



## **POLICY 5.81**

**5-E** I recommend that the Board approve development of the proposed **revised** Policy 5.81, entitled “Protecting Students from Sexual Harassment and Discrimination.”

[Contact: Elizabeth McBride, PX 47673.]

### **Development**

### **CONSENT ITEM**

- 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**

- 1  
2  
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  
27 orientation, sexual harassment directed at gay or lesbian students that is  
28 sufficiently serious to limit or deny a student's ability to participate in or benefit  
29 from the school's program constitutes sexual harassment prohibited by Title IX  
30 . . . . For example, if a male student or a group of male students target a gay  
31 student for physical sexual advances . . . the school would need to respond  
32 promptly and effectively . . . , just as it would if the victim were heterosexual.  
33 On the other hand, if students heckle another student with comments based  
34 on the student's sexual orientation . . . , but their actions do not involve conduct  
35 of a sexual nature, their actions would not be sexual harassment covered by  
36 Title IX. However, sufficiently serious sexual harassment is covered by Title IX

- 37 even if the hostile environment also includes taunts based on sexual  
38 orientation.
- 39 5. This Policy shall be interpreted and applied consistent with all applicable state and  
40 federal laws and the Board's collective-bargaining agreements.
- 41 6. **Title IX Coordinator.** -- Title IX of the Education Amendments ("Title IX") and  
42 regulations of the Department of Education's Office for Civil Rights ("OCR") require  
43 that the School District not discriminate on the basis of sex and that the School  
44 District designate a Title IX Coordinator who is responsible for compliance with  
45 Title IX and this Policy. The School District has designated the Equal Employment  
46 Opportunity ("EEO") Coordinator as the person responsible for ensuring that  
47 students and their custodial parent(s)/guardian receive information related to  
48 sexual harassment.
- 49 7. The EEO Coordinator is the District's Title IX Coordinator and Sexual Harassment  
50 Officer and is located at: 3370 Forest Hill Boulevard, Suite A-115, West Palm  
51 Beach, Florida, 33406; Telephone: (561) 434-8637.
- 52 8. Along with similar information required by Policy 5.001, this contact information is  
53 to be posted in highly visible locations at each school including the main office, the  
54 guidance waiting area, and student services.
- 55 9. **Definitions.**-- For purposes of this Policy, the following definitions shall apply:
- 56 a. *Accused/employee* is defined as a School District employee alleged to be  
57 responsible for the violation alleged in the complaint.
- 58 b. *Accused/student* is defined as a student alleged to be responsible for the  
59 violation that is alleged in the complaint.
- 60 c. *Complaint* is defined as written allegations regarding any action, policy,  
61 procedure, or practice prohibited by Title IX, the Florida Education Equity Act,  
62 and/or this Policy.
- 63 d. *Complainant* is defined as is a student of, or applicant for admission to, the  
64 School District who submits a written complaint of sexual harassment or  
65 discrimination or an individual or group submitting a complaint on behalf of a  
66 student(s).
- 67 e. *Day* is defined as a working day and does not include weekends or holidays  
68 unless noted as "calendar day."
- 69 f. *Gender identity or expression means a gender-related identity, appearance,*  
70 *expression or behavior of an individual, regardless of the individual's assigned*  
71 *sex at birth.*

- 72 g. ~~¶~~ *Minor, or minor student*, is defined as any student who has not yet attained  
73 the age of eighteen (18). *For purposes of this policy*, the term should also be  
74 construed to include an adult student who has been determined incompetent  
75 or unable to give informed consent due to disability under state law. *Note: any*  
76 *procedure in this Policy mentioning a minor student's parent/guardian should*  
77 *also be construed to include an adult student's parent, if the adult student has*  
78 *given consent.* For example, where the Policy requires giving notice to the  
79 parent of a minor student, this requirement also includes notice to the parent  
80 of an adult student who has given consent for the parent to receive the notice.  
81 The notice would also be given to the parent of any adult student who has  
82 been determined to be incompetent or unable to give informed consent due to  
83 disability under state law.
- 84 h. ~~¶~~ *Parties* is defined as the accused student/applicant for admission and/or  
85 accused/employee, and the complainant.
- 86 i. ~~¶~~ *School Official* is defined for purposes of this Policy, as School Board  
87 employees, principals, assistant principals, teachers, and school police officers  
88 who have the duty of reasonable supervision with respect to student activities.
- 89 j. *Sexual orientation means actual or perceived homosexuality, heterosexuality*  
90 *and bisexuality.*

