are good. But, what actions will be taken against those who are proven to make false claims? This needs to be addressed!	NA, -	Determined at local level by circumstances.
Section VIII - Reprisal				
10/10/96	Donna Kubn RESA VIII P. O. Box 213 Petersburg, WV 26847	Intimidation, reprisal (threat of any kind) or harassment.	N, 0	Don't understand comment.
10/16/96	Lisa Diehl Center for Economic Options 601 Delaware Avenue Charleston, WV 25302	First sentence should read "Retaliation will not be tolerated." That agency will develop ... spell out the discipline procedures give an example.	NA, -	Clear as stated.
10/18/96	Musselman Middle School Route 2, Box 119 Bunker Hill, WV 25413	8.1. - Define reprisal and retaliation. Add - The agency will develop a discipline process to take appropriate action against any pupil, teacher, or administrator or other school personnel who falsely report and religious/ethnic, racial, or sexual harassment.		
10/21/96	Debra S. Brady Frametown Elementary School Route 4, Box 61D Frametown, WV 26623	This section of the policy will need to be made very clear. It will be difficult to prevent reprisal unless consequences are made known and seem enforceable.		

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Section IX - Right to Alternative Complaint Procedures				
Section X - Prevention Programs				
9/24/96	John W. Rose Jefferson Co. Brd. of Education P. O. Box 987 Charles Town, WV 25414	Prevention - When are we going to teach math, science, reading, etc. We cannot continue to be held accountable for basic skills if we continue to spend our time teaching other topics.	NA, -	Can be integrated into existing subjects such as social studies and health.
9/27/96	Patricia P. Hubbard Title IX Coordinator Jefferson County Schools P. O. Box 987 Charles Town, WV 25414	Allow educators time to instruct students and deal with the problems that naturally occur whenever varied groups of people come together. Reporting the statistics will not assist in fixing the problems.	NA, -	State Board needs to have data to make future policy/education decisions.
10/16/96	Divide Elementary Faculty Senate PO Box 180 Lookout, WV 25868	Section XII - Effectiveness	N, 0	No comment received.
10/18/96	Abra Lynn Elkins 1293 Van Vorrin Road, Apt. D Morgantown, WV 26505	10.1. - Shouldn't the programs be developed for levels as they are currently established in each county.	A, 0	Local decision.
10/18/96	Musselman Middle School Route 2, Box 119 Bunker Hill, WV 25413	10.1. - Last sentence - change "acceptance" to "tolerance".	NA, 0	
10/21/96	Blackshere Elementary School 77 Blackshere Drive Mannington, WV 26582	10.1. - Yes - Good, before there was no set way of handling this.	A, +	Supportive Comment.
10/21/96	Jack L. Reger RR03 304 High Street Belington, WV 26250	For what purpose? What will the report accomplish? What action will be taken for non-compliance? How will information be verified?	NA, -	Will be used to strengthen policy and program delivery.

Date Received	Individual/Organization	Comment	Action/Type	Rationale
10/21/96	Debra S. Brady Framctown Elementary School Route 4, Box 61D Framctown, WV 26623	Collecting data is fine, but will these reports be made readily available to the general public? Education is the key to prevention. Ignorance is our worst enemy. Once again I would like to see some structure for this program developed at the state level in order to assure some form of consistency.	A, +	Will be used to strengthen policy and program delivery.
Section XI - Dissemination of Policy and Training				
9/17/96	Chuck Polan Department of Administration Cabinet Secretary State Capitol Charleston, WV 25305	11.1, 11.2 - Which states that the policy or summary will be distributed to all students and staff members, should perhaps be inclusive of reasonable care guidelines with regard to disbursing this information to students K-4 and 5-8, i.e.: parents should probably receive a policy copy and sign a form stating that they have read the policy and explained it to the child.	A, +	Change accepted for K-4 students.
9/24/96	John W. Rose Jefferson Co. Brd. of Education P. O. Box 987 Charles Town, WV 25414	Dissemination and Training - The legislature needs to either convert some of the out-of-school environment days to staff development days or extend the 200 day employment term to provide for staff development.	NA, -	State Board cannot pass law.
10/8/96	Susanna Villers Wetzel County Schools 333 Foundry Street New Martinsville, WV 26155	It would greatly assist counties if a state curriculum could be developed to address the concerns in this policy.	A, +	WVDE will work toward this.
10/10/96	Donna Kuhn RESA VIII P. O. Box 213 Petersburg, WV 26847	State should provide a statewide education program model like AIDS curriculum. Multi-cultural education is currently required staff development.	A, +	WVDE will work toward this.

