

## **Policy Code: 1710/4021/7230 Prohibition Against Discrimination, Harassment, and Bullying**

The Wake County Board of Education acknowledges the dignity and worth of all students and employees and strives to create a safe, orderly, caring, inviting, and inclusive school environment to facilitate student learning and achievement.

The Board prohibits discrimination on the basis of race, color, national origin, sex, sexual orientation, transgender or gender identity, disability, or age and will provide equal access to designated youth groups as required by law. Any form of unlawful discrimination, harassment, or bullying as defined in this policy in any educational or employment activities or programs is against Board policy.

### **A. Prohibited Behaviors**

#### **1. Discrimination**

The Board prohibits all forms of discrimination as defined in this policy. For purposes of this policy, discrimination means any act or failure to act that unreasonably and unfavorably differentiates treatment of others based solely on their membership in a socially distinct group or category, such as race, ethnicity, sex, sexual orientation, transgender or gender identity, pregnancy, religion, age, or disability.

Discrimination includes, but is not limited to, any unlawful differentiation in the treatment of others that is claimed to be based on lawful and non-discriminatory factors but is in fact motivated by the desire to differentiate based on race, ethnicity, sex, gender identity, sexual orientation, pregnancy, religion, age, or disability. For example, singling out persons with hairstyles that are historically associated with a particular racial or ethnic group (such as afros, bantu knots, dreadlocks, braids, or twists) for unfavorable treatment is a form of unlawful discrimination if the expressed concerns about hairstyle are a proxy for racial or ethnic discrimination. See Policy 4316 (Student Dress Code) and Policy 7340 (Employee Dress and Appearance).

#### **2. Harassment and Bullying**

The Board prohibits all forms of harassment and bullying, as defined in this policy, against any student or staff member, regardless of whether the student or staff member has any specific differentiating characteristic. For purposes of this policy, harassment or bullying behavior is any pattern of gestures or written, verbal, or electronic communication (as noted below in the section on cyber-bullying and cyber-harassment), or any physical act or any threatening communication that:

- a. places a student or school employee in actual and reasonable fear of harm to his or her person or damage to his or her property; or
- b. creates or is certain to create a hostile environment by substantially interfering with or impairing a student's educational performance, opportunities, or benefits or by adversely altering the conditions of an employee's employment.

"Hostile environment" means that the victim subjectively views the conduct as harassment or bullying and that the conduct is objectively severe or pervasive enough that a reasonable person would agree that it is harassment or bullying. A hostile environment may be created through pervasive or persistent misbehavior or a single incident, if sufficiently severe.

Harassment and bullying include, but are not limited to, behavior described above that is reasonably perceived as being motivated by any actual or perceived differentiating characteristic or motivated by an individual's association with a person who has or is perceived to have a differentiating characteristic, such as race, color, sex, religion, ancestry, national origin, gender, socioeconomic status, academic status, level of engagement or isolation, transgender or gender identity, physical appearance, sexual orientation, or mental, physical, developmental, or sensory disability. Examples of behavior that may constitute bullying or harassment include, but are not limited to, verbal taunts, name-calling and put-downs, epithets, derogatory comments or slurs, lewd propositions, extortion of money or possessions, implied or stated threats, assault, impeding or blocking movement, offensive touching, and visual insults such as derogatory posters or cartoons. A student's discomfort with classroom topics, classroom discussion, or classroom management is not, by itself, harassment or bullying.

Harassment, including sexual or gender-based harassment, is not limited to specific situations or relationships. It may occur between fellow students or co-workers, between supervisors and subordinates, between employees and students, or between non-employees, including visitors, and employees or students. Harassment may occur between members of the opposite sex or the same sex.

Sexual harassment may be committed by members of the same sex or by members of the opposite sex. Romantic or sexual advances toward students by employees, agents, or others subject to this policy, or romantic or sexual relationships between these individuals and students are never appropriate, whether or not they are perceived as consensual. Such relationships are prohibited. Individuals as described above engaging in inappropriate relationships with students will be subject to disciplinary action, up to and including dismissal or removal from the program.

