

Office of School Board Attorney
Walter J. Harvey, School Board Attorney

SUBJECT: PROPOSED AMENDMENT OF SCHOOL BOARD POLICIES: INITIAL
READING: BOARD POLICY 5517, ANTI-
DISCRIMINATION/HARASSMENT (STUDENTS) AND 5517.02,
DISCRIMINATION/HARASSMENT COMPLAINT PROCEDURE FOR
STUDENTS

COMMITTEE: INSTRUCTIONAL EXCELLENCE AND COMMUNITY ENGAGEMENT

LINK TO STRATEGIC
FRAMEWORK: IMPROVE SAFETY AND THE SCHOOL ENVIRONMENT

Title IX of Education Amendments of 1972 (title IX), 20 U.S.C. Section 1681, *et. seq.*, is a federal anti-discrimination law that prohibits sex discrimination, including sexual harassment and sexual assault. This item requests Board authorization to amend School Board Policies 5517, *Anti-Discrimination/Harassment (Students)* and 5517.02, *Discrimination/Harassment Complaint Procedure for Students*, to ensure compliance with Title IX and its implementing regulations and clarify the Board's student complaint procedures. The proposed revisions have been reviewed by District Staff and accepted by the United States Department of Education, Office for Civil Rights (OCR).

The amendments include:

- Identifying of a District-wide Title IX Coordinator;
- Providing that documentation of complaint investigations and corrective action by the school site and throughout the District will be properly maintained in accordance with District established procedures;
- Stating the right for the complainant and the subject of the complaint to present witnesses and other evidence during the investigative process;
- Establishing investigation timeframes;
- Establishing a timeframe for appeals;
- Requiring that after an investigation is closed, written notice of the results be provided to the parents of the complainant and the subject of the complaint;
- Providing that interim measures be implemented to prevent any identified ongoing harassment during the investigation; and
- Clarifying the procedure for investigating complaints.

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Authorization of the Board is requested for the Superintendent to initiate rulemaking proceedings in accordance with the Administrative Procedure Act to amend Board Policies 5517, *Anti-Discrimination/Harassment (Students)* and 5517.02, *Discrimination/Harassment Complaint Procedure for Students*.

Attached are the Notice of Intended Action and the policies proposed for amendment. Changes from the current Policy are indicated by underscoring words to be added and ~~striking through~~ words to be deleted. There is no additional cost to the District associated with this item.

RECOMMENDED: That The School Board of Miami-Dade County, Florida, authorize the Superintendent to initiate rulemaking proceedings in accordance with the Administrative Procedure Act to amend Board Policies 5517, *Anti-Discrimination/Harassment (Students)* and 5517.02, *Discrimination/Harassment Complaint Procedure for Students*.

NOTICE OF INTENDED ACTION

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, announced on October 16, 2013 its intention to amend School Board Policies 5517, *Anti-Discrimination/Harassment (Students)* and 5517.02, *Discrimination/Harassment Complaint Procedure for Students*, at its meeting of November 19, 2013.

PURPOSE AND EFFECT: To amend the School Board's student discrimination and harassment complaint policies and procedures.

SUMMARY: The amendments clarify the rights of the complainants and the subject of the complaint, establish timeframes for the major stages of the complaint investigation and the appeals process, address the requirement to provide written notice of the outcome of the investigation, and allow for the processing of anonymous complaints to the extent possible even when the identity of the complainant cannot be ascertained.

SPECIFIC LEGAL AUTHORITY UNDER WHICH RULEMAKING IS AUTHORIZED: 1001.41(1), (2); 1001.42(6), (26); 1001.43 (1), (6), F.S.

LAW IMPLEMENTED, INTERPRETED, OR MADE SPECIFIC: 1000.05; 1001.32(2); 1001.41(2)(5); 1001.43 (1); 1006.07 F.S.; Title II, Title VI, and Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendment Act of 1972, , Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990.

