

BOARD AGENDA ITEM
April 18, 2017

SUBJECT:

Changes to Policy JI and Administrative Rule JI-R Student Rights and Responsibilities (Complaints and Grievances)

BACKGROUND:

This policy and administrative rule set expectations for students' right to learn in an environment free of discrimination and sexual harassment. They also define sexual harassment consistent with policy GBAA and establish procedures for the redress of grievances.

ADMINISTRATIVE CONSIDERATION:

The revised policy and administrative rule update definitions and bring procedures in line with the district's current administrative structure. The revision provides specific guidance in filing a complaint for individuals who believe they have been harassed.

RECOMMENDATION:

Adopt the proposed policy on final reading

ATTACHMENT:

Policy JI Student Rights and Responsibilities (Complaints and Grievances)
Administrative Rule JI-R Student Rights and Responsibilities (Complaints and Grievances)

PREPARED BY:

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STUDENT RIGHTS AND RESPONSIBILITIES (COMPLAINTS AND GRIEVANCES)

Code **JI** Issued **4/17**

Purpose: To establish the basic structure for student rights and responsibilities.

The board has the responsibility to afford students the legal rights guaranteed to them under federal and state constitutions, statutes and implementing regulations. The board also believes that students must accept the responsibilities connected with these rights and respect the rights enjoyed by others.

The board is committed to equal opportunity for all individuals in education. District programs and activities will be free from discrimination based on race, religious creed, color, national origin, ancestry, disability, marital status, sex or any other unlawful consideration. The board promotes programs dedicated to the elimination of discriminatory practices in district activities.

District programs and facilities, viewed in their entirety, will be readily accessible to individuals with disabilities. The superintendent or his/her designee will ensure that interested persons, including those with impaired vision and hearing, can obtain information about the programs, facilities and activities available to them.

Other essential rights and responsibilities include the following.

- The right to attend public schools; the responsibility to attend school as required by law and to observe school rules and regulations essential for permitting others to learn at school, as set forth in the code of student conduct, student handbooks and other applicable announced rules.
- The right to due process of the law with respect to suspension, expulsion, unreasonable searches and seizures or administrative decisions that the student believes has injured his/her rights, as set forth in district policies and procedures.
- The right to inquiry and expression; the responsibility to observe reasonable rules regarding these rights.
- The right to privacy; the responsibility to be familiar with limitations to this right where needs for security, student safety and discipline enforcement so require.

Students of the district will be made aware of the legal authority of the board to make or delegate authority to its staff to make rules and regulations regarding the orderly operation of the schools.

Sexual harassment

Statement of policy and rationale

Sexual harassment is a form of sex discrimination prohibited by federal and state laws. Consistent with these laws, it is the policy of the Aiken County Public Schools that sexual harassment of students is prohibited.

C-4 Attachment

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Definition

Sexual harassment of students in the Aiken County Public Schools is defined as unwelcome sexual advances, requests for sexual favors, verbal or otherwise expressive behaviors, or physical conduct commonly understood to be of a sexual nature, by a person of either sex against a person of the opposite or same sex, when any the following occurs.

- Submission to such conduct is made either explicitly or implicitly a term or condition of a student's education
- Submission to or rejection of such conduct is used as a basis for educational actions, decisions, or assessments that favor or adversely affect a student's welfare as a student
- Such conduct unreasonably and substantially interferes with an individual's welfare and professional performance and creates an intimidating, hostile, offensive, and demeaning work environment.
- Threats or insinuations that the student's educational opportunities, grades, assignments, honors, services, or other educational conditions or programming may be adversely affected by not submitting to sexual advances.

Responsibility

Each administrator, supervisor, staff member and student will strive to provide an educational environment free from sexual harassment.

Policy of non-reprisal

No student, employee or member of the public may be subject to restraint, interference, coercion, or reprisal for seeking information about sexual harassment, filing a sexual harassment complaint or serving as a witness.

Filing a complaint

Any student who feels that he/she has been directly the victim of sexual harassment by a district employee or student may file a complaint. A complainant should begin the complaint procedure by initiating the informal consultation, after which a formal complaint for investigation may be filed according to the Administrative Procedures for Sexual Harassment JI-R. The investigation will be conducted in a confidential manner and concluded within a reasonable period of time. Nothing in district policy requires the complainant to present the complaint to the person who is the subject of the complaint. A formal complaint must be filed within one calendar year of the alleged occurrence. However, no one should be precluded from filing an informal complaint at any time; or from pursuing a claim of sexual harassment with the Office of Civil Rights, U.S. Department of Education <http://www2.ed.gov/about/offices/list/ocr/index.html?src=ocr>.

Disciplinary action

Violation of this policy, including willful false accusation of sexual harassment, will be subject to disciplinary action that may include, but is not limited to, oral or written warnings, demotion, transfer, dismissal, suspension or expulsion.