~~Sex-based~~ual harassment prohibited pursuant to Title IX regulations constitutes one type of harassment, and it is defined further below. Additionally, ~~sex-based harassment~~ual harassment in employment pursuant to Title VII is also defined below.

### 3. Cyber-Bullying and Cyber-Harassment

The Board prohibits cyber-bullying and cyber-harassment. Cyber-bullying and cyber-harassment are any words, actions, or conduct that meet the definitions of bullying or harassing behavior described in this policy, and are conveyed via e-mail, text message, Internet message boards, interactions on social media, or other electronic media.

### 4. ~~Sexual Discrimination and Sex-based~~ Harassment Pursuant to Title IX Regulations

The Board prohibits unlawful ~~sexual discrimination and sex-based~~ harassment as defined in this policy and pursuant to Title IX.

~~Discrimination on the basis of sex includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.~~

~~Sex-based~~ual harassment prohibited under Title IX regulations means conduct on the basis of sex occurring in a school system education program or activity, and in the United States, that satisfies one or more of the following: and by this policy is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex that is quid pro quo harassment, hostile environment harassment, or one of the specific offenses defined below.

~~Sex-based harassment includes harassment on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity and includes acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex-related conduct that is not of a sexual nature.~~

~~The following conduct constitutes sex-based harassment:~~

- a. ~~Quid pro quo harassment. an employee of the school system Explicitly or implicitly conditioning the provision of an aid, benefit, or service of the school system on an individual's participation in unwelcome sexual conduct, when such conduct occurs by an employee, agent, or other person authorized by the school system to provide an aid, benefit, or service under the school system's education program or activity.~~

b. ~~uHostile environment harassment. Unwelcome sex-based conduct determined by a reasonable person to be so severe, pervasive, and hat, based on the totality of the circumstances:~~

~~1) is subjectively and objectively offensive; that it effectively and~~

~~2) is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the school system's equal access to the school system's education program or activity (i.e. creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:~~

~~i. The degree to which the conduct affected the complainant's ability to access the school system's education program or activity;~~

~~ii. The type, frequency, and duration of the conduct;~~

~~iii. The parties' ages, roles within the school system's education program or activity, previous interactions, and other facts about each party that may be relevant to evaluating the effects of the conduct;~~

~~iv. The location of the conduct and the context in which the conduct occurred; and~~

~~v. Other sex-based harassment in the school system's program or activity.~~

~~c. c. Specific offenses as defined by the Violence Against Women's Act as follows:~~

~~1) sexual assault including rape, statutory rape, fondling, and incest~~

~~d. 2) dating violence;~~

~~e. 3) domestic violence; or~~

~~f. 4) stalking.~~

Sexual assault, dating violence, domestic violence, and stalking -are defined in 1710/4021/7230 R&P(2), Additional Definitions Related to Title IX Sexual Harassment.

## 5. Sexual Harassment in Employment under Title VII

Prohibited sexual harassment in employment includes, but is not limited to, unwelcome conduct which is either of a sexual nature, or is directed at a person because of the person's sex, when:

- a. submission to the conduct is made either explicitly or implicitly a term or condition of a person's employment;
- b. submission to or rejection of such conduct is made the basis for decisions affecting a person's employment; or
- c. the conduct has the purpose or effect of unreasonably interfering with an employee's work performance or creating an intimidating, hostile, or offensive work environment.

## 6. Retaliation

The Board prohibits reprisal or retaliation against any person for reporting or intending to report violations of this policy, supporting someone for reporting or intending to report a violation of this policy, or participating in the investigation of reported violations of this policy.

### **B. Application of Policy**

Unless otherwise indicated, this policy applies to students, employees, volunteers, and visitors. "Visitors" includes persons, agencies, vendors, contractors, and organizations doing business with or performing services for the school system.

This policy applies to behavior that takes place:

1. in any school building or on any school premises before, during or after school hours;
2. on any bus or other vehicle as part of any school activity;
3. at any bus stop;
4. during any school-sponsored activity or extracurricular activity;
5. at any time or place when the individual is subject to the authority of school personnel; and

6. at any time or place when the behavior has a direct and immediate effect on maintaining order and discipline in the schools.