Date Received	Individual/Organization	Comment	Action/Type	Rationale
10/16/96	Lisa Diehl Center for Economic Options 601 Delaware Avenue Charleston, WV 25302	When will these take place, annually, quarterly? Faculty and staff should be first, then they can better develop the education program.	A, +	WVDE will work toward this.
10/16/96	Divide Elementary Faculty Senate PO Box 180 Lookout, WV 25868	Section X - Prevention Programs	?	
10/16/96	Karen Huffman Braxton County High Schools 200 Jerry Burton Drive Sutton, WV 26601	In order to make this policy mandate reasonable, funds for ongoing staff development need to be provided. Each new idea to be implemented for the past few years has come with no funds -- and with the limited time for staff development, several important issues must compete for scarce time and money. Can this be mandated as an issue faculty senates must address during the two-hour meetings monthly?	A, 0	Title IX funds can be used at local level.
10/18/96	Bill Courtney Kanawha County Schools 200 Elizabeth Street Charleston, WV 25311-2119	If the state board mandates training programs, it should take the lead in developing the programs instead of having 55 counties planning, implementing and paying for 55 separate training programs.	A, +	WVDE to work toward this.
10/18/96	Musselman Middle School Route 2, Box 119 Bunker Hill, WV 25413	11.2. - This policy shall be sent to parents for their signature; thereafter it shall be included in the student and staff handbooks.	A, 0	Local decision.
10/21/96	Minnie English 400 Maple Avenue Fairmont, WV 26554	11.3.3. - This is one of the most beneficial parts.	A, +	Supportive Comment.

Date Received	Individual/Organization	Comment	Action/Type	Rationale
10/21/96	Jack L. Reger RR03 304 High Street Belington, WV 26250	Should address age appropriateness. Big difference between kindergarten and fourth grade. Should identify where to teach subject, health, social studies. Will be more consistent! Should be treated same as AIDS/HIV program. Spell it out!	A, +	
10/21/96	Robert W. Minney Route #4, Box 374 Fairmont, WV 26554	To imply that there is no cost for developing and implementing this program is ludicrous. To add this training to the curriculum means that something else must be dropped or shortened. Any guidance on what to drop?	NA, -	Critically important.
10/21/96	Debra S. Brady Frametown Elementary School Route 4, Box 61D Frametown, WV 26623	In addition, more public awareness would be beneficial.	A, +	WVDE and local district both can do this.
10/28/96	Jim Bailey Diversity Education Council Wood County Board of Education 1210 Thirteenth Street Parkersburg, WV 26101	11.2. - Suggest this policy be included in the state's "Student Code of Conduct".		
Section XII - Assessment of Effectiveness				
10/10/96	Donna Kuhn RESA VIII P. O. Box 213 Petersburg, WV 26847	Bi-annual review to frequent.		
10/16/96	Lisa Diehl Center for Economic Options 601 Delaware Avenue Charleston, WV 25302	The policy is reviewed by-annually. When and how often does training take place.		

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10/16/96	Divide Elementary Faculty Senate PO Box 180 Lookout, WV 25868	Section XI - Dissemination and Training		
10/16/96	Karen Huffman Braxton County High Schools 200 Jerry Burton Drive Sutton, WV 26601	A concise version of this policy is needed for inclusion in student handbooks (a complaint form should be given to teachers/students along with the handbook - they should not have to ask for a complaint form after an incident occurs.)		
10/21/96	Blacksheere Elementary School 77 Blacksheere Drive Mannington, WV 26582	This is a good plan.		
10/21/96	Robert W. Minney Route #4, Box 374 Fairmont, WV 26554	The printing of this policy for every member of the faculty, staff, and student body is rather high? Why is this not addressed in the Fiscal Note Worksheet?		
10/28/96	Jim Bailey Diversity Education Council Wood County Board of Education 1210 Thirteenth Street Parkersburg, WV 26101	We suggest that a summary be included in the handbooks rather than the entire policy.		

