



POLICY 5.81

4-E I recommend that the Board adopt the proposed revised Policy 5.81, entitled “Protecting Students from Sexual Harassment and Discrimination.”

[Contact: Elizabeth McBride, PX 47673.]

Adoption

CONSENT ITEM

- The Board approved development of this revised Policy at the development reading on June 1, 2011.
- Proposed amendments to the policy provide for:
 - “Gender identity or expression” addition to the listings of protected classes. See paragraph 1.
 - Addition of the definition of “Gender identity or expression”. See paragraph 9f.
 - Addition of the definition of “Sexual orientation”. See paragraph 9j.

POLICY 5.81

PROTECTING STUDENTS FROM SEXUAL HARASSMENT AND DISCRIMINATION

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3 1. **General Provisions.**-- The School Board of Palm Beach County, as governing
4 body for the District of Palm Beach County, Florida ("School District" or "District"),
5 does not discriminate on the basis of sex or gender expression and/or identification
6 in education programs and prohibits sexual harassment of, or sex/gender-based
7 discrimination against, any student or applicant for admission by any Board
8 member, District employee, consultant, contractor, agent, visitor, volunteer,
9 student, or other person in the school or outside the school at school-sponsored
10 events, on school buses, and at training facilities or training programs sponsored
11 by the School District.

12 2. Sexual harassment and discrimination will not be tolerated and shall be just cause
13 for disciplinary action. Pursuant to § 1006.07(2)(h), the Board hereby gives notice
14 that violation of this "sexual harassment policy by a student is grounds for in-school
15 suspension, out-of-school suspension, expulsion, or imposition of other disciplinary
16 action by the school and may also result in criminal penalties being imposed."

17 3. In an effort to promote an environment free of sexual harassment and
18 discrimination, the School District has adopted this Policy prohibiting sexual
19 harassment of, or gender-based discrimination against, students, in order to
20 prevent, investigate, and take prompt, equitable, and appropriate action with regard
21 to alleged sexual harassment and discrimination.

22 4. The School District believes that all students are entitled to a safe, equitable, and
23 harassment-free school experience. The School Board will not tolerate sexual
24 harassment between members of the same or opposite sex. The Office for Civil
25 Rights (OCR) states in its *Revised Sexual Harassment Guidance* (2001):

26 Although Title IX does not prohibit discrimination on the basis of sexual orientation,
27 sexual harassment directed at gay or lesbian students that is sufficiently serious to
28 limit or deny a student's ability to participate in or benefit from the school's program
29 constitutes sexual harassment prohibited by Title IX For example, if a male
30 student or a group of male students target a gay student for physical sexual
31 advances . . . the school would need to respond promptly and effectively . . . , just
32 as it would if the victim were heterosexual. On the other hand, if students heckle
33 another student with comments based on the student's sexual orientation . . . , but
34 their actions do not involve conduct of a sexual nature, their actions would not be
35 sexual harassment covered by Title IX. However, sufficiently serious sexual
36 harassment is covered by Title IX even if the hostile environment also includes
37 taunts based on sexual orientation.

38 5. This Policy shall be interpreted and applied consistent with all applicable state and

39 federal laws and the Board's collective-bargaining agreements.

40 6. **Title IX Coordinator.** -- Title IX of the Education Amendments ("Title IX") and
41 regulations of the Department of Education's Office for Civil Rights ("OCR") require
42 that the School District not discriminate on the basis of sex and that the School
43 District designate a Title IX Coordinator who is responsible for compliance with
44 Title IX and this Policy. The School District has designated the Equal Employment
45 Opportunity ("EEO") Coordinator as the person responsible for ensuring that
46 students and their custodial parent(s)/guardian receive information related to
47 sexual harassment.

48 7. The EEO Coordinator is the District's Title IX Coordinator and Sexual Harassment
49 Officer and is located at: 3370 Forest Hill Boulevard, Suite A-115, West Palm
50 Beach, Florida, 33406; Telephone: (561) 434-8637.

51 8. Along with similar information required by Policy 5.001, this contact information is
52 to be posted in highly visible locations at each school including the main office, the
53 guidance waiting area, and student services.

54 9. **Definitions.**-- For purposes of this Policy, the following definitions shall apply:

55 a. *Accused/employee* is defined as a School District employee alleged to be
56 responsible for the violation alleged in the complaint.

57 b. *Accused/student* is defined as a student alleged to be responsible for the
58 violation that is alleged in the complaint.

59 c. *Complaint* is defined as written allegations regarding any action, policy,
60 procedure, or practice prohibited by Title IX, the Florida Education Equity Act,
61 and/or this Policy.

62 d. *Complainant* is defined as is a student of, or applicant for admission to, the
63 School District who submits a written complaint of sexual harassment or
64 discrimination or an individual or group submitting a complaint on behalf of a
65 student(s).

66 e. *Day* is defined as a working day and does not include weekends or holidays
67 unless noted as "calendar day."

68 f. *Gender identity or expression means a gender-related identity, appearance,*
69 *expression or behavior of an individual, regardless of the individual's assigned*
70 *sex at birth.*

71 g. *Minor*, or *minor student*, is defined as any student who has not yet attained
72 the age of eighteen (18). *For purposes of this policy*, the term should also be
73 construed to include an adult student who has been determined incompetent

74 or unable to give informed consent due to disability under state law. *Note: any*
75 *procedure in this Policy mentioning a minor student's parent/guardian should*
76 *also be construed to include an adult student's parent, if the adult student has*
77 *given consent.* For example, where the Policy requires giving notice to the
78 parent of a minor student, this requirement also includes notice to the parent
79 of an adult student who has given consent for the parent to receive the notice.
80 The notice would also be given to the parent of any adult student who has
81 been determined to be incompetent or unable to give informed consent due to
82 disability under state law.

83 h. ~~g~~ *Parties* is defined as the accused student/applicant for admission and/or
84 accused/employee, and the complainant.