## 91 10. Prohibited Sexual Harassment

- 92 a. There are two (2) types of sexual harassment: quid pro quo harassment and  
93 hostile environment harassment.
- 94 i. Quid pro quo harassment occurs when some advancement or  
95 opportunity, such as grades, credits, graduation, or other benefits are  
96 conditioned upon sexual favors or that an advancement or opportunity is  
97 withheld or punishment will result from a refusal to comply with a demand  
98 for sexual favors.
- 99 ii. Hostile environment harassment occurs when sexual conduct is  
100 sufficiently severe, persistent, or pervasive that it has the purpose or  
101 effect of unreasonably interfering with a student's performance or ability  
102 to benefit from his/her education, or creates an intimidating, hostile,  
103 offensive, or abusive school environment.
- 104 b. Prohibited sexual harassment includes, but is not limited to, requests for  
105 sexual favors, and other verbal, visual or physical conduct of a sexual nature  
106 when:
- 107 i. submission to the conduct is explicitly or implicitly made a term or  
108 condition of an individual's academic status or progress;

109 ii. submission to or rejection of the conduct by an individual is used as the  
110 basis for academic decisions affecting the individual. The conduct has the  
111 purpose or effect of having a negative impact on the individual's  
112 academic performance, unreasonably interfering with the individual's  
113 education, or creating an intimidating, hostile, or offensive educational  
114 environment; or

115 iii. submission to or rejection of the conduct by the individual is used as the  
116 basis for any decision affecting the individual regarding benefits and  
117 services, honors, programs, or activities available at or through the  
118 school.

119 c. Types of conduct which are prohibited in the District and which may constitute  
120 sexual harassment include, but are not limited to:

121 i. graphic verbal comments about an individual's body or appearance;

122 ii. sexual jokes, notes, stories, drawings, pictures or gestures;

123 iii. sexual slurs; sexually-suggestive leering, threats, abusive words,  
124 derogatory comments; or sexually-degrading descriptions;

125 iv. unwelcome sexual flirtations or propositions for sexual activity or  
126 unwelcome demands for sexual favors, including but not limited to  
127 repeated unwelcome requests for dates;

128 v. spreading sexual rumors;

129 vi. touching an individual's body or clothes (including one's own) in a sexual  
130 way, including, but not limited to, grabbing, brushing against, patting,  
131 pinching, bumping, rubbing, kissing, and fondling;

132 vii. cornering or blocking normal movements, or bullying;

133 viii. displaying sexually suggestive drawings, pictures, written materials, and  
134 objects in the educational environment; or

135 ix. any act of retaliation against an individual who reports a violation of the  
136 Board's sexual harassment Policy or participates in the investigation of a  
137 sexual harassment complaint.

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

141 a. **Reporting Discrimination or Harassment.**-- Any student or applicant for

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

181 parties to resolve the complaint informally through a voluntary  
182 conversation between the complainant and the accused/student,  
183 facilitated by the principal/designee, within two (2) work days of receiving  
184 the complaint. Both the complainant and the accused/student may be  
185 accompanied by a person of their choice for support and guidance.

