

**POLICY 3.31**

**5-D** I recommend the Board approve the proposed revisions to Policy 3.31, entitled "Grievance Procedure for Employees."

[Contact: Dr. Mary Ann DuPont, 434-8963; or JulieAnn Rico Allison, 434-8500]

**Development**

- The DOE's Educational Equity Monitoring Work Plan requested that this Policy allow 60 days for initial reporting of alleged discrimination or harassment, reflecting the recent recommendations of the federal Office for Civil Rights.
- The new Section (4) is based on the employee-related portions of Policies 5.001 and 5.81 and provides a procedure tailored to resolving discrimination and harassment complaints, including the requested 60-day limit.
- Retaliation is prohibited at line 346.
- Based on the Board's recent discussion about procedures for investigation of its direct reports (the Superintendent, the Chief Counsel, and the District Auditor), Section (7) has been expanded to cover grievances by or about such direct reports or the employees they supervise. Paragraph (7)(c) is based on discussions with school board attorneys in three other large districts.

CONSENT ITEM

**PROPOSED REVISIONS TO POLICY 3.31**

**GRIEVANCE PROCEDURE FOR EMPLOYEES**

1  
2 1. ~~A. DEFINITIONS~~**Purpose.--** The purpose of this procedure is to secure, at the  
3 lowest administrative level, equitable solutions to claim(s) arising from a violation,  
4 misapplication, or misinterpretation of School Board Policies or Administrative  
5 Directives, which may include harassment prohibited by Policy 3.19, and to  
6 establish an orderly succession of procedures wherein these solutions may be  
7 pursued.

8 2. ~~B. PURPOSED~~**Definitions.--** As used herein, the following terms have these  
9 meanings:

10 ~~The purpose of this procedure is to secure, at the lowest administrative level,~~  
11 ~~equitable solutions to claim(s) arising from a violation, misapplication, or~~  
12 ~~misinterpretation of School Board Policies and Administrative Directives and to~~  
13 ~~guarantee an orderly succession of procedures wherein these solutions may be~~  
14 ~~pursued.~~

15 a. A "grievance" is a complaint which alleges a violation, misinterpretation, or  
16 misapplication of School Board Policy or Administrative Directives, including  
17 discrimination or harassment prohibited by Policy 3.19.

18 b. The term "employee" includes every employee, instructional or non-  
19 instructional, of the School Board of Palm Beach County.

20 c. The terms "grievant" and "complainant" refer to an employee (including an  
21 applicant as defined in Section (2)(e)) who alleges that he/she has been  
22 subjected to discrimination or harassment as prohibited by Policy 3.19.

23 d. "Accused/employee" refers to an employee who is alleged to have subjected  
24 another employee to discrimination or harassment as prohibited by Policy  
25 3.19.

26 e. The term "applicant," as used herein, means a *current District employee* who  
27 applies for another instructional or non-instructional position within the District.

28 ~~f. The term "days" in this procedure shall mean work days.~~

29 g. The term “supervisor” means the Pprincipal, Ddirector, Aarea Executive  
30 Director superintendent, Assistant Superintendent, Deputy Superintendent,  
31 Superintendent of Schools or other Ddepartment Administrator who has the  
32 direct responsibility of supervising or managing the aggrieved employee and  
33 who has the authority to take action necessary to resolve the grievance. For  
34 purposes of this Policy, this term may also include a consultant retained by the  
35 Board to provide interim management assistance.

36 h. The term “superior” as used herein refers to the supervisor of the aggrieved  
37 employee's immediate supervisor.

38 i. A "chief officer" is the Chief Academic Officer or the Chief Operating Officer.

39 j. The term “days” in this Policy shall mean work days unless calendar days are  
40 specified.

41 3. G. Procedure for Grievances Other than Alleged Harassment or  
42 Discrimination.-- The following grievance procedure applies when the grievance  
43 is based on an allegation other than discrimination, or harassment under Policy  
44 3.19. (However, when the grievance is based on allegations of discrimination, or  
45 harassment as prohibited by Policy 3.19, the procedures of Section (4) shall apply,  
46 instead.)

47 a. Level One: Informal Conference

48 Within ten (10) work days after the employee first knows or reasonably should  
49 have known, of the grievable incident, the employee shall initially discuss the  
50 matter with the immediate supervisor with the objective of informally resolving  
51 the matter.

52 A. ~~For an allegation of discrimination by one's supervisor, an employee~~  
53 ~~may refer a complaint to the District's Equal Employment Opportunity~~  
54 ~~(EEO) office in the Division of Personnel Services.~~

55 b. Level Two: Filing a Written Grievance

56 i. Within ten (10) work days after the informal conference described in Level  
57 One, if no satisfactory disposition is made, the employee may file a  
58 written grievance with the supervisor. The written grievance shall set  
59 forth specifically the event(s) upon which the grievance is based, citing

60 the Policy and/or Directive alleged to be violated, the date the alleged  
61 infraction took place, and grounds upon which the grievance is made.  
62 The employee must sign and date the grievance.