85 i. ~~h~~ *School Official* is defined for purposes of this Policy, as School Board
86 employees, principals, assistant principals, teachers, and school police officers
87 who have the duty of reasonable supervision with respect to student activities.

88 j. *Sexual orientation means actual or perceived homosexuality, heterosexuality*
89 *and bisexuality.*

90 10. Prohibited Sexual Harassment

91 a. There are two (2) types of sexual harassment: quid pro quo harassment and
92 hostile environment harassment.

93 i. Quid pro quo harassment occurs when some advancement or
94 opportunity, such as grades, credits, graduation, or other benefits are
95 conditioned upon sexual favors or that an advancement or opportunity is
96 withheld or punishment will result from a refusal to comply with a demand
97 for sexual favors.

98 ii. Hostile environment harassment occurs when sexual conduct is
99 sufficiently severe, persistent, or pervasive that it has the purpose or
100 effect of unreasonably interfering with a student's performance or ability
101 to benefit from his/her education, or creates an intimidating, hostile,
102 offensive, or abusive school environment.

103 b. Prohibited sexual harassment includes, but is not limited to, requests for
104 sexual favors, and other verbal, visual or physical conduct of a sexual nature
105 when:

106 i. submission to the conduct is explicitly or implicitly made a term or
107 condition of an individual's academic status or progress;

108 ii. submission to or rejection of the conduct by an individual is used as the
109 basis for academic decisions affecting the individual. The conduct has the

- 110 purpose or effect of having a negative impact on the individual's
111 academic performance, unreasonably interfering with the individual's
112 education, or creating an intimidating, hostile, or offensive educational
113 environment; or
- 114 iii. submission to or rejection of the conduct by the individual is used as the
115 basis for any decision affecting the individual regarding benefits and
116 services, honors, programs, or activities available at or through the
117 school.
- 118 c. Types of conduct which are prohibited in the District and which may constitute
119 sexual harassment include, but are not limited to:
- 120 i. graphic verbal comments about an individual's body or appearance;
- 121 ii. sexual jokes, notes, stories, drawings, pictures or gestures;
- 122 iii. sexual slurs; sexually-suggestive leering, threats, abusive words,
123 derogatory comments; or sexually-degrading descriptions;
- 124 iv. unwelcome sexual flirtations or propositions for sexual activity or
125 unwelcome demands for sexual favors, including but not limited to
126 repeated unwelcome requests for dates;
- 127 v. spreading sexual rumors;
- 128 vi. touching an individual's body or clothes (including one's own) in a sexual
129 way, including, but not limited to, grabbing, brushing against, patting,
130 pinching, bumping, rubbing, kissing, and fondling;
- 131 vii. cornering or blocking normal movements, or bullying;
- 132 viii. displaying sexually suggestive drawings, pictures, written materials, and
133 objects in the educational environment; or
- 134 ix. any act of retaliation against an individual who reports a violation of the
135 Board's sexual harassment Policy or participates in the investigation of a
136 sexual harassment complaint.

137 11. **GRIEVANCE PROCEDURE FOR SEXUAL HARASSMENT OR**
138 **DISCRIMINATION BY STUDENTS -- Investigation and Resolution of**
139 **Complaints Against an Accused/Student**

- 140 a. **Reporting Discrimination or Harassment.**-- Any student or applicant for
141 admission who believes he/she is a victim of sexual harassment or
142 discrimination (or any individual, including any student, teacher, or other

- 143 employee of the District, who has knowledge of any incident(s) involving
144 sexual harassment or discrimination of students or applicants for admission) is
145 strongly encouraged to report the incident(s) in writing to the principal or other
146 school official. Due to the sensitive nature of sexual harassment complaints,
147 the written complaint may be filed directly with the EEO/Title IX Coordinator
148 and ADA/504 Specialist.
- 149 b. School officials must report in writing any allegations of harassment or
150 discrimination to the principal and to the EEO/Title IX Coordinator.
- 151 c. School officials must instruct students and their custodial parent(s)/guardian
152 that the student (or custodial parent(s)/guardian on behalf of the student) may
153 file a written complaint with the principal/designee or EEO/Title IX Coordinator.
- 154 d. The principal/designee shall document all complaints in writing to ensure that
155 problems are appropriately addressed. Failure by the principal to respond to a
156 complaint within two (2) work days will automatically allow the complainant to
157 re-file the complaint with the area superintendent.
- 158 e. It is the responsibility of the principal to forward all complaints within two (2)
159 work days to the area superintendent, EEO/Title IX Coordinator, and ADA/504
160 Specialist. Although this Policy encourages students to use the formal written
161 complaint process, school officials "should investigate all complaints and
162 reports of harassment, *whether or not the complaint is in writing*," as stated by
163 the Office for Civil Rights in *Protecting Students from Harassment and Hate*
164 *Crime: A Guide for Schools, Part II* (1999).
- 165 f. **Principal Involvement.**-- If the principal is directly and personally involved
166 with a complaint or is closely related to a party to the complaint, then the area
167 superintendent shall be asked to conduct the investigation.
- 168 g. **Informal Resolution.**-- Where appropriate, the complainant and the
169 accused/student may agree to informally resolve the complaint. Complaints
170 should be made as soon as possible but no later than one hundred eighty
171 (180) calendar days after the alleged incident (that is, within 180 days after the
172 last act of harassment or discrimination). Even at this stage, where a formal
173 complaint form is not filed, the principal must summarize, in a written record,
174 the complainant's allegations. The principal should request the complainant (or
175 minor complaint's parent/guardian) to sign the summary to indicate that it is
176 accurate. The principal must transmit a copy of this summary to the area
177 superintendent, EEO/Title IX Coordinator, and ADA/504 specialist within two
178 (2) work days, noting that the parties agreed to attempt informal resolution.
- 179 i. If both parties are willing, the principal/designee may arrange for the
180 parties to resolve the complaint informally through a voluntary
181 conversation between the complainant and the accused/student,

182 facilitated by the principal/designee, within two (2) work days of receiving
183 the complaint. Both the complainant and the accused/student may be
184 accompanied by a person of their choice for support and guidance.