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

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

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

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

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

- 220 j. The principal/designee may assist the student in completing the form or may  
221 complete the form for a student. The complainant will be requested to provide  
222 signed, specific information regarding the alleged discrimination or  
223 harassment, the alleged offender(s), witnesses, and other relevant  
224 information. In all instances, the student (or custodial parent(s)/guardian on  
225 behalf of a minor as defined in paragraph (9)(f)) shall review the form to  
226 ensure its accuracy and sign and date the complaint.
- 227 k. All complaints filed with the principal/designee must be reported in writing to  
228 the area superintendent and the EEO/Title IX Coordinator and ADA/504  
229 Specialist.
- 230 l. **Notice to Accused/Student.** -- Within two (2) days of receipt of a complaint,  
231 the principal/designee will notify the accused/student of the allegations.
- 232 m. **Notice to Parent(s)/Guardians.**-- Within two (2) days of receiving a  
233 complaint, and in accordance with federal and state privacy laws, the  
234 principal/designee shall notify the custodial parent(s)/guardian of any minor  
235 student, as defined in paragraph (9)(f), who is involved in alleged harassment  
236 or discrimination. Notification may be made by telephone, letter, or personal  
237 conference. The students involved and their custodial parent(s)/guardians will  
238 also be notified of events and decisions described in this Policy.
- 239 n. **Steps in the Investigation.**-- The principal/designee shall begin an  
240 investigation within two (2) work days and thoroughly investigate all complaints  
241 of sexual harassment or discrimination, including at a minimum the following  
242 steps:
- 243 i. talk with the complainant within two (2) work days;
- 244 ii. give the complainant (or custodial parent(s)/guardian of a minor as  
245 defined in paragraph (9)(f)) shall have an opportunity to describe the  
246 incident, present witnesses and other evidence of the harassment or  
247 discrimination, and ensure that the complaint is put in;
- 248 iii. talk with the accused/student (or custodial parent(s)/guardian of a minor  
249 as defined in paragraph (9)(f)) within two (2) work days;
- 250 iv. the accused/student shall have an opportunity to describe the incident,  
251 present witnesses and other evidence, and put his/her response in  
252 writing;
- 253 v. talk with any person who saw the harassment, has knowledge of the  
254 discrimination, or who may have related information; and
- 255 vi. conduct a conference, if appropriate, with the complainant (and custodial



256 parent(s)/guardian of a minor as defined in paragraph (9)(f)) and the  
257 accused/student (and custodial parent(s)/guardian of a minor) with prior  
258 notice of the date, time, place and rules to the parties.

259 vii. The principal/designee is encouraged to ask open-ended questions to  
260 enable students to describe what happened in their own words.

261 viii. The principal/designee may request that the accused/student (or the  
262 custodial parent(s)/guardian of a minor as defined in paragraph (9)(f)),  
263 prepare a written response to the complaint; or the principal/designee  
264 may prepare a written statement of the accused/student's oral response  
265 to the complaint based on their meeting and obtain the signature of the  
266 accused/student (and/or custodial parent(s)/guardian of the minor student  
267 as defined in paragraph (9)(f)), after his/her review of the statement.

268

- 269           ix. The principal/designee should dictate and then review his/her notes with  
270           the complainant and accused/student after the interviews to verify the  
271           facts and ensure accuracy, and then obtain signatures, but shall not tape  
272           the interviews.
- 273           o. **Pursuing the Investigation.**-- During the investigation, the principal/designee  
274           may take any action necessary to protect the complainant or other students or  
275           employees, consistent with the requirements of applicable regulations and  
276           statutes.
- 277           i. In general, complainants shall continue attendance at the school and  
278           pursue their studies as directed while the investigation is conducted and  
279           the complaint is pending resolution.
- 280           ii. When necessary to carry out his/her investigation or for other good  
281           reasons, and consistent with federal and state privacy laws, the  
282           principal/designee may discuss the complaint with any of the following  
283           persons:
- 284           A. Superintendent/designee;
- 285           B. Chief Academic Officer;
- 286           C. area superintendents;
- 287           D. associate superintendents;
- 288           E. Chief of School Police;
- 289           F. the custodial parent(s)/guardian of the complainant, if the  
290           complainant is a minor, as defined in paragraph (9)(f) of this Policy;
- 291           G. the custodial parent(s)/guardian of the accused/student, if the  
292           accused/student is a minor, as defined in paragraph (9)(f);
- 293           H. a teacher or staff member whose knowledge of the students involved  
294           may help determine who is telling the truth;
- 295           I. child protective agencies responsible for investigating child abuse;  
296           and/or
- 297           J. legal counsel for the Board.
- 298           p. **Written Decision of the Principal/Designee.**-- Upon completion of the  
299           investigation, the principal/designee will make a decision about the validity of  
300           the allegations in the complaint and about any corrective action, if applicable,

301 consistent with the Matrix of Incidents and Actions in Policy 5.1812  
302 (elementary) or Policy 5.1813 (secondary). In reaching a decision about the  
303 complaint, the principal/designee should take into account:

304 i. statements made by the persons identified in paragraphs (11)(n), (o)  
305 above;

306 ii. the details and consistency of each person's account;