Adopted 6/10/75; Revised 8/17/93, 3/9/99, 4/23/02

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Legal references:

A. United States Code:

1. Title VI of the Civil Rights Act of 1964 – Prohibits discrimination on the basis of race, color, national origin, religion or sex.
2. Section 504(b) of Rehabilitation Act of 1973 – Prohibits discrimination against “otherwise qualified” handicapped persons by federal grantees.
3. Title IX of the Education Amendments of 1972 – Prohibits sex discrimination by federal education grantees. See regulations set forth in 34 CFR Section 86.6 (a,b).
4. Title IV of the Civil Rights Act of 1964 – Public school desegregation.
5. Americans with Disabilities Act – Prohibits discrimination in employment and access to programs and facilities on the basis of disability.

STUDENT RIGHTS AND RESPONSIBILITIES (COMPLAINTS AND GRIEVANCES)

Code **JI-R** Issued **4/17**

Resolution of student discrimination complaints

Discrimination

Students who believe that they have been discriminated against on the basis of race, religious creed, color, national origin, ancestry or sex (including Title IX complaints) have the right to appeal to their principals. If the student is not satisfied with the decision of the principal, he/she may appeal to the appropriate executive director. Thereafter, an appeal may come to the chief officer of administration (serving as the district's civil rights coordinator). Appeals from this level will be to the district superintendent and then to the board of education.

Section 504 complaints

Students who believe that they have been discriminated against on the basis of a disability or handicapping condition have the right to appeal to their principals. If the student is not satisfied with the decision of the principal, he/she may appeal to the appropriate executive director. Thereafter, an appeal may come to the district's Section 504 coordinator. Appeals from this level will be to the district superintendent and then to the board of education.

Procedures

Generally, complaints of alleged discrimination as set forth in board policy will be limited to alleged occurrences or omissions happening within 60 days prior to the initiation of such complaint. However, upon request by the complainant, the administration can waive such limitation if the complainant can show that the information he/she seeks to include in the record is reasonably related to the subject of the complaint.

Any complaint intended to be filed pursuant to this procedure (formal complaint) will be in writing to the principal.

The principal will, within five working days, exclusive of the day of receiving the complaint, conduct an appropriate investigation and/or hold a conference, with the complainant and other appropriate involved parties.

Within five working days after the investigation (or conference), the principal will notify the complainant in writing of his/her findings and action taken (where necessary).

A complainant may appeal in writing within 10 days of the date of the principal's written decision to the next level (by personal delivery, fax delivery, email delivery or postmarked mail). Failing to appeal within such time constitutes waiver of further appeal rights.

Procedures for appeals made on a timely basis will be subject to the same time guidelines as proceedings at the level of the school principal. For appeals beyond the level of the civil rights coordinator or Section 504 coordinator, the complainant has no automatic right to a conference and such appeal will be based on written materials only (unless the superintendent and/or board grants a discretionary conference).

The principal may initially assign complaints involving Section 504 concerns to the designated building-level Section 504 coordinator, but this will not alter the time constraints for handling the complaint.

Sexual harassment

The Aiken County Board of Education recognizes that in order to maintain an environment in which the dignity and worth of all students of the district are respected, sexual harassment must be prohibited. The board has adopted policy to provide direction to this process. The following procedures have been developed and approved by the board of education to implement the policy.

Definition

Sexual harassment is defined in policy JI.

Examples of prohibited behavior

Prohibited acts of sexual harassment may take a variety of forms ranging from subtle pressure for sexual activity to physical assault. Examples of the kinds of conduct included in the definition of sexual harassment include, but are not limited to, the following.

- Threats or intimidation of sexual relations or sexual contact which is not freely or mutually agreeable to both parties.
- Continual or repeated verbal abuses including graphic commentaries, innuendoes, comments, jokes or propositions of a sexual nature; unwelcome touching or interference with movement; the visual display of derogatory cartoons, drawings or posters; or suggestive or insulting sounds, leering, whistling or obscene gestures.
- Threats or insinuations that the student's educational opportunities, grades, assignments, honors, services, or other educational conditions or programming may be adversely affected by not submitting to sexual advances.

Sexual harassment complaints

Students who believe that they are the victims of sexual harassment will follow the procedures set forth in this administrative rule.

Complaint procedures

An aggrieved student is encouraged to inform the person engaging in sexually harassing conduct that such conduct is offensive and must stop. If the aggrieved student is not comfortable with direct communication, or if direct communication is unsuccessful, the aggrieved student should discuss the matter with a parent, teacher, counselor, or any other adult with whom he/she feels comfortable, and/or should initiate the complaint procedures described below.

Informal consultation

The purpose of informal consultation is to clarify what constitutes sexual harassment, to provide guidance and information on administrative procedures, and to resolve inadvertent cases of harassment. A request for informal consultation should be directed to either the student's principal, the assistant principal, guidance counselor, or appropriate executive director. The individual who receives the request for informal consultation must inform the complainant about the options available under the policy. Anyone else receiving a complaint should encourage the complainant(s) to request an informal consultation or should notify one of the designated individuals directly.

Contact with any of the designated individuals may conclude in one or more of the following options.