185 ii. The parties shall never be asked to work out the problem directly with the
186 accused/student unless the assistance of a counselor, teacher,
187 administrator, or mediator is provided and both the complainant and the
188 accused/student are willing.

189 iii. If the principal/designee and the complainant and the accused/student
190 (and/or their parents) agree that a satisfactory resolution has been
191 achieved through the informal conversation, then no further action need
192 be taken (besides notifying the area superintendent, EEO/Title IX
193 Coordinator, and ADA/504 Specialist that the matter has been resolved).
194 However, if a complete resolution has not been achieved, a formal written
195 complaint should be filed within ten (10) work days after the informal
196 meeting.

197 iv. If the complaint is satisfactorily resolved informally, the principal/designee
198 shall notify the area superintendent, EEO/Title IX Coordinator, and
199 ADA/504 Specialist of the resolution of the complaint.

200 h. **Filing a Formal Complaint Report.**-- If the matter is not satisfactorily
201 resolved informally, the principal/designee shall assist the student (or custodial
202 parent(s)/guardian on behalf of a minor as defined in paragraph (9)(f)) in filing
203 a complaint. Individuals may file a written complaint with the principal/designee
204 or EEO/Title IX Coordinator by using the *Student Complaint Report* form
205 (PBSD 1615). Said form is hereby incorporated by reference and made a part
206 of this Policy and shall be filed with the Clerk of the School Board herewith and
207 is available on the District's web site at:
208 www.palmbeachschools.org/Forms/Index.asp
209 www.palmbeach.k12.fl.us/Records/Forms.htm. The Witness Statement form
210 (PBSD 1616) is to be completed by witnesses to the alleged incident.

211 i. Complaints should be made as soon as possible but no later than one
212 hundred eighty (180) calendar days after the alleged incident (that is, within
213 180 days after the last act of harassment or discrimination). Failure on the part
214 of the complainant to initiate and/or follow up on the complaint within this
215 period may result in the complaint being deemed abandoned. The
216 principal/designee shall record in writing and document all complaints
217 regarding sexual harassment and discrimination to ensure that problems are
218 appropriately addressed, whether the report is made verbally or in writing.

219 j. The principal/designee may assist the student in completing the form or may
220 complete the form for a student. The complainant will be requested to provide

221 signed, specific information regarding the alleged discrimination or
222 harassment, the alleged offender(s), witnesses, and other relevant
223 information. In all instances, the student (or custodial parent(s)/guardian on
224 behalf of a minor as defined in paragraph (9)(f)) shall review the form to
225 ensure its accuracy and sign and date the complaint.

226 k. All complaints filed with the principal/designee must be reported in writing to
227 the area superintendent and the EEO/Title IX Coordinator and ADA/504
228 Specialist.

229 l. **Notice to Accused/Student.** -- Within two (2) days of receipt of a complaint,
230 the principal/designee will notify the accused/student of the allegations.

231 m. **Notice to Parent(s)/Guardians.**-- Within two (2) days of receiving a
232 complaint, and in accordance with federal and state privacy laws, the
233 principal/designee shall notify the custodial parent(s)/guardian of any minor
234 student, as defined in paragraph (9)(f), who is involved in alleged harassment
235 or discrimination. Notification may be made by telephone, letter, or personal
236 conference. The students involved and their custodial parent(s)/guardians will
237 also be notified of events and decisions described in this Policy.

238 n. **Steps in the Investigation.**-- The principal/designee shall begin an
239 investigation within two (2) work days and thoroughly investigate all complaints
240 of sexual harassment or discrimination, including at a minimum the following
241 steps:

242 i. talk with the complainant within two (2) work days;

243 ii. give the complainant (or custodial parent(s)/guardian of a minor as
244 defined in paragraph (9)(f)) shall have an opportunity to describe the
245 incident, present witnesses and other evidence of the harassment or
246 discrimination, and ensure that the complaint is put in;

247 iii. talk with the accused/student (or custodial parent(s)/guardian of a minor
248 as defined in paragraph (9)(f)) within two (2) work days;

249 iv. the accused/student shall have an opportunity to describe the incident,
250 present witnesses and other evidence, and put his/her response in
251 writing;

252 v. talk with any person who saw the harassment, has knowledge of the
253 discrimination, or who may have related information; and

254 vi. conduct a conference, if appropriate, with the complainant (and custodial
255 parent(s)/guardian of a minor as defined in paragraph (9)(f)) and the
256 accused/student (and custodial parent(s)/guardian of a minor) with prior

- 257 notice of the date, time, place and rules to the parties.
- 258 vii. The principal/designee is encouraged to ask open-ended questions to
259 enable students to describe what happened in their own words.
- 260 viii. The principal/designee may request that the accused/student (or the
261 custodial parent(s)/guardian of a minor as defined in paragraph (9)(f)),
262 prepare a written response to the complaint; or the principal/designee
263 may prepare a written statement of the accused/student's oral response
264 to the complaint based on their meeting and obtain the signature of the
265 accused/student (and/or custodial parent(s)/guardian of the minor student
266 as defined in paragraph (9)(f)), after his/her review of the statement.
- 267 ix. The principal/designee should dictate and then review his/her notes with
268 the complainant and accused/student after the interviews to verify the
269 facts and ensure accuracy, and then obtain signatures, but shall not tape
270 the interviews.
- 271 o. **Pursuing the Investigation.**-- During the investigation, the principal/designee
272 may take any action necessary to protect the complainant or other students or
273 employees, consistent with the requirements of applicable regulations and
274 statutes.
- 275 i. In general, complainants shall continue attendance at the school and
276 pursue their studies as directed while the investigation is conducted and
277 the complaint is pending resolution.
- 278 ii. When necessary to carry out his/her investigation or for other good
279 reasons, and consistent with federal and state privacy laws, the
280 principal/designee may discuss the complaint with any of the following
281 persons:
- 282 A. Superintendent/designee;
- 283 B. Chief Academic Officer;
- 284 C. area superintendents;
- 285 D. associate superintendents;
- 286 E. Chief of School Police;
- 287 F. the custodial parent(s)/guardian of the complainant, if the
288 complainant is a minor, as defined in paragraph (9)(f) of this Policy;
- 289 G. the custodial parent(s)/guardian of the accused/student, if the

