



Book	BHASD Policies
Section	100 Programs
Title	Nondiscrimination in Employment Practices
Code	104
Status	Active
Adopted	June 28, 2004
Last Revised	October 1, 2018

### Authority

The Board declares it to be the policy of this district to provide to all persons equal access to all categories of employment in this district, regardless of race, color, age, creed, religion, sex, sexual orientation, ancestry, national origin, marital status, genetic information, pregnancy or handicap/disability. The district shall make reasonable accommodations for identified physical and mental impairments that constitute disabilities, consistent with the requirements of federal and state laws and regulations.[\[1\]](#)[\[2\]](#)[\[3\]](#)[\[4\]](#)[\[5\]](#)[\[6\]](#)[\[7\]](#)[\[8\]](#)[\[9\]](#)[\[10\]](#)[\[11\]](#)[\[12\]](#)[\[13\]](#)[\[14\]](#)

The Board encourages employees and third parties who believe they or others have been subject to discrimination to promptly report such incidents to school district administration.

The Board directs that verbal and written complaints of discrimination shall be investigated promptly, and appropriate corrective action be taken when allegations are substantiated.

### Confidentiality

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 district's legal and investigative obligations.

### Retaliation

The Board prohibits retaliation against any person for making a report of discrimination or 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.

## Definitions

### Discriminatory Harassment

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 or handicap/disability 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. [\[8\]](#)[\[15\]](#)[\[16\]](#)[\[17\]](#)[\[18\]](#)[\[19\]](#)

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:

1. Sufficiently severe, persistent or pervasive; and
2. A reasonable person in the complainant's position would find that it creates an intimidating, threatening or abusive work 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.

For purposes of this policy, sexual harassment shall consist of unwelcome sexual advances; requests for sexual favors; and other inappropriate verbal, nonverbal, written, electronic, graphic or physical conduct of a sexual nature when:

1. Submission to such conduct is made explicitly or implicitly a term or condition of an employee's status; or
2. Submission to or rejection of such conduct is used as the basis for employment-related decisions affecting an employee; or
3. 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.

## Delegation of Responsibility

In order to maintain a program of nondiscrimination practices that is in compliance with applicable laws and regulations, the Board designates the Superintendent of Schools as the district's Compliance Officer.

The Compliance Officer shall publish and disseminate this policy and complaint procedure at least annually to students, parents/guardians, employees and the public to notify them of where and how to initiate complaints under this policy.

The Compliance Officer shall be responsible to ensure adequate nondiscrimination procedures are in place, to recommend new procedures or modifications to procedures and to monitor the implementation of nondiscrimination procedures in the following areas:

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; district designed performance evaluations; review of planned employee demotions, non-renewal of contracts, and proposed employee disciplinary actions up to and including termination.
2. Training – Provision of training for supervisors and staff to prevent, identify and alleviate problems of employment discrimination, where applicable.
3. Complaints – Monitor and provide technical assistance to building principals or designees (such as the Human Resources Specialist) in processing complaints.

The building principal or supervisor shall be responsible to promptly complete the following duties upon receipt of a report of discrimination or retaliation from employees or third parties:

1. If the building principal or supervisor is the subject of the complaint, refer the complainant to the Compliance Officer to carry out these responsibilities.
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..
4. Immediately notify the Compliance Officer of the complaint. The Compliance Officer shall assess whether the investigation should be conducted by the building principal, another employee, the Compliance Officer or an attorney and shall promptly assign the investigation to that individual.

5. After consideration of the allegations and in consultation with the Compliance Officer and other appropriate individuals, promptly implement interim measures as appropriate to protect the complainant and others as necessary from violation of this policy during the course of the investigation.
6. 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 district shall take prompt, corrective action designed to ensure that such conduct ceases and that no retaliation occurs. The district 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 school program environment. District staff shall document the corrective action taken and, where not prohibited by law, inform the complainant.

### Appeal Procedure

- 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) days. If the Compliance Officer investigated the complaint, such appeal shall be made to the Superintendent.
- 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.
- The person handling the appeal shall prepare a written response to the appeal within twenty (20) days. Copies of the response shall be provided to the complainant, the accused and the investigator who conducted the initial investigation.

## Legal

1. 20 U.S.C. 1681 et seq
2. 29 U.S.C. 206
3. 29 U.S.C. 621 et seq
4. 29 U.S.C. 794
5. 42 U.S.C. 12101 et seq
6. 42 U.S.C. 1981 et seq
7. 42 U.S.C. 2000e et seq
8. 42 U.S.C. 2000ff et seq
9. 43 P.S. 336.3
10. 43 P.S. 951 et seq
11. U.S. Const. Amend. XIV, Equal Protection Clause
12. Pol. 317
13. Pol. 806
14. Pol. 824
15. 29 CFR 1604.11
16. 29 CFR 1606.8
17. EEOC Enforcement Guidance on Harris v. Forklift Sys., Inc., November 9, 1993
18. EEOC Enforcement Guidance on Vicarious Employer Liability for Unlawful Harassment by Supervisors, June 18, 1999
19. EEOC Policy Guidance on Current Issues of Sexual Harassment, March 19, 1990
- 16 PA Code 44.1 et seq
- 28 CFR 35.140
- 28 CFR Part 41
- 29 CFR Parts 1600-1691