- Complainant decides that no sexual harassment has occurred. In this case, no further action will be taken, and the consultation will remain entirely confidential.
- Complainant decides that sexual harassment has occurred and one of the following happens.
 - Where the accused is a student, agrees to have the accused's principal investigate the matter and take disciplinary action, as warranted, pursuant to the student discipline code.
 - Where the accused is an employee, requests that an informal resolution be pursued.

In either case, the complainant must be advised that, depending upon the circumstances of the complaint, it may be impossible to protect the complainant's identity from the accused.

- Complainant decides that sexual harassment has occurred and chooses to file a formal complaint for investigation. Documentation that the informal consultation has taken place should be kept and should include a written statement from the complainant and/or notes taken by the consultant. If such notes are kept, the complainant should be so advised and the notes should be reviewed by the complainant for accuracy. If the name of an accused is revealed during the informal consultation, the accused should be advised of the allegations.

Formal complaint

Filing a complaint

After completing the informal consultation step, a complainant and/or the complainant's parent who wishes to file a formal complaint for investigation and possible action should do so with the individual who conducted the informal consultation. The consultant will complete a sexual harassment complaint form and refer the matter to the chief officer of administration who will conduct an investigation. Once a formal complaint has been filed, it must proceed through all the steps in this administrative rule.

Investigation

The purpose of the investigation is to establish whether there is a reasonable basis for believing that the alleged violation of this policy has occurred. In conducting the investigation, the chief officer of administration will interview the complainant and the accused, and will normally interview other persons believed to have pertinent factual knowledge. While it may be necessary at times to reveal the name of the accused or the complainants, confidentiality will be maintained by all persons involved. Failure to maintain the confidentiality of the investigation could result in disciplinary action. The investigation will afford the accused a full opportunity to respond to the allegations. Within a reasonable period of time (normally 40 calendar days from the time the complaint was filed), the investigator will provide the complainant's parent and the accused, or the accused's parent if the accused is a student, with written notification that the investigation has been completed, that a written report has been sent to the accused's principal or immediate supervisor, and that they will be notified as to what further action, if any, will be taken.

Process of formal action

After receiving a written report of the findings of the investigation from the chief officer of administration, the principal will initiate a consultation with the chief officer of administration. Based upon the report and the consultation, the principal will decide upon one of three possible courses of action.

- judgment that the allegations are not warranted
- informal resolution as agreed upon by the parties
- corrective and disciplinary action as described below

Protection of complainant, witnesses and others

At the time that the formal complaint is filed, the complainant and/or the complainant's parent will be informed fully by the individual who conducted the informal consultation and/or the chief officer of administration, of steps which the investigation will follow, including the projected timetable for completion of the process.

All reasonable action will be taken to assure that the complainant and those testifying on behalf of the complainant, or supporting the complainant in other ways, will suffer no retaliation as a result of their activities in regard to the process. Steps to avoid retaliation may include the following.

- transfers of one or more of the parties to another class or setting
- arrangements that educational evaluations or decisions concerning the complainant and the student witnesses, or employment evaluations of employee witnesses, be made by an appropriate individual other than the accused

In cases where the accused is an employee and if in the judgment of the superintendent it is in the best interest of the district, the accused may be relieved of his/her duties during the investigation.

Protection of the accused

At the time the investigation commences, the accused, and the accused's parents if the accused is a student, will be informed in writing of the allegations, the identity of the complainant, and the facts surrounding the allegations.

In the event the allegations are not substantiated, all reasonable steps will be taken to so advise those involved in the investigation who had knowledge of the allegations and to generally restore the reputation of the accused if damaged by the proceeding.

A complainant found to have been intentionally dishonest in making the allegations or to have made them maliciously is subject to disciplinary action, pursuant to the student discipline code.

Disciplinary action

Any employee or student who is found to have engaged in sexual harassment of a student, and the student's parent if the accused is a student, will be notified of the outcome of the investigation and will be subject to appropriate disciplinary action, which may include, but is not limited to, oral or written warnings, demotion, transfer, dismissal, suspension or expulsion.

Remedial action

The complainant's parent will be notified of the outcome of the investigation. If applicable, the complainant's parent will also be notified of the specific remedy available and the general category of disciplinary action taken against the accused. Every reasonable effort will be made to insure that the complainant is free from any further harassment. The individual who conducted the informal consultation will be responsible for counseling the complainant to insure that he/she is comfortable with the resolution and for following up with the complainant at least once within three months of the resolution to insure that the complainant has not been subjected to any further harassment.

Education of the school district community

Following the adoption of policy, the policy will be referenced in the student handbook and a copy of the policy and this administrative rule will be available in each school media center and the district office. Principals and supervisors will also conduct a review of the policy and this administrative rule for all students and staff members to provide orientation on the nature of sexual harassment, how to identify it and the appropriate actions to follow should they encounter sexual harassment. With regard to students, such review and orientation will take into consideration and be appropriate to the age of the students.

Principals and supervisors will provide an appropriate orientation for new students and employees near the beginning of their association with the district.

The School District of Aiken County

Near the beginning of each subsequent school year, principals and supervisors will provide for their students and staff a review of the policy and administrative rule.

Issued 3/9/99; Revised 4/23/02, 2/7/12