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Additional Comments				
9/11/96	Sharon Brown WV Department of Education Building 6, Room 215 1900 Kanawha Boulevard, East Charleston, WV 25305	I think a section should also be added on physical appearance. There have been a number of cases where children were not allowed to be in certain activities because of their physical appearance. Also, children harass other children because of their weight, clothing, and sometimes certain birth defects. This type of harassment is not covered in this policy. There have been two cases of children committing suicide because of being harassed by other children because of their weight especially.	NA, -	Not appropriate for this policy but can be included in education programs.
9/27/96	Lawrence Hitt, Principal Shepherdstown Elementary 410 South Church Street Shepherdstown, WV 25443	It is my belief that this policy could be an overload of reporting and paperwork. Our county has a sexual harassment policy in effect, now. (I realize the proposed policy goes in to more categories of harassment.) It is my belief too, that in an elementary school, all these reports would be too time consuming. Is there a need for the state department to have this policy? My time is already being taken for too many "paperwork" details, now. I would take exception to this proposed policy.	NA, -	Policy is needed to assure protection of students and staff.
10/7/96	Kathy M. Finsley Ohio County Schools 2203 National Road Wheeling, WV 26003	This will cause Boards of Education to rescind present Title IX, VII policies and procedures and replace with this broad policy/procedure. Fiscal note: you <u>should</u> get figures on the cost of the county's personnel in investigation of complaints. It would astound you.		???

Date Received	Individual/Organization	Comment	Action/Type	Rationale
10/16/96	Debbie Nile Jefferson Elementary	<p>In regard to IMPACT:(found in the executive summary) Why must each of 55 counties be required to create a customized system when one universal system would suit the entire state? This will require many hours of unnecessary work. If this policy is accepted, the state should make available a "packaged-deal" to each county board of education to include:</p> <ul style="list-style-type: none"> • the reporting and communication system; • a system boards can use to assess the effectiveness of the policy. • an awareness training video or other means of explaining the policy to the county employees. This program must be of high quality, entertaining, and meaningful to the participants. 	A, +	WVDE will work toward this.
10/16/96	Scott Britton Steering Committee WV Lesbian & Gay Coalition PO Box 11033 Charleston, WV 25339	<p>The Coalition commends the Department of Education's recognition that racial, sexual, religious and ethnic harassment exists in West Virginia's schools, and that bias-motivated violence sometimes results. However, we are puzzled by the conspicuous exclusion of sexual orientation in your new policy. As stated in the executive summary, "performance in school can be adversely affected when harassment of any kind is present," and "Educational institutions should play a significant role in the process of eliminating all types of harassment." (Con't)</p>	NA, -	Policy covers this already.

Date Received	Individual/Organization	Comment	Action/Type	Rationale
10/16/96	Scott Britton Steering Committee WV Lesbian & Gay Coalition PO Box 11033 Charleston, WV 25339	<p>Harassment of students based on perceptions of their sexual orientation--that they are gay or lesbian--is rampant in schools today. Words like "faggot" and "queer" are heard frequently on playgrounds, in bathrooms and locker rooms, and even in the classroom; moreover, such offensive language is rarely challenged by teachers and other school personnel. These slurs merit the same response as sexual, racial, or religious epithets. Young people are teased, ostracized, and sometimes assaulted by peers simply because they "act gay." Gay-bashing must not be tolerated in our schools. As gay and lesbian teenagers become aware of their sexual orientation, they face hostility from peers and, sometimes they even attempt suicide.</p> <p>According to statistics, gay and lesbian kids make up about one-third of all teen suicide attempts. Currently the Lambda Legal Defense and Education Fund is challenging anti-gay violence in public schools to send a message that educational institutions should protect <i>all</i> children from violence and harassment. The case was filed on behalf of Jamie Nabozny, who attended school in Ashland, Wisconsin. There, he was subjected to shocking treatment by fellow students and school personnel alike. Called derogatory names, pinched, kicked, teased, and spat upon. Jamie suffered humiliating acts of terrorism. In the seventh grade, after a teacher temporarily stepped out of the classroom, two boys pinned him to the floor for several minutes and pretended to rape him while the rest of the class watched and laughed.</p> <p>(Continued)</p>		