This policy shall not be construed to allow school officials to punish student expression or speech based on an undifferentiated fear or apprehension of a disturbance or out of a desire to avoid the discomfort and unpleasantness that may accompany an unpopular viewpoint.

### **C. Reporting and Investigating Complaints of Discrimination, Harassment, or Bullying**

Employees are required to report any actual or suspected violations of this policy. Students, parents, volunteers, visitors, or others are also strongly encouraged to report any actual or suspected incidents of discrimination, harassment, or bullying. All reports should be made in accordance with policy 1720/4015/7225, Discrimination, Harassment, and Bullying Complaint Procedure, and reported to one of the school officials identified in that policy. Reports may be made anonymously, and all reports shall be investigated in accordance with that policy.

### **D. Consequences**

Any violation of this policy is serious and shall result in prompt and appropriate action. Students who violate this policy will be disciplined in accordance with applicable policies and procedures governing student conduct and discipline. Based on the nature and severity of the offense and the circumstances surrounding the incident, the student will be subject to appropriate consequences and/or remedial actions ranging from positive behavioral interventions up to, and including, expulsion.

Employees who violate this policy will be subject to disciplinary action, up to, and including, dismissal.

Volunteers and visitors who violate this policy will be directed to leave school property and/or reported to law enforcement, as appropriate, in accordance with Visitors to the Schools policy.

The actions taken in response to harassment or bullying behavior shall be reasonably calculated to end any harassment or bullying, eliminate a hostile environment if one has been created, and prevent harassment from occurring again. When considering if a response beyond the individual level is appropriate, school administrators should consider the nature and severity of the misconduct to determine whether a classroom, school-wide, or school system-wide response is necessary. Such classroom, school-wide, or school system-wide responses may include staff training, harassment and bullying prevention programs, and/or other measures deemed appropriate by the Superintendent or designee.

Nothing in this policy precludes the school system from taking disciplinary action against a student or employee where the evidence does not establish discrimination, harassment, or bullying but the conduct otherwise violates the Code of Conduct.

### **E. Training and Programs**

The Board directs the Superintendent to establish training and other programs that are designed to help eliminate unlawful discrimination, harassment, and bullying and to foster an environment of understanding and respect for all members of the school community. The training or programs should (1) provide examples of behavior that constitutes discrimination, harassment, or bullying; (2) teach employees to identify groups that may be the target of discrimination, harassment, or bullying; and (3) train school employees to be alert to locations where such behavior may occur, including locations within school buildings, at school bus stops, on cell phones, and on the Internet. Information about this policy and the related complaint procedure must be included in the training plan.

As funds are available, the Superintendent is also authorized to provide additional training for students, employees, and volunteers who have significant contact with students regarding the Board's efforts to address discrimination, harassment, and bullying, and to create programs to address these issues.

### **F. Notice**

The Superintendent is responsible for providing effective notice to students, parents, and employees of this policy and of the procedures for reporting and investigating complaints of discrimination, harassment, and bullying established in policy 1720/4015/7225, Discrimination, Harassment, and Bullying Complaint Procedure. The Superintendent or designee must ensure that students, employees, and parents or other responsible care givers are provided effective notice of this policy at the beginning of each school year. In addition, both policies must be posted on the school system website, and copies of the policies must be readily available in the principal's office, the media center at each school, and the Superintendent's office. Notice of the policies must appear in all student and employee handbooks and in any school or school system publication that sets forth the comprehensive rules, procedures, and standards of conduct for students and employees.

### **G. Coordinators**

The Superintendent shall appoint one or more individuals to coordinate the school system's efforts to comply with and carry out its responsibilities under federal non-discrimination laws. These responsibilities include investigating complaints communicated to school officials alleging noncompliance with Title VI or Title IX of the Civil Rights Act, Section 504 of the Rehabilitation Act, the Americans with

Disabilities Act (ADA), the Age Discrimination Act, and/or the Boy Scouts Act, or alleging actions which would be prohibited by those laws. The names, titles, and contact information for these individuals will be posted on the district's website and otherwise made publicly available.