63 ii. Within ten (10) work days after receiving the written grievance, the  
64 supervisor shall schedule another meeting with the employee. Within ten  
65 (10) work days of the second meeting, and after investigating the  
66 allegations, the supervisor shall issue a written decision to the employee.

67 c. Level Three: Review by the Supervisor's Superior or Chief Officer

68 i. Within ten (10) work days after the supervisor's decision, if the employee  
69 is not satisfied with the supervisor's decision or if no decision has been  
70 made issued, the employee may forward the grievance and the  
71 supervisor's decision to the superior or to the applicable chief  
72 officer ~~Department of Employee relations~~. The written grievance shall set  
73 forth the event(s) upon which the grievance is based. If the grievance is  
74 not forwarded to the superior or chief officer within the designated time,  
75 the grievance is considered withdrawn from the grievance process and  
76 shall be so noted in the grievance file.

77 ii. Within ten (10) work days after receiving the grievance, the superior or  
78 chief officer ~~Department of Employee relations~~ will schedule a meeting  
79 with the employee. Within ten (10) work days of the said that meeting,  
80 meeting, and after further investigating the allegations as appropriate, the  
81 superior or chief officer ~~Department of Employee Relations~~ shall issue a  
82 written decision to the employee. A copy shall be provided to the  
83 supervisor.

84 d. Level Four: Appeal to the Superintendent

85 i. Within ten (10) work days after the superior or chief officer ~~Department of~~  
86 ~~Employee~~ issues its written decision, if the employee is not satisfied with  
87 the decision or if no decision is has been issued within ten (10) work days  
88 of the meeting, the employee may appeal the decision, in writing, to the  
89 Superintendent, or to the decision of the Department of Employee  
90 Relations. ~~If the grievant does not pursue the grievance past Level~~  
91 ~~three, the grievant is encouraged to forward written correspondence to~~  
92 ~~the Department of Employee Relations indicating that he/she is~~  
93 ~~withdrawing the grievance from the grievance process.~~ If the grievance is

- 94 not forwarded to the Superintendent within the designated time, the  
95 grievance is considered withdrawn from the grievance process and shall  
96 be so noted in the grievance file.
- 97 ii. The Superintendent/ ~~or~~ designee, shall appoint an ad hoc ~~G~~grievance  
98 ~~R~~review ~~C~~committee. The chair of the committee will be the highest-  
99 ranking District official on the committee. The committee will consist of
- 100 A. one (1) member from District management, selected by the  
101 Superintendent;
- 102 B. one (1) member selected by the grievant; and
- 103 C. ~~the~~ a third member selected by agreement of the first two (2)  
104 members. If the third member is not selected by the other committee  
105 members within seven (7) calendar days, the  
106 Superintendent/~~designee~~, shall appoint a third member to serve on  
107 the committee.
- 108 iii. ~~The highest ranking official in the District among the three (3) committee~~  
109 ~~members shall be the Ccommittee Cchairperson. In an effort to resolve~~  
110 ~~the grievance. Within ten (10) work days after the Ccommittee is~~  
111 ~~designated, the Ccommittee shall meet with the grievant and the~~  
112 ~~supervisor or superior of the person alleged to have violated,~~  
113 ~~misinterpreted, or misapplied a Policy or Directive. in an effort to resolve~~  
114 ~~the grievance.~~ Other persons may be presented as witnesses at the  
115 meeting by either the grievant or the supervisor/superior. The committee  
116 shall issue a written decision recommendation within ~~five (5)~~ ten (10) work  
117 days after the meeting, determining whether any violation has occurred,  
118 and if so, an appropriate remedy. A copy of the ~~decision~~  
119 recommendation shall be provided to the grievant, supervisor or superior,  
120 the ~~D~~irector of ~~E~~mployee labor Relations, and the Superintendent.
- 121 iv. ~~The decision of the Committee shall be final and binding. The~~  
122 recommendation of the committee shall be forwarded to the  
123 Superintendent for review. The Superintendent/designee shall review the  
124 recommendation of the committee and the record of the grievance. If the  
125 Superintendent/ designee finds that a meeting with the grievant would  
126 assist in the final determination, the Superintendent/ designee may  
127 schedule a meeting for the purposes of this review. The

128 Superintendent/designee's decision is the final and binding decision of  
129 the District.

130 **4. Reporting and Resolving Allegations of Harassment or Discrimination.--**

131 When the cause for the grievance is an allegation of discrimination or harassment  
132 of an employee (including an applicant, as defined in Section (2)(e)), the following  
133 procedures shall apply:

134 **a. Level One: Reporting to the Supervisor or EEO Coordinator and**  
135 **Investigation by the EEO Coordinator/Designee**