307 iii. evidence of how the complainant reacted to the incident;

308 iv. evidence of past instances of harassment or discrimination by the  
309 accused/student (provided that, if evidence of harassment/discrimination,  
310 accusations, or complaints is to be considered, the principal/designee  
311 must review in their entirety the files regarding those past incidents);

312 v. evidence of past harassment or discrimination complaints that were found  
313 to be untrue (provided that, if evidence of past accusations or complaints  
314 is to be considered, the principal/designee must review in their entirety  
315 the files regarding those past incidents); and

316 vi. case law, state and federal laws and regulations, and the Board's Policies  
317 prohibiting sexual harassment and discrimination.

318 q. To determine the severity of the harassment or discrimination, the  
319 principal/designee may consider, among other things:

320 i. how the misconduct affected one or more student's education;

321 ii. the type, frequency, and duration of the misconduct;

322 iii. the number of persons involved;

323 iv. the subject(s) of harassment or discrimination;

324 v. the place and situation where the incident occurred; and/or

325 vi. other incidents at the school, including incidents of harassment or  
326 discrimination that were not related to sex.

327 r. Within thirty (30) calendar days of the filing of the complaint, the  
328 principal/designee shall give the area superintendent/designee and the  
329 EEO/Title IX Coordinator and ADA/504 Specialist a written report that  
330 describes the complaint and investigation and contains findings, decision, and  
331 reasons for the decision.

332 i. If the principal/designee verifies that sexual harassment or discrimination

333 occurred, this report shall describe the actions taken to end the  
334 harassment or discrimination pursuant to the Matrix of Incidents and  
335 Actions in Policy 5.1812 (elementary) or Policy 5.1813 (secondary);  
336 address the effects of the harassment or discrimination on the  
337 complainant; and prevent retaliation or further harassment or  
338 discrimination.

339 ii. The principal/designee shall notify the parties (and their custodial  
340 parents(s)/guardian if the parties are minors as defined in paragraph  
341 (9)(f)) in writing of the decision and their right to review by the area  
342 superintendent/designee. (If the complaint was originally filed with, and  
343 investigated by, the EEO/Title IX Coordinator or ADA/504 Specialist  
344 instead of the principal, the Title IX Coordinator or ADA/504 Specialist  
345 shall inform the parties of the right to appeal to the Chief Academic  
346 Officer/designee within ten (10) days after receiving the  
347 Coordinator's/Specialist's decision.)

348 s. No retaliation of any kind is permitted on the basis of an individual's having  
349 made a discrimination or harassment complaint.

350 12. **Appeal to Area Superintendent.**-- If the complaint against an accused/student is  
351 not resolved at the school-site level to the satisfaction of the parties, either party (or  
352 their custodial parents(s)/guardian if the parties are minors as defined in paragraph  
353 (9)(f)), may seek review by the area superintendent designee through the following  
354 process :

355 a. The written complaint and request for review shall be sent to the area  
356 superintendent's office within ten (10) days of the completion of the site-level  
357 process by the principal/designee.

358 i. If the principal's designee conducted the investigation and made the  
359 decision, the first level of appeal is to the principal rather than the area  
360 superintendent. If the complaint was reviewed or investigated by the  
361 principal, the next level of appeal is to the area superintendent/designee.  
362 (If the complaint was originally filed with, and investigated by, the  
363 EEO/Title IX Coordinator or ADA/504 Specialist instead of the principal,  
364 the next level of appeal is to the Chief Academic Officer/designee.)

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

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

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

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

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

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

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

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

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

398 a. If the complainant or accused/student (or the custodial parent(s)/guardian of a  
399 minor party as defined in paragraph (9)(f)) is dissatisfied with the area  
400 superintendent's decision, that decision may be appealed in writing to the  
401 Chief Academic Officer/designee within ten (10) days after receipt of the  
402 decision.

403 i. If the area superintendent's designee conducted the investigation, the  
404 next level of appeal is to the area superintendent rather than the Chief  
405 Academic Officer.

406 ii. If the Chief Academic Officer/designee is directly involved with a  
407 complaint or closely related to a party to the complaint, then the Chief  
408 Operating Officer/designee shall be asked to review the matter.