- 290 accused/student is a minor, as defined in paragraph (9)(f);
- 291 H. a teacher or staff member whose knowledge of the students involved
292 may help determine who is telling the truth;
- 293 I. child protective agencies responsible for investigating child abuse;
294 and/or
- 295 J. legal counsel for the Board.
- 296 p. **Written Decision of the Principal/Designee.**-- Upon completion of the
297 investigation, the principal/designee will make a decision about the validity of
298 the allegations in the complaint and about any corrective action, if applicable,
299 consistent with the Matrix of Incidents and Actions in Policy 5.1812
300 (elementary) or Policy 5.1813 (secondary). In reaching a decision about the
301 complaint, the principal/designee should take into account:
- 302 i. statements made by the persons identified in paragraphs (11)(n), (o)
303 above;
- 304 ii. the details and consistency of each person's account;
- 305 iii. evidence of how the complainant reacted to the incident;
- 306 iv. evidence of past instances of harassment or discrimination by the
307 accused/student (provided that, if evidence of harassment/discrimination,
308 accusations, or complaints is to be considered, the principal/designee
309 must review in their entirety the files regarding those past incidents);
- 310 v. evidence of past harassment or discrimination complaints that were found
311 to be untrue (provided that, if evidence of past accusations or complaints
312 is to be considered, the principal/designee must review in their entirety
313 the files regarding those past incidents); and
- 314 vi. case law, state and federal laws and regulations, and the Board's Policies
315 prohibiting sexual harassment and discrimination.
- 316 q. To determine the severity of the harassment or discrimination, the
317 principal/designee may consider, among other things:
- 318 i. how the misconduct affected one or more student's education;
- 319 ii. the type, frequency, and duration of the misconduct;
- 320 iii. the number of persons involved;
- 321 iv. the subject(s) of harassment or discrimination;

- 322 v. the place and situation where the incident occurred; and/or
- 323 vi. other incidents at the school, including incidents of harassment or
324 discrimination that were not related to sex.
- 325 r. Within thirty (30) calendar days of the filing of the complaint, the
326 principal/designee shall give the area superintendent/designee and the
327 EEO/Title IX Coordinator and ADA/504 Specialist a written report that
328 describes the complaint and investigation and contains findings, decision, and
329 reasons for the decision.
- 330 i. If the principal/designee verifies that sexual harassment or discrimination
331 occurred, this report shall describe the actions taken to end the
332 harassment or discrimination pursuant to the Matrix of Incidents and
333 Actions in Policy 5.1812 (elementary) or Policy 5.1813 (secondary);
334 address the effects of the harassment or discrimination on the
335 complainant; and prevent retaliation or further harassment or
336 discrimination.
- 337 ii. The principal/designee shall notify the parties (and their custodial
338 parents(s)/guardian if the parties are minors as defined in paragraph
339 (9)(f)) in writing of the decision and their right to review by the area
340 superintendent/designee. (If the complaint was originally filed with, and
341 investigated by, the EEO/Title IX Coordinator or ADA/504 Specialist
342 instead of the principal, the Title IX Coordinator or ADA/504 Specialist
343 shall inform the parties of the right to appeal to the Chief Academic
344 Officer/designee within ten (10) days after receiving the
345 Coordinator's/Specialist's decision.)
- 346 s. No retaliation of any kind is permitted on the basis of an individual's having
347 made a discrimination or harassment complaint.
- 348 12. **Appeal to Area Superintendent.**-- If the complaint against an accused/student is
349 not resolved at the school-site level to the satisfaction of the parties, either party (or
350 their custodial parents(s)/guardian if the parties are minors as defined in paragraph
351 (9)(f)), may seek review by the area superintendent designee through the following
352 process:
- 353 a. The written complaint and request for review shall be sent to the area
354 superintendent's office within ten (10) days of the completion of the site-level
355 process by the principal/designee.
- 356 i. If the principal's designee conducted the investigation and made the
357 decision, the first level of appeal is to the principal rather than the area
358 superintendent. If the complaint was reviewed or investigated by the
359 principal, the next level of appeal is to the area superintendent/designee.

360 (If the complaint was originally filed with, and investigated by, the
361 EEO/Title IX Coordinator or ADA/504 Specialist instead of the principal,
362 the next level of appeal is to the Chief Academic Officer/designee.)

363 ii. However, if the area superintendent/designee is directly involved with a
364 complaint or closely related to a party to the complaint, then the Chief
365 Academic Officer/designee shall be asked to conduct the review and/or
366 further investigation.

367 b. **Notice Requirement.**-- Notice will be given to all parties of a request for
368 review by the area superintendent/designee within two (2) business days of
369 the request for review.

370 c. **Procedure.**-- The area superintendent/designee shall review the complaint,
371 the answer to the complaint, the principal's report, and any other evidence in
372 the record. The area superintendent/designee may conduct any further
373 investigation he/she deems necessary.

374 i. The area superintendent/designee will review the principal's decision as
375 to the validity of the allegations and any corrective action and will make a
376 decision within thirty (30) calendar days after receipt of the request for
377 review. Time limits may be extended by written mutual agreement of the
378 individual(s) making the complaint and accused/student (or the custodial
379 parent(s)/guardian of a minor party as defined in paragraph (9)(f)).