IF REQUESTED, A HEARING WILL BE HELD DURING THE SCHOOL BOARD MEETING OF November 19, 2013, which begins at 1:00 p.m., in the School Board Auditorium, 1450 N.E. Second Avenue, Miami, Florida 33132. Persons requesting such a hearing or who wish to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative as provided in Section 120.541(1), F.S., must do so in writing by November 12, 2013, to the Superintendent of Schools, Room 912, at the same address.

ANY PERSON WHO DECIDES TO APPEAL THE DECISION made by The School Board of Miami-Dade County, Florida, with respect to this action will need to ensure the preparation of a verbatim record of the proceedings, including the testimony and evidence upon which the appeal is based. (Section 286.0105, FS)

A COPY OF THE PROPOSED AMENDED POLICIES are available at cost to the public for inspection and copying in the Citizen Information Center, Room 158, 1450 N.E. Second Avenue, Miami, Florida 33132.

Date: July 23, 2013

1
2 For information on Section 504 of the Rehabilitation Act of 1973 or any other
3 student disability concerns contact:
4

5 Division of Special Education
6 504 Coordinator
7 1501 N.E. 2nd Avenue, Suite 409
8 Miami, FL 33132
9 Phone: (305) 995-1796/Fax: (305) 523-0591
10 Email: ese@dadeschools.net
11 Website: <http://ese.dadeschools.net/>
12

13 The Board will take immediate steps to discipline individuals for:

- 14 A. Retaliating against a person who has made a report or filed a
15 complaint alleging unlawful discrimination/harassment, or who has
16 participated as a witness in a discrimination/harassment
17 investigation.
- 18 B. Filing a malicious or knowingly false report or complaint of
19 discrimination/harassment.
- 20 C. Disregarding, failing to investigate adequately, or delaying
21 investigation of allegations of prohibited discrimination/harassment,
22 when responsibility for reporting and/or investigating unlawful
23 harassment charges comprises part of one's supervisory duties.

24 The District compliance officer will supervise compliance with Federal and State
25 regulations and address complaints in accordance with law and Policy 5517.02. The
26 Board will provide proper notice of nondiscrimination for Title II, Title VI, and Title
27 VII of the Civil Rights Act of 1964, Title IX of the Education Amendment Act of 1972,
28 Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities
29 Act of 1990.

1 Definitions of the protected categories can be found in the CRC webpage at
2 http://crc/dadschools.net/pro_categories.asp. Additional explanations of
3 harassment by and against students are contained in the Code of Student Conduct
4 (Policy 5500) and the Anti-Bullying/Harassment policy (Policy 5517.01).

5 **Reports and Complaints**

6 Students are encouraged to promptly report incidents of discriminatory or harassing
7 conduct to their pPrincipal or the Office of Civil Rights Compliance (CRC) so that the
8 conduct can be addressed before it becomes severe, pervasive, or persistent.

9 Students who believe they have been harassed or discriminated against are entitled
10 to use the complaint process in Policy 5517.02. Students and parents should make
11 every effort are encouraged to present a complaints of discrimination or harassment
12 by other students to the Principal and complaints against employees to the CRC
13 Office as soon as possible after the alleged conduct occurs while the facts are known
14 and potential witnesses are available. During the investigation, the complainant and
15 the subject of the complaint shall be provided an opportunity to present witnesses
16 and evidence relevant to the complaint. The Principal shall apply the Code of
17 Student Conduct to findings of discrimination/harassment by students.

18
19 The investigative process through CRC involves the investigation of complaints of
20 harassment and discrimination based on the protected categories. The CRC office
21 investigates each case within a reasonable time.

22
23 Documentation of investigations of complaint and of any corrective action taken by
24 the school site and throughout the District will be maintained by the department
25 that conducted the investigation. Records of ongoing investigations are kept
26 confidential until a final determination is made on each case. During the
27 investigative process, appropriate preventive measures will be taken to protect the
28 victims and the school community. Subsequent to the completion of a case, the
29 complainant and the subject of the complaint will be provided with written
30 notification of the outcome of the investigation. The District will take remedial
31 action, as necessary, to address and resolve any substantiated complaint of
32 discrimination or harassment and to prevent its recurrence.

