

Office of Superintendent of Schools
Board Meeting of July 14, 1999

June 30, 1999

Management and Accountability
Carol Cortes, Deputy Superintendent

SUBJECT: PROPOSED AMENDMENT OF BOARD RULE: INITIAL READING 6Gx13-4A-1.32, DISCRIMINATION/HARASSMENT: COMPLAINT PROCEDURES FOR EMPLOYEES

This item is submitted for consideration by the School Board to amend this rule, which contains the District's procedures for assurance of compliance with Federal, State Regulations, and School Board Policies of nondiscrimination/harassment in employment. Amendments include changes of a technical nature as well as revisions in the language of the item to reflect current applicable standards as delineated in federal/state enforcement regulations and court rulings in the area of discrimination/harassment.

Attached are the Notice of Intended Action and the rule proposed for amendment. Changes from the current rule are indicated by underscoring words to be added and ~~striking through~~ words to be deleted.

Authorization of the Board is requested for the Superintendent to initiate rulemaking proceedings in accordance with the Administrative Procedure Act for the amendment of School Board Rule 6Gx13- 4A-1.32, Discrimination/Harassment: Complaint Procedures for Employees.

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 School Board Rule 6Gx13- 4A-1.32, Discrimination/Harassment: Complaint Procedures for Employees.

CC/reu

K-21

NOTICE OF INTENDED ACTION

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, announced on July 14, 1999, its intention to amend Board Rule 6Gx13- 4A-1.32, Discrimination/Harassment: Complaint Procedures for Employees, at its meeting of August 25, 1999.

PURPOSE AND EFFECT: To revise the Board Rule to reflect current applicable standards as delineated in federal/state enforcement regulations and court rulings in the area of discrimination/harassment.

SUMMARY: Board Rule 6Gx13- 4A-1.32, Discrimination/Harassment: Complaint Procedures for Employees, establishes procedures to assure nondiscrimination in employment, and the elimination of harassment, including sexual harassment.

SPECIFIC LEGAL AUTHORITY UNDER WHICH RULEMAKING IS AUTHORIZED: 230.22(2); 230.23(17) F.S.

LAW IMPLEMENTED, INTERPRETED, OR MADE SPECIFIC: 230.23005(6),(11); 6A-19.010 FAC; Title VI of the Civil Rights Act of 1964; Title VII of the Civil Rights Act of 1964, as amended; Title IX of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; Age Discrimination in Employment Act of 1967, as amended; Equal Pay Act of 1963; the Florida Educational Equity Act, F.S. 228.2001; the Americans with Disabilities Act of 1990; the Pregnancy Discrimination Act of 1978; the Florida Civil Rights Act of 1992; and the Family and Medical Leave Act of 1993.

IF REQUESTED, A HEARING WILL BE HELD DURING THE BOARD MEETING OF August 25, 1999, 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 by Section 120.541(1), F.S., must do so in writing by August 9, 1999, 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 to be based. (Section 286.0105, Florida Statutes)

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

Originator: Mr. Rafael E. Urrutia
Supervisor: Ms. Carol Cortes
Date: June 30, 1999

Permanent Personnel**DISCRIMINATION/HARASSMENT: COMPLAINT PROCEDURES FOR EMPLOYEES**PROCEDURES FOR ASSURANCE OF COMPLIANCE
WITH FEDERAL/STATE REGULATIONS/SCHOOL BOARD POLICIES
OF NONDISCRIMINATION/HARASSMENT IN EMPLOYMENT OPPORTUNITIES

I. Purpose

The School Board of Miami-Dade County, Florida, has established procedures to assure nondiscrimination in employment, and the elimination of harassment, including sexual harassment. It is the policy of the School Board that all employees will be treated with respect. Hostile treatment or violence against an employee because of his/her gender, race, color, religion, ethnic or national origin, political beliefs, marital status, age, sexual orientation, social and family background, linguistic preference, pregnancy, or disability, will not be tolerated.