- 409 b. **Notice.**-- Notice of the appeal shall be given in writing to the complainant and  
410 accused/student (and the custodial parent(s)/guardian of a minor party as  
411 defined in paragraph (9)(f)) within two (2) days of receipt of the appeal.
- 412 c. **Procedure.**-- The Chief Academic Officer/designee shall review the written  
413 complaint, the accused/student's response to the complaint (or  
414 parent's/guardian's response on behalf of the minor accused/student as  
415 defined in paragraph (9)(f)), and all documentation pertaining to the alleged  
416 harassment or discrimination including the area superintendent's decision.
- 417 i. The Chief Academic Officer/designee, in his/her discretion, may request  
418 additional information.
- 419 ii. The Chief Academic Officer/designee shall issue a written decision to the  
420 parties within twenty (20) calendar days of request of the appeal.

#### 421 14. **Appeal to the Superintendent**

- 422 a. If the complainant or accused/student (or the custodial parent(s)/guardian of a  
423 minor party as defined in paragraph (9)(f)), is dissatisfied with the Chief  
424 Academic Officer's decision, that decision it may be appealed in writing to the  
425 Superintendent within ten (10) days after receipt of the decision.
- 426 i. If the Chief Academic Officer's designee conducted the investigation, the  
427 next level of appeal is to the Chief Academic Officer, rather than to the  
428 Superintendent.
- 429 ii. If the Superintendent is directly involved with a complaint or closely  
430 related to a party to the complaint, then the Chief Counsel to the Board  
431 shall be asked to review the matter and report the findings in writing to the  
432 Board.
- 433 b. **Notice.**-- Notice of the appeal shall be given to the parties within two (2) days  
434 of receipt of appeal.
- 435 c. **Procedure.**-- The Superintendent/designee shall review the written complaint,  
436 the accused/student's response to the complaint (or the response of the  
437 custodial parent(s)/guardian of a minor student as defined in paragraph (9)(f)),  
438 and all documentation pertaining to the alleged sexual harassment or  
439 discrimination, including the Chief Academic Officer's decision.
- 440 i. The Superintendent/designee may request additional information.
- 441 ii. The Superintendent/designee shall issue a written decision to the parties  
442 within twenty (20) calendar days of request of the appeal. The decision of  
443 the Superintendent/designee is the final decision of the District.

444 15. **Other Means of Resolution.**- - If the complainant is not satisfied with the results of  
445 the procedures contained in this policy, he/she may utilize other means for  
446 resolution as provided by law, including seeking recourse through the federal Office  
447 for Civil Rights (“OCR”).

448 16. **GRIEVANCE PROCEDURE FOR SEXUAL HARASSMENT OR DISCRIMINATION**  
449 **BY EMPLOYEES -- Investigation of Complaints Against an**  
450 **Accused/Employee**

451 a. **Reporting Discrimination or Harassment.**-- Any student/applicant for  
452 admission (or the custodial parent(s)/guardian thereof, if a minor as defined in  
453 paragraph (9)(f)), who believes he/she is a victim of discrimination or  
454 harassment, (or any individual, including any student, teacher, or other  
455 employee of the District who has knowledge of any incident(s) involving sexual  
456 discrimination against, or harassment of, students) is strongly encouraged to  
457 report the incident(s) in writing to the principal or other school official. Due to  
458 the sensitive nature of sexual harassment complaints, the written complaint  
459 may be filed directly with the EEO/Title IX Coordinator and ADA/504  
460 Specialist. Complaints should be filed as soon as possible after the alleged  
461 incident, but must be filed within one hundred eighty (180) calendar days after  
462 the alleged incident (i.e. within 180 days after the last act of alleged  
463 harassment or discrimination).

464 b. School officials must report in writing any allegations of discrimination or  
465 harassment to the principal and to the EEO/Title IX Coordinator and ADA/504  
466 Specialist.

467 c. School officials must instruct students that they may file a written complaint  
468 with the principal/designee or the EEO/Title IX Coordinator and ADA/504  
469 Specialist. If the principal is directly involved with a complaint or with the  
470 parties to the complaint or is closely related to a party to the complaint, then  
471 the incident may be reported directly to the EEO/Title IX Coordinator.