380 ii. No retaliation of any kind is permitted because an individual has made a
381 sexual harassment or sexual discrimination complaint. During the
382 investigation, the area superintendent/designee may take any action
383 necessary to protect the complainant, other students, or employees,
384 consistent with the requirements of applicable regulations and statutes.

385 iii. The area superintendent/designee shall take action deemed appropriate
386 to resolve the situation, including, but not limited to, disciplinary action by
387 the school, consistent with the requirements of applicable procedures
388 outlined in each school's *Student-Parent Handbook*, the Matrix of
389 Incidents and Actions in Policy 5.1812 (elementary) or Policy 5.1813
390 (secondary), and Florida law, or transfer to alternative school.

391 iv. The area superintendent/designee will inform the parties in writing of the
392 decision and the parties' right to appeal.

393 v. A copy of the decision will be sent to the EEO/Title IX Coordinator and
394 ADA/504 Specialist.

395 **13. Appeal to the Chief Academic Officer/Designee**

- 396 a. If the complainant or accused/student (or the custodial parent(s)/guardian of a
397 minor party as defined in paragraph (9)(f)) is dissatisfied with the area
398 superintendent's decision, that decision may be appealed in writing to the
399 Chief Academic Officer/designee within ten (10) days after receipt of the
400 decision.
- 401 i. If the area superintendent's designee conducted the investigation, the
402 next level of appeal is to the area superintendent rather than the Chief
403 Academic Officer.
- 404 ii. If the Chief Academic Officer/designee is directly involved with a
405 complaint or closely related to a party to the complaint, then the Chief
406 Operating Officer/designee shall be asked to review the matter.
- 407 b. **Notice.**-- Notice of the appeal shall be given in writing to the complainant and
408 accused/student (and the custodial parent(s)/guardian of a minor party as
409 defined in paragraph (9)(f)) within two (2) days of receipt of the appeal.
- 410 c. **Procedure.**-- The Chief Academic Officer/designee shall review the written
411 complaint, the accused/student's response to the complaint (or
412 parent's/guardian's response on behalf of the minor accused/student as
413 defined in paragraph (9)(f)), and all documentation pertaining to the alleged
414 harassment or discrimination including the area superintendent's decision.
- 415 i. The Chief Academic Officer/designee, in his/her discretion, may request
416 additional information.
- 417 ii. The Chief Academic Officer/designee shall issue a written decision to the
418 parties within twenty (20) calendar days of request of the appeal.

419 **14. Appeal to the Superintendent**

- 420 a. If the complainant or accused/student (or the custodial parent(s)/guardian of a
421 minor party as defined in paragraph (9)(f)), is dissatisfied with the Chief
422 Academic Officer's decision, that decision it may be appealed in writing to the
423 Superintendent within ten (10) days after receipt of the decision.
- 424 i. If the Chief Academic Officer's designee conducted the investigation, the
425 next level of appeal is to the Chief Academic Officer, rather than to the
426 Superintendent.
- 427 ii. If the Superintendent is directly involved with a complaint or closely
428 related to a party to the complaint, then the Chief Counsel to the Board
429 shall be asked to review the matter and report the findings in writing to the
430 Board.

- 431 b. **Notice.**-- Notice of the appeal shall be given to the parties within two (2) days
432 of receipt of appeal.
- 433 c. **Procedure.**-- The Superintendent/designee shall review the written complaint,
434 the accused/student's response to the complaint (or the response of the
435 custodial parent(s)/guardian of a minor student as defined in paragraph (9)(f)),
436 and all documentation pertaining to the alleged sexual harassment or
437 discrimination, including the Chief Academic Officer's decision.
- 438 i. The Superintendent/designee may request additional information.
- 439 ii. The Superintendent/designee shall issue a written decision to the parties
440 within twenty (20) calendar days of request of the appeal. The decision of
441 the Superintendent/designee is the final decision of the District.
- 442 15. **Other Means of Resolution.**- - If the complainant is not satisfied with the results of
443 the procedures contained in this policy, he/she may utilize other means for
444 resolution as provided by law, including seeking recourse through the federal Office
445 for Civil Rights ("OCR").
- 446 16. **GRIEVANCE PROCEDURE FOR SEXUAL HARASSMENT OR DISCRIMINATION**
447 **BY EMPLOYEES -- Investigation of Complaints Against an**
448 **Accused/Employee**
- 449 a. **Reporting Discrimination or Harassment.**-- Any student/applicant for
450 admission (or the custodial parent(s)/guardian thereof, if a minor as defined in
451 paragraph (9)(f)), who believes he/she is a victim of discrimination or
452 harassment, (or any individual, including any student, teacher, or other
453 employee of the District who has knowledge of any incident(s) involving sexual
454 discrimination against, or harassment of, students) is strongly encouraged to
455 report the incident(s) in writing to the principal or other school official. Due to
456 the sensitive nature of sexual harassment complaints, the written complaint
457 may be filed directly with the EEO/Title IX Coordinator and ADA/504
458 Specialist. Complaints should be filed as soon as possible after the alleged
459 incident, but must be filed within one hundred eighty (180) calendar days after
460 the alleged incident (i.e. within 180 days after the last act of alleged
461 harassment or discrimination).
- 462 b. School officials must report in writing any allegations of discrimination or
463 harassment to the principal and to the EEO/Title IX Coordinator and ADA/504
464 Specialist.
- 465 c. School officials must instruct students that they may file a written complaint
466 with the principal/designee or the EEO/Title IX Coordinator and ADA/504
467 Specialist. If the principal is directly involved with a complaint or with the
468 parties to the complaint or is closely related to a party to the complaint, then