It is recognized that discrimination or harassment complaints by employees may arise from actual or perceived situations and circumstances related to the prohibition of discrimination. It is the intent of these procedures to assure that discrimination or harassment complaints are resolved in an expeditious, orderly, and equitable manner that serves to fulfill the letter and intent of the regulations. All administrators and principals are required to make a conscientious effort to fully consider and understand the nature and basis of the discrimination or harassment complaint of an employee and resolve it without delay or refer it to the appropriate source for resolution without delay. The initiation of a discrimination or harassment complaint by an employee will not be used as a basis for actions that adversely affect the employee's standing in his/her work location. Additionally, participation in or assistance in the investigation of a complaint is not to be used as the basis for any adverse employment action on an employee.

Discrimination or harassment complaints made under the provisions of this rule will be handled using federal enforcement agencies' standards in the investigation of discrimination/harassment charges in an informal manner and without extraneous administrative barriers, ~~except that a.~~ A record or log will be maintained of each discrimination or harassment complaint investigation to include the final disposition of each.

H. ~~Definitions~~

A. ~~**Complaint.** A written allegation, officially made to a principal/administrator by a School Board employee that there has been a discriminatory action or inaction on the basis of gender, race, color, age, religion, ethnic or national origin, political beliefs, marital status,~~

~~sexual orientation, social and family background, linguistic preference, or disability against the employee by a specified individual or individuals, situations, circumstances, conditions, or other factors within the school system's scope of responsibility.~~

- ~~B. **Employee.** The person filing a complaint.~~
- ~~C. **Respondent.** Individual(s) charged with or having responsibility for the alleged discriminatory action.~~
- ~~D. **Principal/Administrator.** The individual having immediate administrative authority over the teacher(s) and other employee(s) of the school, and the administrator having immediate administrative authority over the employee(s) in an office or School Board facility other than a school.~~
- ~~E. **Assistant/Associate/Region Superintendent.** The Assistant/Associate/Region Superintendent having immediate administrative authority over the principal/administrator.~~
- ~~F. **Executive Director.** The Executive Director, Division of Equal Educational Opportunity and Advocacy (DEEO&A) is responsible for monitoring the district's compliance with federal/state regulations related to civil rights, discrimination, and harassment. The Executive Director is authorized to make the final determination on complaints involving employees.~~
- ~~G. **Letter of Inquiry.** Assistant/Associate/Region/Deputy Superintendents or other appropriate district or region staff may initiate a letter of inquiry to the Executive Director for the purpose of seeking a clarification of a Dade County Public Schools Board Rule related to the compliance or interpretation and application of federal/state regulations regarding civil rights, discrimination or harassment.~~

~~A response to a letter of inquiry should be made within ten (10) working days following receipt.~~

II. Procedure for Filing Complaints

A School Board employee who has a reasonable and good-faith belief that he/she has been the subject of discrimination or harassment because of his/her gender, race, color, religion, ethnic or national origin, political beliefs, marital status, age, sexual orientation, social and family background, linguistic preference, pregnancy, or disability, shall communicate in writing the allegation(s) to his/her principal or supervising administrator. The principal or administrator will be responsible for scheduling a meeting to discuss the complaint. In the event the complaint involves the employee's principal or supervising administrator, the employee may go directly to the

next level of administration, such as an Assistant/Associate/Region/Deputy Superintendent. If the employee does not feel comfortable discussing his/her complaint at his/her work location, the employee may file the complaint with the next administrative level.

If, in the opinion of the employee, the complaint is not resolved after discussion with the principal or supervising administrator, or cannot be resolved at that level, the employee may appeal at the next level of administration, i.e., Assistant/Associate/Region/Deputy Superintendent.

If the complaint is not satisfactorily resolved at the second level of administration, as determined by the employee, he/she may file a complaint with the School Board's Equal Educational and Employment Opportunity (EEEE) office. The employee will be requested to provide, signed, specific information to the School Board's EEEEO office regarding the discriminatory or harassing action(s) or inaction(s), the basis (e.g., age, race, disability, etc.) for the action(s) or inaction(s), the alleged offender(s), witnesses, etc.

Due to the sensitive nature of sexual harassment complaints, employees may file such a complaint directly with the School Board's EEEEO office.