Date Received	Individual/Organization	Comment	Action/Type	Rationale
10/16/96	<p>Scott Britton Steering Committee WV Lesbian & Gay Coalition PO Box 11033 Charleston, WV 25339</p>	<p>In ninth grade, two boys pushed him into a bathroom stall and urinated on him. One of his teachers called him a "fag" and threw him out of class. In tenth grade, ten boys trapped him in a hallway; one of the boys, wearing cowboy boots, kicked him in the stomach so hard and so many times that he had to be hospitalized with internal bleeding. When Jamie's parents approached principals and guidance counselors for intervention, they were told that, as a gay student, Jamie should expect such treatment. Despite administration promises, none of Jamie's harassers was suspended, expelled, or even kept at a safe distance. No policy was in place to protect Jamie, and so he dropped out of school during his junior year. While Jamie's case may appear to be extreme, the Coalition has met young people right here in West Virginia who have withdrawn from school because of similar harassment. West Virginia schools must sanction all acts of violence and intimidation perpetrated against youth who are or who are perceived to be lesbian or gay. By including sexual orientation in its policy on harassment and violence, the West Virginia Board of Education sends a strong and consistent message that violence against students or staff based on race, gender, sexual orientation, religion, or ethnicity will not be tolerated. The Coalition understands the controversial nature of including sexual orientation in this policy. We urge the Department of Education to look at anti-gay harassment and violence in schools not as a moral issue but as a matter of fact: (continued)</p>		

Date Received	Individual/Organization	Comment	Action/Type	Rationale
10/16/96	<p>Scott Britton Steering Committee WV Lesbian & Gay Coalition PO Box 11033 Charleston, WV 25339</p>	<p>It happens, and children--gay and straight--suffer because of it. And because it is the children who suffer, the Lesbian and Gay Coalition is confident that you will take a stand to protect them. After all, every child deserves to be protected from taunts, humiliation, and outright violence based on their sex, race, religion, ethnicity, or their sexual orientation.</p>		
10/18/96	<p>David Hunt Teacher - Raleigh County Academy of Careers and Tech. 390 Stanford Road Beckley, WV 25801</p>	<p>Culturally boys are taught to be the pursuers of young women in dating relationships. Young boys (6-10 years old), who are shy, might pull a girls hair or pinch her arm when he likes her because they are immature and they don't know how to express themselves. Boys (11-17 years old) who are "smooth" and considered "Don Juans" know how to charm girls and make girls feel good about themselves. However, some boys are clumsy and because of nervousness and immaturity say things that are inappropriate or which can have double meanings. A few weeks ago a 6 year old in North Carolina and a 7 year old in New York were charged with sexual harassment for kissing school mates. In our county handbook it states that a teacher can be charged with harassment for making a sexually suggestive look! Also, I have been informed that the accused person's intent is irrelevant and the perception of the accuser is the deciding factor. As a grown man, I have trouble with the vague language in this policy. Are we to assume that an immature 14 year old will easily comprehend this policy? (Con't)</p>		<p>The point of the policy is to educate boys and girls about what is appropriate.</p>

Date Received	Individual/Organization	Comment	Action/Type	Rationale
10/18/96	David Hunt Teacher - Raleigh County Academy of Careers and Tech. 390 Stanford Road Beckley, WV 25801	<p>Question #1: Is it proper to charge juvenile boys who have no formal authority over their peers, with sexual harassment?</p> <p>In the video shown during the Policy 2421 Seminar, I noticed that all the perpetrators shown were white males and most of the victims were female. (Very politically correct!) I also noticed that there was not a scene depicting a false accusation. Most men have daughters, mothers, and sisters, who they don't want sexually harassed and don't pity men who are truly guilty. In various discussions that I have had with women, the comment that I commonly hear is "He must be guilty! How would it benefit her to lie about something like that? It draws attention to her also!" My response to this statement is that when a man buys a shotgun and kills his family and commits suicide, no one ever asks how this extreme act benefitted him. This reinforces the feminist doctrine that most men are bad, most women are good! Most men are abusers and most women are victims! Criminals and unstable people are not rational. I contend that when revenge or vendetta are motives, people are often willing to destroy themselves in order to do greater harm to their perceived enemy!</p> <p>Possible motives for false claims include: 1. Rebuffed advanced, 2. Jilted Lover, 3. Competition for positions, and 4. General dislike for someone. (Con't)</p>	NA, -	Not related to policy.