33
34 Initiating a complaint will not adversely affect the complainant's participation in
35 educational or extra-curricular programs unless the complainant makes the
36 complaint maliciously or with knowledge that it is false. No anonymous complaints
37 will be accepted or processed. Investigation of an allegation shall not be proceed
38 solely on the basis of an anonymous complaint without first attempting to ascertain
39 the identity of the complainant. If after such efforts, the complainant remains
40 anonymous, the investigation will proceed to the extent possible.

1 **Privacy/Confidentiality**

2 The District respects the privacy of students, the individual(s) against whom the
3 complaint is filed, and the witnesses consistent with the Board's legal obligations to
4 investigate, take appropriate action, and comply with any discovery or disclosure
5 obligations. All records generated under this policy and Policy 5517.02 shall be
6 maintained as confidential to the extent permitted by law.

7 The complaint process in Policy 5517.02 is not intended to interfere with student
8 rights to pursue complaints with the United States Department of Education, Office
9 for Civil Rights, or the Florida Department of Education. The CRC Office processes
10 such complaints according to the procedures and standards set forth by Federal and
11 State agencies.

12 **Education and Training**

13 The Board promotes preventative educational measures to create greater awareness
14 of unlawful harassment and discrimination. The Superintendent shall provide
15 appropriate training to members of the School District community related to the
16 implementation of this policy and Policy 5517.02.

17 **Sexual Conduct**

18 Any teacher, administrator, coach, or other school authority who engages in sexual
19 conduct with a student may also be guilty of a crime.

20 F.S. 110.1221, 1000.05, 1006.07

21 42 U.S.C. 2000d et seq.

22 42 U.S.C. 2000e et seq.

23 29 U.S.C. 621 et seq.

24 29 U.S.C. 794

25 42 U.S.C. 12101 et seq.

26 20 U.S.C. 1681 et seq.

27 42 U.S.C. 1983

28 National School Boards Association Inquiry and Analysis – May 2008

1 This procedure is not intended to interfere with the rights of students/parents to
2 pursue a complaint of discrimination/harassment with the United States
3 Department of Education, Office for Civil Rights ("OCR"), or the Florida Department
4 of Education.

- 5 A. Complaints must be in writing and include the following information
6 to the extent it is available: the identity of the individual believed to
7 have engaged in, or be engaging in, prohibited conduct; a detailed
8 description of the facts upon which the complaint is based; a list of
9 potential witnesses; and identification of the resolution which the
10 complainant seeks.

11 ~~In accordance with Federal guidelines, the following are not~~
12 ~~complaints:~~

- 13 1. ~~oral allegations that are not reduced to writing;~~
14 2. ~~anonymous correspondence;~~
15 3. ~~courtesy copies of correspondence or a complaint filed with~~
16 ~~others; or~~
17 4. ~~inquiries that seek advice or information but do not seek~~
18 ~~action or intervention from the District.~~

19 ~~Anonymous complaints shall not be accepted or processed, without~~
20 ~~first attempting to ascertain the identity of the complainant and~~
21 ~~except as outlined in Policy 5517.01 and Policy 5136.02. If after~~
22 ~~such efforts, the complainant remains anonymous, the investigation~~
23 ~~will proceed.~~

24
25 The complaint must be signed attesting that it is true to the best of
26 the complainant's knowledge, information, and belief. The Principal
27 or the CRC Office will assist the complainant in reducing verbal
28 complaints to writing. Any complainant who knowingly submits
29 false information will be subject to discipline according to the Code
30 of Student Conduct or applicable laws. During the investigation of a
31 complaint, the complainant and the subject of the complaint shall
32 be provided an opportunity to present witnesses and other evidence
33 relevant to the complaint.