- 469 the incident may be reported directly to the EEO/Title IX Coordinator.
- 470 d. The principal shall document all complaints in writing to ensure that problems
471 are appropriately addressed. It is the responsibility of the principal to forward
472 all complaints to the area superintendent, EEO/Title IX Coordinator and
473 ADA/504 Specialist. Failure by the principal to respond to a complaint within
474 two (2) work days will automatically allow the complainant to re-file the
475 complaint with the area superintendent.
- 476 e. **Filing the Compliant Form.**-- Consistent with OCR guidelines, a formal
477 complaint process is required for any complaint against an employee.
478 Complainants (or the custodial parent(s)/guardian of the minor student as
479 defined in paragraph (9)(f)) may file a complaint in writing with the
480 principal/designee or the EEO/Title IX Coordinator and ADA/504 Specialist by
481 using the *Student Complaint Report* form (PBSD 1615), available on the
482 District's web site at www.palmbeachschools.org/Forms/Index.asp
483 <http://www.palmbeach.k12.fl.us/Records/Forms.htm>. The Witness Statement
484 form (PBSD 1616) is to be completed by witnesses to the alleged incident.
- 485 i. Complaints should be filed as soon as possible after the alleged incident,
486 but must be filed within one hundred eighty (180) calendar days after the
487 alleged incident (that is, within 180 days after the last act of alleged
488 harassment or discrimination). Failure on the part of the complainant to
489 initiate and/or follow up on the complaint within this period may result in
490 the complaint being deemed abandoned.
- 491 ii. The principal/designee may assist the individual in completing the form by
492 recording information on it, reviewing it with the complainant, and
493 obtaining the complainant's signature. The complainant will be requested
494 to provide signed, specific information regarding the alleged
495 discrimination or harassment, the alleged offender(s), witnesses, and
496 other relevant information.
- 497 iii. All complaints filed with the principal/designee must be reported to the
498 area superintendent and the EEO/Title IX Coordinator and ADA/504
499 specialist for investigation.
- 500 f. **Notice to Parent(s)/Guardians.**-- Within two (2) days of receiving the
501 complaint, and in accordance with federal and state privacy laws, the
502 principal/designee shall notify the custodial parent(s)/guardian of any minor
503 student as defined in paragraph (9)(f)) who is allegedly subject to harassment
504 or discrimination. Notification may be made by telephone, letter, or personal
505 conference. The students involved (and their custodial parent(s)/guardians, if
506 the students are minors) will also be notified of events and decisions described
507 in this Policy.

- 508 g. **Investigation by EEO/Title IX Coordinator/designee or ADA/504**
509 **Specialist/designee.**-- The EEO/Title IX Coordinator/designee or ADA/504
510 Specialist/designee shall document and begin within (2) work days to
511 thoroughly investigate all complaints of harassment or discrimination, including
512 the following steps to ensure that problems are appropriately addressed:
- 513 i. talk with the complainant within two (2) business days after receiving the
514 complaint. The complainant (and/or the custodial parent(s)/guardian of
515 the minor complainant as defined in paragraph (9)(f)) shall have an
516 opportunity to describe the incident, present any evidence, name
517 witnesses, and ensure that the complaint is put in writing;
- 518 ii. talk with any witnesses or others who may have relevant information.; and
- 519 iii. conduct an investigation meeting with the accused/employee, and the
520 accused/employee's representative, if applicable, to discuss the
521 allegations and allow the accused/employee to respond to the allegations.
- 522 h. During the investigation, the EEO/Title IX Coordinator/designee or ADA/504
523 Specialist/designee may recommend to the Chief Personnel Officer/designee,
524 any action necessary to protect the complainant or other students or
525 employees, consistent with the requirements of applicable statutes, State
526 Board of Education Rules, School Board Policies, and collective bargaining
527 agreements.
- 528 i. In general, complainants will continue attendance at the school and
529 pursue their studies as directed while the investigation is conducted and
530 the complaint is pending resolution.
- 531 ii. When necessary to carry out the investigation or for other good reasons,
532 and consistent with federal and state privacy laws, the EEO/Title IX
533 Coordinator/designee or ADA/504 Specialist/designee also shall discuss
534 the complaint with the following persons, as appropriate:
- 535 A. Superintendent/designee;
- 536 B. Chief Operating Officer and/or Chief Operating Officer;
- 537 C. area superintendent/designee;
- 538 D. associate superintendents;
- 539 E. Chief of School Police;
- 540 F. Chief Personnel Officer;

- 541 G. Director of Labor Relations;
- 542 H. the custodial parent(s)/guardian of the complainant, if the
543 complainant is a minor as defined in Section (9)(f);
- 544 I. a teacher or staff member whose knowledge of the student(s) or
545 employee(s) involved may help determine who is telling the truth;
- 546 J. child protective agencies responsible for investigating child abuse;
- 547 K. legal counsel for the Board;
- 548 L. exclusive bargaining representative or the legal counsel thereof, if
549 appropriate; and
- 550 M. the accused/employee.
- 551 17. **Decision of the EEO/Title IX Coordinator or ADA/504 Specialist.**-- Upon
552 completion of the investigation, within thirty (30) calendar days of receiving the
553 complaint if possible, the EEO/Title IX Coordinator shall make a decision about the
554 validity of the allegations in the complaint.
- 555 a. The EEO/Title IX Coordinator/designee or ADA/504 Specialist/designee shall
556 discuss the determination and any corrective action with the principal/designee
557 and Chief Personnel Officer.
- 558 b. In reaching a decision about the complaint, the following should be taken into
559 account:
- 560 i. statements made by the persons identified above;
- 561 ii. the details and consistency of each person's account;
- 562 iii. evidence of how the complainant reacted to the incident;
- 563 iv. evidence of past instances of harassment or discrimination by the
564 accused/employee (provided that, if evidence of past
565 harassment/discrimination are to be considered, the investigator must
566 review in their entirety the files regarding those past incidents);
- 567 v. evidence of past harassment or discrimination complaints that were found
568 to be untrue (provided that, if evidence of past accusations or complaints
569 is to be considered, the investigator must review in their entirety the files
570 regarding those past incidents); and
- 571 vi. case law, state and federal laws and regulations, and Board Policies
572 prohibiting harassment and discrimination.