472 d. The principal shall document all complaints in writing to ensure that problems  
473 are appropriately addressed. It is the responsibility of the principal to forward  
474 all complaints to the area superintendent, EEO/Title IX Coordinator and  
475 ADA/504 Specialist. Failure by the principal to respond to a complaint within  
476 two (2) work days will automatically allow the complainant to re-file the  
477 complaint with the area superintendent.

478 e. **Filing the Compliant Form.**-- Consistent with OCR guidelines, a formal  
479 complaint process is required for any complaint against an employee.  
480 Complainants (or the custodial parent(s)/guardian of the minor student as  
481 defined in paragraph (9)(f)) may file a complaint in writing with the  
482 principal/designee or the EEO/Title IX Coordinator and ADA/504 Specialist by

483 using the *Student Complaint Report* form (PBSD 1615), available on the  
484 District's web site at [www.palmbeachschools.org/Forms/Index.asp](http://www.palmbeachschools.org/Forms/Index.asp)  
485 <http://www.palmbeach.k12.fl.us/Records/Forms.htm>. The Witness Statement  
486 form (PBSD 1616) is to be completed by witnesses to the alleged incident.

487 i. Complaints should be filed as soon as possible after the alleged incident,  
488 but must be filed within one hundred eighty (180) calendar days after the  
489 alleged incident (that is, within 180 days after the last act of alleged  
490 harassment or discrimination). Failure on the part of the complainant to  
491 initiate and/or follow up on the complaint within this period may result in  
492 the complaint being deemed abandoned.

493 ii. The principal/designee may assist the individual in completing the form by  
494 recording information on it, reviewing it with the complainant, and  
495 obtaining the complainant's signature. The complainant will be requested  
496 to provide signed, specific information regarding the alleged  
497 discrimination or harassment, the alleged offender(s), witnesses, and  
498 other relevant information.

499 iii. All complaints filed with the principal/designee must be reported to the  
500 area superintendent and the EEO/Title IX Coordinator and ADA/504  
501 specialist for investigation.

502 f. **Notice to Parent(s)/Guardians.**-- Within two (2) days of receiving the  
503 complaint, and in accordance with federal and state privacy laws, the  
504 principal/designee shall notify the custodial parent(s)/guardian of any minor  
505 student as defined in paragraph (9)(f)) who is allegedly subject to harassment  
506 or discrimination. Notification may be made by telephone, letter, or personal  
507 conference. The students involved (and their custodial parent(s)/guardians, if  
508 the students are minors) will also be notified of events and decisions described  
509 in this Policy.

510 g. **Investigation by EEO/Title IX Coordinator/designee or ADA/504**  
511 **Specialist/designee.**-- The EEO/Title IX Coordinator/designee or ADA/504  
512 Specialist/designee shall document and begin within (2) work days to  
513 thoroughly investigate all complaints of harassment or discrimination, including  
514 the following steps to ensure that problems are appropriately addressed:

515 i. talk with the complainant within two (2) business days after receiving the  
516 complaint. The complainant (and/or the custodial parent(s)/guardian of  
517 the minor complainant as defined in paragraph (9)(f)) shall have an  
518 opportunity to describe the incident, present any evidence, name  
519 witnesses, and ensure that the complaint is put in writing;

520 ii. talk with any witnesses or others who may have relevant information.; and



- 521           iii. conduct an investigation meeting with the accused/employee, and the  
522           accused/employee's representative, if applicable, to discuss the  
523           allegations and allow the accused/employee to respond to the allegations.
- 524           h. During the investigation, the EEO/Title IX Coordinator/designee or ADA/504  
525           Specialist/designee may recommend to the Chief Personnel Officer/designee,  
526           any action necessary to protect the complainant or other students or  
527           employees, consistent with the requirements of applicable statutes, State  
528           Board of Education Rules, School Board Policies, and collective bargaining  
529           agreements.
- 530           i. In general, complainants will continue attendance at the school and  
531           pursue their studies as directed while the investigation is conducted and  
532           the complaint is pending resolution.
- 533           ii. When necessary to carry out the investigation or for other good reasons,  
534           and consistent with federal and state privacy laws, the EEO/Title IX  
535           Coordinator/designee or ADA/504 Specialist/designee also shall discuss  
536           the complaint with the following persons, as appropriate:
- 537           A. Superintendent/designee;
- 538           B. Chief Operating Officer and/or Chief Operating Officer;
- 539           C. area superintendent/designee;
- 540           D. associate superintendents;
- 541           E. Chief of School Police;
- 542           F. Chief Personnel Officer;
- 543           G. Director of Labor Relations;
- 544           H. the custodial parent(s)/guardian of the complainant, if the  
545           complainant is a minor as defined in Section (9)(f);
- 546           I. a teacher or staff member whose knowledge of the student(s) or  
547           employee(s) involved may help determine who is telling the truth;
- 548           J. child protective agencies responsible for investigating child abuse;
- 549           K. legal counsel for the Board;
- 550           L. exclusive bargaining representative or the legal counsel thereof, if  
551           appropriate; and