## H. Records and Reporting

The Superintendent or designee shall maintain confidential records of complaints or reports of discrimination, harassment, or bullying. The records must identify the names of all individuals accused of such offenses and the resolution of such complaints or reports. The Superintendent or designee also shall maintain records of training conducted and corrective action(s) or other steps taken by the school system to provide an environment free of discrimination, harassment, and bullying.

The Superintendent or designee shall report to the State Board of Education all verified cases of discrimination, harassment, or bullying. The report must be made through the Discipline Data Collection Report or through other means required by the State Board.

## I. Evaluation

The Superintendent or designee shall evaluate the effectiveness of efforts to correct or prevent discrimination, harassment, and bullying and shall share these evaluations periodically with the Board.

Legal References: Age Discrimination in Employment Act of 1967, [29 U.S.C. 621 et seq.](#), [34 C.F.R. pt. 110](#); Americans with Disabilities Act of 1990, [42 U.S.C. 12101 et seq.](#), [28 C.F.R. pt. 35](#); Boy Scouts of America Equal Access Act, [20 U.S.C. 7905](#), [34 C.F.R. pt. 108](#); Equal Educational Opportunities Act of 1974, [20 U.S.C. 1703](#); Equal Pay Act of 1963, [29 U.S.C. 206](#); Fair Credit Reporting Act, [15 U.S.C. 1681 et seq.](#); Genetic Information Nondiscrimination Act of 2008, [42 U.S.C. 2000ff et seq.](#); Individuals with Disabilities Education Act, [20 U.S.C. 1400 et seq.](#); Military Selective Service Act, [50 U.S.C. Appx. 453](#); Rehabilitation Act of 1973, [29 U.S.C. 705\(20\)](#), [794](#), [34 C.F.R. pt. 104](#); Title VI of the Civil Rights Act of 1964, [42 U.S.C. 2000d et seq.](#), [34 C.F.R. pt. 100](#); Title VII of the Civil Rights Acts of 1964, [42 U.S.C. 2000e et seq.](#); Title IX of the Education Amendments of 1972, [20 U.S.C. 1681 et seq.](#); Uniformed Services Employment and Reemployment Rights Act of 1994, [38 U.S.C. 4301 et seq.](#); [8 U.S.C. 1101 et seq.](#); [G.S. 14-208.18](#); [15A-153](#); [115C-12.2](#), [-36](#), [-47](#), [-276\(j\)](#), [-332](#), [-407.15 through -407.18](#); [-126-7.1\(i\)](#), [-16](#); [127A-202.1 et seq.](#); [127B-10](#), [-12](#), [-14](#); [143B-421.1](#), [-931](#); *Green v. Missouri Pacific Railroad* (8th Cir. 1975); *Grimm v. Gloucester Cty. Sch. Bd.*, 972 F.3d 586 (4th Cir. 2020), *as amended* (Aug. 28, 2020); *Bostock v. Clayton Cty., Georgia*, 140 S. Ct. 1731, 1734, 207 L. Ed. 2d 218 (2020); *Leandro v. State*, 346 N.C. 336 (1997); *Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964*, U.S. Equal Employment Opportunity Commission (April 25, 2012) available at [http://www.eeoc.gov/laws/guidance/arrest\\_conviction.cfm](http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm); Racial Incidents and

Harassment Against Students at Educational Institutions; Investigative Guidance, U.S. Department of Education, Office for Civil Rights (1994), available at <https://www2.ed.gov/about/offices/list/ocr/docs/race394.html>; Notice of Non-Discrimination, U.S. Department of Education, Office for Civil Rights (2010); Dear Colleague Letter (Harassment and Bullying), U.S. Department of Education, Office for Civil Rights (2010), available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>; [16 N.C.A.C. 6C .0313](#); State Board of Education Policies [SSCH-000](#), [BENF-009](#), and [NCAC-019](#); Parent Rights & Responsibilities in Special Education, (N.C. Dept. of Public Instruction, Exceptional Children Division), available at <https://ec.ncpublicschools.gov/parent-resources/parents-rights-handbook>; [WCPSS Title IX Sexual Harassment Complaint Procedure](#)

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**Wake County Board of Education**