- 573 c. To determine the severity of the harassment or discrimination, the following
574 may be considered:
- 575 i. how the misconduct affected one or more student's education;
- 576 ii. the type, frequency, and duration of the misconduct;
- 577 iii. the number of persons involved;
- 578 iv. the subject(s) of harassment or discrimination;
- 579 v. the place and situation where the incident occurred; and
- 580 vi. other incidents at the school.
- 581 d. The following action(s) may be taken, consistent with any applicable collective-
582 bargaining agreement provisions, to resolve a complaint of harassment or
583 discrimination:
- 584 i. no action, if the complaint is unsubstantiated;
- 585 ii. training requirements for the employee;
- 586 iii. oral reprimand of the employee;.
- 587 iv. written reprimand of the employee;
- 588 v. suspension of the employee ; or
- 589 vi. termination of the employee.
- 590 A. For the first verified offense of harassment of, or discrimination
591 against, a student, suspension should be recommended for a
592 minimum of thirty (30) days without pay. Termination should be
593 recommended for the second offense of verified harassment of, or
594 discrimination against, a student.
- 595 B. Suspension without pay and/or termination requires Board action.

596 **18. Appeal Procedure for an Accused/Employee**

- 597 a. If the accused/employee wishes to appeal the action taken in resolution of the
598 complaint, such appeal shall be filed either in accordance with Board Policy
599 3.31 or pursuant to the relevant collective bargaining agreement.
- 600 b. For those employees not in a bargaining unit, the appeal shall be filed in
601 accordance with Board Policy 3.31.

602 19. **Appeal Procedure for Student/Complainant Against Accused/Employee**

603 a. **Appeal to the Chief Operating Officer/Designee.**-- If the complainant (or the
604 custodial parent(s)/guardian on his/her behalf if the complainant is a minor as
605 defined in paragraph (9)(f)) is dissatisfied with the EEO/Title IX Coordinator's
606 decision, it may be appealed in writing to the Chief Operating Officer/designee
607 within ten (10) days after receipt of the decision. However, if the Chief
608 Operating Officer is directly involved with a complaint or closely related to a
609 party to the complaint, then the Chief Academic Officer shall be asked to
610 review the matter.

611 i. **Notice.**-- Notice of the appeal shall be given to the parties (and the
612 custodial parent(s)/guardian of a complainant who is a minor as defined in
613 paragraph (9)(f)) within two (2) days of receipt of appeal.

614 ii. **Procedure.**-- The/Chief Operating Officer/designee shall review the
615 written complaint, the accused/employee's response to the complaint,
616 and all documentation pertaining to the alleged sexual harassment or
617 discrimination including the EEO/Title IX Coordinator's or ADA/504
618 Specialist's decision.

619 A. The Chief Operating Officer/designee may request additional
620 information.

621 B. The Superintendent/Chief Operating Officer/designee shall issue a
622 written decision to the parties within twenty (20) calendar days of
623 request of the appeal.

624 b. **Appeal to the Superintendent.**-- If the complainant (or custodial
625 parent(s)/guardian of the minor complainant) is dissatisfied with the Chief
626 Operating Officer's decision, the decision may be appealed in writing to the
627 Superintendent within ten (10) days after receipt of the decision.

628 i. If the Chief Operating Officer's designee conducted the review, the next
629 level of appeal is to the Chief Operating Officer rather than to the
630 Superintendent.

631 ii. If the Superintendent is directly involved with a complaint or closely
632 related to a party to the complaint, then the Chief Counsel to the Board
633 shall be asked to review the matter and report the findings to the Board.

634 iii. **Notice.**-- Notice of the appeal shall be given in writing to the parties (and
635 their custodial parent(s)/guardian if appropriate) within two (2) days of
636 receipt of the appeal.

637 iv. **Procedure.**-- The Superintendent/designee shall review the written

638 complaint, the accused/employee's response to the complaint, and all
639 documentation pertaining to the alleged harassment or discrimination,
640 including the Chief Operating Officer's decision.

641 A. The Superintendent may request additional information.

642 B. The Superintendent/designee shall issue a written decision to the
643 parties (and their custodial parent(s)/guardian if appropriate) within
644 twenty (20) calendar days of request of the appeal. The decision of
645 the Superintendent/designee is the final decision of the District.

646 c. Other Means of Resolution.-- If the complainant is not satisfied with the results
647 of the procedures contained in this Policy, he/she may utilize other means for
648 resolution as provided by law, including seeking recourse through the federal
649 Office for Civil Rights ("OCR").

650 20. GRIEVANCE PROCEDURE FOR SEXUAL HARASSMENT OR DISCRIMINATION
651 BY **VOLUNTEERS, VISITORS, OR CONTRACTORS** -- Investigation of
652 Complaints Against a School Volunteer, Campus Visitor, Contractor/Consultant, or
653 Other Third Party.

654 a. The School Board will not tolerate sexual harassment or discrimination by
655 school volunteers, consultants, independent contractors or subcontractors (or
656 their employees), or any third party in the school (or outside of the school at
657 school-sponsored events), on school buses, or at training facilities sponsored
658 by the School District. Any such alleged harassment or discrimination should
659 be reported immediately to the school principal, using the same formal written
660 complaint process as would be used to report harassment or discrimination by
661 a District employee. The complaint should be filed as soon as possible, at
662 least within one hundred eighty (180) calendar days of the alleged incident
663 (i.e. within 180 days of the last act of alleged harassment or discrimination).

664 b. It is the responsibility of the principal to forward all complaints to the area
665 superintendent, EEO/Title IX Coordinator, and ADA/504 Specialist within two
666 (2) work days. Failure by the principal to respond to a complaint within two (2)
667 work days will automatically allow the complainant to re-file the complaint with
668 the area superintendent.