136  
137 **i. Reporting Discrimination or Harassment.-- Any employee (including**  
138 an applicant as defined in Section (2)(e)) who believes he/she is a victim  
139 of discrimination or harassment as prohibited by Policy 3.19, may report  
140 the incident(s) in writing to the principal or other immediate supervisor, as  
141 applicable. Due to the sensitive nature of sexual harassment complaints,  
142 or in the event of an allegation of harassment or discrimination by one's  
143 supervisor, the complaint may be filed in writing directly with the District's  
144 Equal Employment Opportunity Coordinator ("EEO Coordinator"). The  
145 EEO Coordinator is located at: 3370 Forest Hill Boulevard, Suite A-115,  
146 West Palm Beach, Florida, 33406; Telephone: (561) 434-8637.

147  
148 **ii. Complaints should be filed as soon as possible after the alleged incident,**  
149 but must be filed within sixty (60) calendar days after the employee  
150 (including an applicant as defined in Section (2)(e)) first knows or should  
151 have known of the grievable incident. Failure on the part of the  
152 complainant to initiate and/or follow up on a complaint in a timely manner  
153 may result in the complaint being deemed abandoned.

154  
155 **iii. The principal/designee or other immediate supervisor (as applicable) or**  
156 EEO Coordinator may assist the individual in putting the complaint in  
157 writing, if its has not yet been recorded in writing; reviewing it with the  
158 complainant; and obtaining the complainant's signature. The complainant  
159 will be requested to provide signed, specific information regarding the  
160 alleged discrimination or harassment, the alleged offender(s), witnesses,  
161 and other relevant information. All complaints filed with the  
162 principal/designee or other supervisor must be reported to the area  
163 superintendent (if applicable) and the EEO Coordinator.

164

165 iv. It is the responsibility of the principal or other supervisor, as applicable, to  
166 forward all harassment or discrimination complaints to the area  
167 superintendent (if applicable) and EEO Coordinator.  
168

169 **b. Investigation by EEO Coordinator.--** The EEO Coordinator/designee shall  
170 document and promptly and thoroughly investigate all complaints of  
171 harassment or discrimination, including the following steps:  
172

173 i. promptly talk with the complainant. The complainant shall have an  
174 opportunity to describe the incident, present any evidence, name  
175 witnesses, and put his/her complaint in writing, if he/she has not already  
176 done so;  
177

178 ii. talk with any witnesses or others who may have relevant information; and  
179

180 iii. conduct an investigative meeting with the accused/employee, and the  
181 accused/employee's representative, if applicable, to discuss the  
182 allegations and allow the accused/employee to respond to the allegations.  
183

184 iv. During the investigation, the EEO Coordinator may recommend to the  
185 Chief Personnel Officer/designee any action deemed necessary to protect  
186 the complainant or other employees, consistent with the requirements of  
187 applicable laws.  
188

189 v. When necessary to carry out the investigation or for other good reasons,  
190 and consistent with federal and state privacy laws, the EEO Coordinator  
191 should discuss the complaint with any of the following persons, as  
192 appropriate:  
193

194 A. Superintendent/designee;  
195

196 B. chief officer;  
197

198 C. area superintendent/designee ;  
199

200 D. associate superintendents;  
201

202 E. chief of School Police;

- 203
- 204 F. chief personnel officer;
- 205
- 206 G. director of labor relations;
- 207
- 208 H. another employee whose knowledge of the persons involved may
- 209 help determine the truth;
- 210
- 211 I. legal counsel for the Board;
- 212
- 213 J. exclusive bargaining representative or their legal counsel, if
- 214 appropriate; and
- 215
- 216 K. the accused/employee.
- 217
- 218 c. **Decision of the EEO Coordinator.**--Upon completion of the investigation, the
- 219 EEO Coordinator/designee shall make a decision about the validity of the
- 220 allegations in the complaint. The EEO Coordinator shall discuss the
- 221 determination and any recommended corrective action with the
- 222 principal/designee, or other immediate supervisor as applicable. In reaching a
- 223 decision about the complaint, the following should be taken into account:
- 224
- 225 i. statements made by the persons identified above Section (4)(b);
- 226
- 227 ii. the details and consistency of each person's account;
- 228
- 229 iii. evidence of how the complainant reacted to the incident;
- 230
- 231 iv. evidence of past instances of harassment or discrimination by the
- 232 accused/employee (provided that, if evidence of past harassment/
- 233 discrimination is to be considered, the principal/designee must review in
- 234 their entirety the files regarding those past incidents);
- 235
- 236 v. evidence of past harassment or discrimination complaints that were found
- 237 to be untrue (provided that, if evidence of past accusations or complaints
- 238 is to be considered, the principal/designee/supervisor must review in their
- 239 entirety the files regarding those past incidents); and
- 240