Date Received	Individual/Organization	Comment	Action/Type	Rationale
10/18/96	<p>David Hunt Teacher - Raleigh County Academy of Careers and Tech. 390 Stanford Road Beckley, WV 25801</p>	<p>Question #2: What safeguards are in place to protect innocent men who are falsely accused?</p> <p>In addition to being a teacher, I am an avid observer of political changes in society. A few months ago, I was watching a National Organization for Women (NOW) Conference. The speaker was Molly Ivins, a Forthworth, Texas feminist writer and friend of former Texas Governor Ann Richards. Ms. Ivins uses an unusual amount of vulgar language and curses at least once every three sentences. I am paraphrasing her comments, but she basically stated the following: "Men rape, abuse, and beat women on a regular basis all over the world. Men cause wars and most of the problems in this world are caused by men. We all know that most men are Neanderthals and pigs! We must ensure that young women are managers and political leaders and take charge of society!" At the conclusion of her speech, Ms. Ivins received a standing ovation. The National Organization for Women and the Women's Legal Defense Funds lobbied Congress and President Clinton to have these measures introduced into the school system. Many opponents of these policies feel that introducing Policy 2421 is a way of "feminizing" young boys and severely labels and punishes them for typical immature, adolescent male behavior. To say that I oppose Policy 2421, does not mean that I think that young boys should have a "free hand" in using vulgar language or inappropriately touching other students. (Con't)</p>	N, 0	<p>Investigation's are to be thorough and examine both sides of issue.</p> <p>Policy is necessary to prevent harassment of either sex.</p>

Date Received	Individual/Organization	Comment	Action/Type	Rationale
10/18/96	<p>David Hunt Teacher - Raleigh County Academy of Careers and Tech. 390 Stanford Road Beckley, WV 25801</p>	<p>However, I do feel that they should be punished for using vulgar language and inappropriate touching, and the sexual harassment language (which was designed for the adult work-place environment) should not be applied in a school setting.</p> <p>Question #3: Are these policies aimed at men and boys?</p> <p>During the discussion portion of the Policy 2421 seminar, Mrs. Harrington continually suggested that this policy applied to girls and women also, and that my characterization that this policy was "male bashing" was incorrect. In response to this I would like to that the EEOC commonly uses "raw statistics" to enforce discrimination laws. What is the ratio of sexual harassment complaints filed by women as opposed to the number filed by men? 50-1? 1,000-1? 10,000-1? In cases, where a false accusation occurs, the man or woman who is accused must do the following: (a) Be temporarily suspended until the case is resolved, (b) settle the issue in a court of law, (c) pay their own legal fees and possibly spend their entire savings. On the other hand, the false accuser may be represented by the following organizations: (a) Raleigh County Board of Education, (b) State of West Virginia, (c) NOW (National Organization for Women), (d) EEOC (Equal Employment Opportunities Commission) The scales of justice are tilted most favorably toward the accuser in these cases. (Con't)</p>		

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10/18/96	Mark McWilliams Managing Attorney WV Advocates Litton Building, 4th Floor 1207 Quarrier Street Charleston, WV 25301-1842	3. The policy requires a written report and is specific about the contents of investigations, but it specifies no timelines for completing a report and does not provide any assurance that an independent investigation will occur. (The State Department of Education, to our knowledge, has a memorandum of understanding with the Department of Health and Human Resources to conduct independent investigations of abuse and neglect.)	N, 0	

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 Revised -November 26, 1996

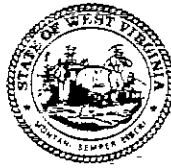
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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE (Plus all the volunteer help we can get)

Lenore Zedasky
TO: VIRGINIA HARRIS

AGENCY: EDUCATION

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: February 13, 1997

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 18 TITLE: 126 EDUCATION

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: *Lenore Zedasky*
TITLE OF PERSON SIGNING: *Executive Director*
DATE: *2/27/97*

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: _____
TITLE OF PERSON SIGNING: _____
DATE: _____

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.