669 c. Within two (2) days of receiving the complaint, and in accordance with federal
670 and state privacy laws, the principal/designee shall notify the custodial
671 parent(s)/guardian of any minor student as defined in paragraph (9)(f) who is
672 allegedly subject to harassment or discrimination. Notification may be made by
673 telephone, letter, or personal conference. The students involved (and their
674 custodial parent(s)/guardians, if the students are minors) will also be notified of
675 events and decisions described in this Policy.

676 d. Within two (2) days of receiving the complaint, the EEO/Title IX
677 Coordinator/designee or ADA/504 Specialist/designee shall begin an
678 investigation, using procedures similar to those used for investigation of
679 allegations against District employees.

680 e. If the District's investigation substantiates a complaint of sexual harassment or
681 discrimination by a school volunteer, visitor, consultant/independent
682 contractor, vendor or other third party, the Superintendent shall promptly
683 recommend appropriate action. As stated in OCR's *Revised Sexual*
684 *Harassment Guidance* (2001):

685 The type of appropriate steps that the school should take will differ
686 depending on the level of control that the school has over the third party
687 harasser. For example, if athletes from a visiting team harass the home
688 school's students, the home school may not be able to discipline the
689 athletes. However, it could encourage the other school to take
690 appropriate action to prevent further incidents; if necessary, the home
691 school may choose not to invite the other school back.

692 f. Depending on the situation, an appropriate response may include, but not
693 limited to, revoking the volunteer's status under Policy 2.53; asking the visitor
694 to refrain from returning to the campus; requesting a contractor to remove an
695 employee from a project at a school site and discipline the employee; or
696 debarring a vendor pursuant to Policy 6.14(5). The District's response will be
697 designed to eliminate the harassment or discrimination and prevent its
698 reoccurrence. If the complainant is not satisfied with the District's response,
699 he/she (or the custodial parent(s)/guardian of a minor complainant) may
700 appeal according to the procedures used to appeal a decision regarding
701 alleged harassment or discrimination by an employee under Section 19.

702 g. Other Means of Resolution.-- If the complainant is not satisfied with the
703 District's response under this Section, he/she may utilize other means for
704 resolution as provided by law, including seeking recourse through OCR.

705 21. Confidentiality

706 a. To the greatest extent possible, all complaints will be treated as confidential
707 and in accordance with Fla. Stat. § 1002.22(3)(d); the Family Educational
708 Rights and Privacy Act ("FERPA"); and any other applicable law, such as Fla.
709 Stat. §§ 119.07(3)(p) & (u); 1012.31(3)(a); or 1012.796(1)(c).

710 b. However, limited disclosure may be necessary to complete a thorough
711 investigation as described above. The District's obligation to investigate and
712 take corrective action may supersede an individual's right to privacy.

713 c. The complainant's identity shall be protected, but absolute confidentiality

714 cannot be guaranteed.

715 **22. Informing Students and Employees About this Policy.**-- Notice of the existence
716 of this Policy, prevention plan, and procedures shall be posted in prominent
717 locations in all District buildings, including information on how to receive a copy.
718 Notice shall be included annually in student, parent, and staff handbooks.

719 **23. Retaliation Prohibited**

720 a. Retaliation includes, but is not limited to, any form of intimidation, reprisal or
721 harassment in connection with filing a complaint or assisting with an
722 investigation under this Policy.

723 b. Retaliatory or intimidating conduct against any individual who has made a
724 harassment or discrimination complaint or any individual who has testified,
725 assisted, or participated, in any manner, in an investigation is specifically
726 prohibited.

727 c. The principal/designee, and EEO/Title IX Coordinator or ADA/504 Specialist, if
728 applicable, shall inform complainants that they are protected by law from
729 retaliation.

730 **24. Additional Assistance Available**

731 a. In all cases, the District reserves the right to refer the results of its own
732 investigation to the local State Attorney for possible criminal charges, whether
733 or not the District takes any other action on its own account.

734 b. The District will provide counseling services for students who have been
735 harassed or discriminated against.

736 c. Training will be provided to assist teachers and counselors who work with
737 students to prevent sexual harassment and discrimination between people of
738 the same sex or the opposite sex.

739 d. The Office for Civil Rights is a federal agency in the Department of Education
740 that schools' compliance with charged with implementing Title IX of the
741 Education Amendments and can be contacted by telephone at 1-800-421-
742 3481; by fax at (404) 562-6455; or by e-mail at OCR_Atlanta@ed.gov.

743 e. For more information, one may contact: EEO/Title IX Coordinator, 3370 Forest
744 Hill Boulevard, Suite A-115, West Palm Beach, Florida, 33406; Telephone:
745 (561) 434-8637; or visit <http://www.ed.gov/ocr/sex.html> on the Internet.

746 STATUTORY AUTHORITY: Fla. Stat. §§ 1001.41(2); 1001.43(1), (6); 1006.07;
747 1012.23(1)

748 119.07(3)(p), (u); 1000.05(2)(a), (b) (Florida Education Equity Act); 1002.22(3)(a), (d);
749 1001.41(1), (2); 1006.07(2)(h); 1006.08; 1012.31(3)(a); 1012.796(1)(c); 760.01(2), Fla.
750 Stat.; (20 U.S.C. § 1681-1688 (Title IX of the Education Amendments of 1972); 20
751 U.S.C. § 1232g (Family Educational Rights and Privacy Act ("FERPA"))
752 STATE BOARD OF EDUCATION RULES: 6A-19.001; 6A-19.002; 19.008; 6B-
753 1.006(3)(a), (g)
754 HISTORY: 8/16/95; 3/17/99; 3/24/2003; __/___2011

Legal Signoff:

The Legal Department has reviewed proposed Policy 5.81 and finds it legally sufficient for adoption by the Board.

Attorney

Date