552 M. the accused/employee.

553 17. **Decision of the EEO/Title IX Coordinator or ADA/504 Specialist.**-- Upon  
554 completion of the investigation, within thirty (30) calendar days of receiving the  
555 complaint if possible, the EEO/Title IX Coordinator shall make a decision about the  
556 validity of the allegations in the complaint.

557 a. The EEO/Title IX Coordinator/designee or ADA/504 Specialist/designee shall  
558 discuss the determination and any corrective action with the principal/designee  
559 and Chief Personnel Officer.

560 b. In reaching a decision about the complaint, the following should be taken into  
561 account:

562 i. statements made by the persons identified above;

563 ii. the details and consistency of each person's account;

564 iii. evidence of how the complainant reacted to the incident;

565 iv. evidence of past instances of harassment or discrimination by the  
566 accused/employee (provided that, if evidence of past  
567 harassment/discrimination are to be considered, the investigator must  
568 review in their entirety the files regarding those past incidents);

569 v. evidence of past harassment or discrimination complaints that were found  
570 to be untrue (provided that, if evidence of past accusations or complaints  
571 is to be considered, the investigator must review in their entirety the files  
572 regarding those past incidents); and

573 vi. case law, state and federal laws and regulations, and Board Policies  
574 prohibiting harassment and discrimination.

575 c. To determine the severity of the harassment or discrimination, the following  
576 may be considered:

577 i. how the misconduct affected one or more student's education;

578 ii. the type, frequency, and duration of the misconduct;

579 iii. the number of persons involved;

580 iv. the subject(s) of harassment or discrimination;

581 v. the place and situation where the incident occurred; and

582 vi. other incidents at the school.

- 583 d. The following action(s) may be taken, consistent with any applicable collective-  
584 bargaining agreement provisions, to resolve a complaint of harassment or  
585 discrimination:
- 586 i. no action, if the complaint is unsubstantiated;
- 587 ii. training requirements for the employee;
- 588 iii. oral reprimand of the employee;.
- 589 iv. written reprimand of the employee;
- 590 v. suspension of the employee ; or
- 591 vi. termination of the employee.
- 592 A. For the first verified offense of harassment of, or discrimination  
593 against, a student, suspension should be recommended for a  
594 minimum of thirty (30) days without pay. Termination should be  
595 recommended for the second offense of verified harassment of, or  
596 discrimination against, a student.
- 597 B. Suspension without pay and/or termination requires Board action.

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

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

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

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

- 615 paragraph (9)(f)) within two (2) days of receipt of appeal.
- 616 ii. **Procedure.**-- The/Chief Operating Officer/designee shall review the  
617 written complaint, the accused/employee's response to the complaint,  
618 and all documentation pertaining to the alleged sexual harassment or  
619 discrimination including the EEO/Title IX Coordinator's or ADA/504  
620 Specialist's decision.
- 621 A. The Chief Operating Officer/designee may request additional  
622 information.
- 623 B. The Superintendent/Chief Operating Officer/designee shall issue a  
624 written decision to the parties within twenty (20) calendar days of  
625 request of the appeal.
- 626 b. **Appeal to the Superintendent.**-- If the complainant (or custodial  
627 parent(s)/guardian of the minor complainant) is dissatisfied with the Chief  
628 Operating Officer's decision, the decision may be appealed in writing to the  
629 Superintendent within ten (10) days after receipt of the decision.
- 630 i. If the Chief Operating Officer's designee conducted the review, the next  
631 level of appeal is to the Chief Operating Officer rather than to the  
632 Superintendent.
- 633 ii. If the Superintendent is directly involved with a complaint or closely  
634 related to a party to the complaint, then the Chief Counsel to the Board  
635 shall be asked to review the matter and report the findings to the Board.
- 636 iii. **Notice.**-- Notice of the appeal shall be given in writing to the parties (and  
637 their custodial parent(s)/guardian if appropriate) within two (2) days of  
638 receipt of the appeal.
- 639 iv. **Procedure.**-- The Superintendent/designee shall review the written  
640 complaint, the accused/employee's response to the complaint, and all  
641 documentation pertaining to the alleged harassment or discrimination,  
642 including the Chief Operating Officer's decision.
- 643 A. The Superintendent may request additional information.
- 644 B. The Superintendent/designee shall issue a written decision to the  
645 parties (and their custodial parent(s)/guardian if appropriate) within  
646 twenty (20) calendar days of request of the appeal. The decision of  
647 the Superintendent/designee is the final decision of the District.
- 648 c. **Other Means of Resolution.**-- If the complainant is not satisfied with the results  
649 of the procedures contained in this Policy, he/she may utilize other means for