~~III. Procedure for Complaints~~

~~A. **Step #1.** The employee shall communicate in writing to the principal or appropriate administrator of a work location that there has been a discriminatory or harassing action or inaction. The principal or administrator will be responsible for scheduling a discussion on the complaint with the employee within five (5) working days following receipt of the communication.~~

~~In the event the complaint involves the employee's principal or appropriate administrator, he/she may appeal directly to the Assistant/Associate/Region/Deputy Superintendent, bypassing Step #1 above and move directly to Step #2 as indicated below.~~

~~B. **Step #2.** If after discussion of the complaint with the principal or appropriate administrator, the complaint, in the opinion of the employee, is not resolved, or cannot be resolved at that level, the complaint shall be forwarded by the principal or appropriate administrator within five (5) working days, to the Region/Assistant/Associate/or Deputy Superintendent for resolution.~~

~~C. **Step #3:**~~

~~1. If the complaint is not satisfactorily resolved in Step #2, as determined by the employee, he/she may file a complaint with the Executive Director, Division of Equal Educational Opportunity and Advocacy.~~

2. ~~**Conciliation** - If a determination of reasonable cause is made, the Executive Director will seek to conciliate the complaint with the respondent and the employee.~~

~~Resolution of the complaint through this procedure by agreement of all participants, i.e., the employee, the respondent, and the Executive Director, will close the issue.~~

3. ~~**Corrective Action** - If a determination of reasonable cause is made and the issue cannot be resolved by conciliation, or the circumstances preclude conciliation by the immediate supervisor, the Executive Director will present the issue to the Assistant/Associate/Region/Deputy Superintendent, for corrective action. The Assistant/Associate/Region/Deputy Superintendent shall submit a response to the Executive Director of the actual or proposed corrective action within ten (10) working days from date of receipt.~~

~~If the proposed corrective action constitutes an inadequate or inappropriate response to the complaint, the Executive Director will make the final determination of corrective action.~~

IV:III. Appeals

If the employee does not agree with the statement of final determination made by the Executive Director, DEEO&A, School Board's EEO office, he/she may appeal the determination to the Superintendent's designee to hear such appeals.

In addition, the employee has the right to seek recourse through the Equal Employment Opportunity Commission (EEOC):

V:IV. Special Provisions

- A. Failure on the part of the employee to initiate and/or follow-up on a complaint in a timely manner may result in the complaint being considered abandoned. A complaint must be filed within 300 days of the alleged discriminatory act(s).
- B. Failure by a principal or appropriate administrator to respond to a complaint ~~within the prescribed time limits~~ will automatically allow the complainant to move the complaint to the next step: level of administration.
- C. In general, School Board employees are obligated to perform their duties, as directed, while complaints are pending resolution.

- D. ~~Copies of all communications pertaining to a complaint shall be provided to the employee, unless classified as privileged or confidential according to statute. Records of an ongoing investigation shall remain confidential and not subject to disclosure pursuant to Chapter 119, Florida Statutes, until a final determination is made on the case.~~
- E. ~~If the employee does not feel comfortable discussing his/her complaint at his/her work location, the employee may file the complaint with the next administrative level.~~
- F. This Board rule, ~~**Discrimination/Harassment: Complaint Procedures for Employees**~~, shall not to be used in lieu of grievance procedures available through bargaining agreements with the various unions.
- G. ~~E.~~ Suspensions, dismissals, and reductions in pay grade are not subject to federal/state regulations in the absence of discrimination.

This rule is intended to effect compliance with federal/state regulations, i.e., Title VI of the Civil Rights Act of 1964; Title VII of the Civil Rights Act of 1964, as amended; Title IX of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; Age Discrimination in Employment Act of 1967, as amended; Equal Pay Act of 1963; the Florida Educational Equity Act, F.S. 228.2001; ~~and the Americans Wwith Disabilities Act of 1990-; the Pregnancy Discrimination Act of 1978; the Florida Civil Rights Act of 1992; and the Family and Medical Leave Act of 1993.~~

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History: THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA
New: 6-4-86
Amended: 9-17-86; 3-4-92; 6-8-94