34 The initiation of a discrimination or harassment complaint by
35 student/parent will not be used as a basis for actions that adversely
36 affect the student's standing in his/her educational or
37 extra-curricular activities unless the student makes the complaint
38 maliciously or with knowledge that it is false. Additionally,
39 participation in or assistance with the investigation of a complaint

1 shall not be used as the basis of any adverse action against the
2 student or parent.

3 B. Students/parents should make every effort to submit a complaint as
4 soon as possible after the prohibited conduct while the facts are
5 known and potential witnesses are available, and to ensure a timely
6 response to the conduct in question. Under Federal guidelines,
7 complaints must be filed within 180 calendar days of the date of the
8 last act of alleged discrimination.

9 **Processing Complaints**

10 A. School-Site

11 All complaints involving student to student harassment, including
12 sexual harassment, will be first investigated at the school site. If
13 such complaints are made directly to the District Office, the Region
14 Office or the CRC Office, they will be referred to the school site for
15 the initial investigation. Complaints involving harassment,
16 including sexual harassment, of a student by an employee or other
17 representatives of the school system will be investigated by the CRC
18 Office.

19
20 All-Principals are required to:

- 21 1. receive and document the complaint and notify the CRC
22 Office within 24 hours of receiving the complaint; for verbal
23 complaints, assist the complainant in reducing the complaint
24 to writing and encourage the complainant to attest that it is
25 true to the best of the complainant's knowledge, information,
26 and belief;
- 27 2. provide a copy of this Policy 5517.02 to the complainant;
- 28 3. meet with the complainant (student/parent) to ascertain the
29 facts pertinent to the allegations;
- 30 4. ~~ascertain the facts pertinent to the allegations~~ meet with the
31 student(s) accused of the alleged harassment to obtain a
32 response to the complaint both orally and in writing;
- 33 5. ~~document the steps taken to address the complaint, including~~
34 ~~the outcome/resolution~~ meet with all available witnesses
35 identified by the person(s) making the report of harassment
36 and the subject of the complaint, individually and
37 confidentially. Witnesses will be asked to make a statement

1 both orally and in writing regarding the alleged facts that
2 form the basis of the complaint;

- 3 6. ~~forward the complaint and documentation to the CRC Office~~
4 document all reports and interventions on the appropriate
5 student case management forms within 10 workdays.

6 Upon completion of the investigation, any student(s) found to
7 have violated this policy will be subject to any of the
8 disciplinary actions described in the Code of Student Conduct
9 and coded on the appropriate student case management
10 form;

11 *The principal shall contact Miami-Dade County Schools Police
12 in accordance with the Code of Student Conduct.

- 13 7. provide complainant and subject of the complaint with a
14 written notification of the outcome of the investigation in
15 accordance with student confidentiality requirements.
16 Absent unusual circumstances, the written report of the
17 investigation will be provided within 10 workdays of reaching
18 a final determination; and

- 19 8. notify the CRC Office concurrently in writing of the outcome
20 of the complaint.

21 If the complaint is made directly to a school staff member other than
22 the Principal, they shall immediately refer the complaint to the
23 Principal.

24 School-site administrators shall apply the Code of Student Conduct
25 to all allegations of harassment by students and to report the
26 allegations to the CRC Office. Additional procedures concerning
27 complaints of bullying are contained in Policy 5517.01.
28 Students/Parents are encouraged to direct complaints alleging
29 discrimination/harassment by employees to the CRC Office. Any
30 such complaints filed with the school must be immediately
31 forwarded by the Principal to the CRC Office.

32 ~~B. Region Office~~

33 ~~Complaints made directly to the Region Office shall be processed~~
34 ~~following steps 1-6 above.~~

1 CB. Appeals to the Region Office

2 If the complaint is not resolved to the complainant's satisfaction
3 after discussion with the Principal, the student/parent may appeal
4 to the Region Office by submitting a letter to the corresponding
5 Region Office within 15 workdays of the Principal's final
6 determination.