650 resolution as provided by law, including seeking recourse through the federal  
651 Office for Civil Rights (“OCR”).

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

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

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

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

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

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

687 The type of appropriate steps that the school should take will differ  
688 depending on the level of control that the school has over the third party

689 harasser. For example, if athletes from a visiting team harass the home  
690 school's students, the home school may not be able to discipline the  
691 athletes. However, it could encourage the other school to take  
692 appropriate action to prevent further incidents; if necessary, the home  
693 school may choose not to invite the other school back.

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

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

## 707 21. Confidentiality

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

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

715 c. The complainant's identity shall be protected, but absolute confidentiality  
716 cannot be guaranteed.

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

## 721 23. Retaliation Prohibited

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

- 725           b. Retaliatory or intimidating conduct against any individual who has made a  
726 harassment or discrimination complaint or any individual who has testified,  
727 assisted, or participated, in any manner, in an investigation is specifically  
728 prohibited.
- 729           c. The principal/designee, and EEO/Title IX Coordinator or ADA/504 Specialist, if  
730 applicable, shall inform complainants that they are protected by law from  
731 retaliation.

732 **24. Additional Assistance Available**

- 733           a. In all cases, the District reserves the right to refer the results of its own  
734 investigation to the local State Attorney for possible criminal charges, whether  
735 or not the District takes any other action on its own account.
- 736           b. The District will provide counseling services for students who have been  
737 harassed or discriminated against.
- 738           c. Training will be provided to assist teachers and counselors who work with  
739 students to prevent sexual harassment and discrimination between people of  
740 the same sex or the opposite sex.
- 741           d. The Office for Civil Rights is a federal agency in the Department of Education  
742 that schools' compliance with charged with implementing Title IX of the  
743 Education Amendments and can be contacted by telephone at 1-800-421-  
744 3481; by fax at (404) 562-6455; or by e-mail at [OCR\\_Atlanta@ed.gov](mailto:OCR_Atlanta@ed.gov).
- 745           e. For more information, one may contact: EEO/Title IX Coordinator, 3370 Forest  
746 Hill Boulevard, Suite A-115, West Palm Beach, Florida, 33406; Telephone:  
747 (561) 434-8637; or visit <http://www.ed.gov/ocr/sex.html> on the Internet.

748 STATUTORY AUTHORITY: Fla. Stat. §§ 1001.41(2); 1001.43(1), (6); 1006.07;  
749 1012.23(1)

750 LAWS IMPLEMENTED: Fla. Stat. §§ 119.07(3)(p), (u); 1000.05(2)(a), (b) (Florida  
751 Education Equity Act); 1002.22(3)(a), (d); 1001.41(1), (2); 1006.07(2)(h); 1006.08;  
752 1012.31(3)(a); 1012.796(1)(c); 760.01(2), Fla. Stat.; (20 U.S.C. § 1681-1688 (Title IX of  
753 the Education Amendments of 1972); 20 U.S.C. § 1232g (Family Educational Rights  
754 and Privacy Act ("FERPA"))

755 STATE BOARD OF EDUCATION RULES: 6A-19.001; 6A-19.002; 19.008; 6B-  
756 1.006(3)(a), (g)

757 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 development by the Board.

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Attorney

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Date