7 Within 15 workdays, ~~T~~the Region Office shall address appeals of
8 complaints made to the school site by:

- 9 1. reviewing documentation submitted by the Principal;
- 10 2. providing a copy of this Policy 5517.02 to the complainant;
- 11 3. discussing the allegations with the complainant, the subject
12 of the complaint, and witnesses (in person or otherwise), if
13 necessary;
- 14 4. appending existing documentation to outline the steps taken
15 to address the complaint, including the outcome/resolution;
16 and
- 17 5. providing complainant and the subject of the complaint with
18 a written notification of the outcome of the investigation in
19 accordance with student confidentiality requirements. Absent
20 unusual circumstances, the written report of the investigation
21 will be provided within 10 workdays of reaching a final
22 determination by the Region Office; and
- 23 ~~5.~~ ~~forwarding the complaint and documentation to~~ notifying the
24 CRC Office concurrently in writing of the outcome of the
25 complaint.
26

27 CD. Complaints to the CRC Office

28 The Compliance Officer is responsible for accepting complaints and
29 routing them for investigation and/or response within 3 workdays.
30 Students/Parents should be aware that submitting complaints to
31 other District offices (e.g., Superintendent) may require additional
32 time to process.

33 ~~For i~~ Investigations conducted by the CRC Office, absent unusual
34 circumstances, may take 30 workdays. at the District level, t The
35 complainant and the subject of the complaint will be provided a

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1 written report of the findings summarizing the evidence gathered
2 during the investigation and the final determination of the case. The
3 written report of the investigation will be provided within 10
4 workdays of reaching a final determination.

5 If the student/parent does not agree with the final determination
6 made by the CRC Office, s/he may appeal the determination to the
7 Superintendent by submitting a letter of appeal within fifteen (15)
8 workdays of the date of the final determination.

9
10 The Superintendent or designee shall address the requests for
11 appeal within fifteen (15) workdays of receipt of the written request
12 by:

- 13 1. reviewing documentation submitted by the CRC office;
- 14 2. reviewing information provided by complainant;
- 15 3. obtaining additional information if determined necessary to
16 do so;
- 17 4. providing complainant written notification of the outcome of
18 the appeal. Absent unusual circumstances, the written
19 notification will be provided within fifteen (15) workdays of
20 the review; and
- 21 5. notifying the CRC Office concurrently in writing of the
22 outcome of the review.

23 E.D. Other School District Offices/Sites:

24 Complaints filed with any other School District site shall be referred
25 directly to the CRC Office for routing and processing.
26 For complaints filed directly with the United States Department of
27 Education and/or the Florida Department of Education, the
28 Compliance Officer coordinates the District's investigation and
29 response to the Federal or State agency. However, the Federal or
30 State agency provides a written response directly to the
31 complainant. The School Board will provide proper notice of
32 nondiscrimination for Title II, Title VI, and Title VII of the Civil
33 Rights Act of 1964, Title IX of the Education Amendment Act of
34 1972, Section 504 of the Rehabilitation Act of 1973, Americans with
35 Disabilities Act of 1990.

36
37 E. Corrective Strategies:

38 Appropriate remedial/corrective action for students who commit
39 acts of harassment range from behavioral interventions up to and

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1 including suspension or expulsion as outlined in the Code of
2 Student Conduct. Removal from the class where the infraction
3 occurred may be implemented as a preventive measure, pending the
4 outcome of the investigation.

5 Consequences and appropriate remedial action for a school
6 employee found to have committed an act of harassment shall
7 include discipline in accordance with District policies,
8 administrative procedures, and collective bargaining agreements.
9 Alternate assignments to another location are considered when the
10 nature of the allegation is so egregious as to warrant the removal of
11 an employee from the site to an alternate assignment until the
12 resolution of the case.

13 Consequences and appropriate remedial action for a visitor or
14 volunteer found to have committed an act of harassment shall be
15 determined by the school administrator after consideration of the
16 nature and circumstances of the act, including reports to
17 appropriate law enforcement officials. Temporary removal of the
18 alleged subject of the complaint from the premises may be
19 implemented as a preventive measure.
20