- 241 vi. case law, state and federal laws and regulations, and Board Policies  
242 prohibiting harassment and discrimination.  
243
- 244 d. To determine the severity of the harassment or discrimination, factors such as  
245 the following may be considered:  
246
- 247 i. how the misconduct affected an employee's work;  
248
- 249 ii. the type, frequency, and duration of the misconduct;  
250
- 251 iii. the number of persons involved;  
252
- 253 iv. the subject(s) of harassment or discrimination;  
254
- 255 v. the place and situation where the incident occurred; and  
256
- 257 vi. other incidents at the site.  
258
- 259 e. The recommendations for action(s) to be taken, consistent with any applicable  
260 collective-bargaining agreement provisions, to resolve a complaint of  
261 harassment or discrimination by an employee include, but are not limited to,  
262 the following:  
263
- 264 i. no action, if the complaint is unsubstantiated;  
265
- 266 ii. training requirements for the accused/employee;  
267
- 268 iii. oral reprimand of the accused/employee;  
269
- 270 iv. written reprimand of the accused/employee;  
271
- 272 v. suspension of the accused/employee; or  
273
- 274 vi. termination of the accused/employee.  
275
- 276 f. **Level Two: Appeal to the Chief Operating Officer/Designee.--** If the  
277 complainant or accused/employee wishes to appeal the action taken in  
278 resolution of the complaint, such appeal shall be filed in accordance either with

279 this Policy or relevant collective bargaining agreement, as applicable. For  
280 those employees not in a bargaining unit, the appeal shall be filed in  
281 accordance with the following procedures:

282  
283 i. If the grievant or accused/employee desires to appeal the EEO  
284 Coordinator's decision, it may be appealed in writing to the Chief  
285 Operating Officer/designee within ten (10) work days after receipt of the  
286 decision.

287  
288 ii. If the Chief Operating Officer is directly involved with a complaint or with  
289 the parties to the complaint complainant or accused/employee, then the  
290 Chief Academic Officer shall be asked to review the matter.

291  
292 iii. Notice of the appeal shall be given to the opposite party within two (2)  
293 work days of receipt of appeal.

294  
295 iv. The Chief Operating Officer/designee shall review the written complaint,  
296 the accused/employee's response to the complaint, and all  
297 documentation pertaining to the alleged sexual harassment or  
298 discrimination, including the EEO Coordinator's decision.

299  
300 v. The Chief Operating Officer/designee, in his/her discretion, may request  
301 additional information. The Chief Operating Officer/designee shall issue a  
302 written decision to the parties within twenty (20) calendar days of request  
303 of the appeal.

304  
305 **g. Level Three: Appeal to the Superintendent.-- Within ten (10) work days**  
306 **after the Chief Operating Officer/designee issues a written decision, if a party**  
307 **is not satisfied with the decision (or if no decision has been issued within ten**  
308 **(10) work days of the meeting), the party may appeal the decision in writing to**  
309 **the Superintendent. If the grievance is not forwarded to the Superintendent**  
310 **within the designated time, the grievance is considered withdrawn from the**  
311 **grievance process and shall be so noted in the grievance file.**

312 i. Notice of the appeal shall be given to the opposite party within two (2)  
313 work days of receipt of appeal.

314 ii. The Superintendent/designee shall appoint an ad hoc grievance review  
315 committee as specified in Section (3)(d)(ii), above.

316 A. In an effort to resolve the grievance, within ten (10) work days after  
317 the committee is designated, the committee shall meet with the  
318 appealing party and, if deemed appropriate, may also meet with the  
319 opposite party. Other persons may be presented as witnesses at the  
320 meeting by either the appealing party or the opposite party.

321 B. The committee shall issue a written recommendation within ten (10)  
322 work days after the meeting, determining whether any violation has  
323 occurred, and if so, recommending an appropriate remedy. A copy  
324 of the recommendation shall be provided to both parties, the  
325 grievant's supervisor and the director of labor relations (if  
326 appropriate), and the Superintendent.

327 iii. The Superintendent/designee shall review the recommendation of the  
328 grievance review committee and the record of the grievance. If the  
329 Superintendent/designee finds that a meeting with the grievant and/or  
330 accused/employee would assist in the final determination, the  
331 Superintendent/ designee may recommend scheduling a meeting for the  
332 purposes of this review. The Superintendent/designee's decision is final  
333 and binding and not subject to appeal.

334 h. If the complainant is not satisfied with the results of the procedures contained  
335 in this Section, he/or she may utilize other means for resolution as provided by  
336 law, including seeking recourse through the federal Office for Civil Rights  
337 ("OCR") or Equal Employment Opportunity Commission ("EEOC").

338 **5. Rights of Employees (Including Applicants as Defined in Section (2)(e))**

339 a. During any of the grievance levels, the employee (including an applicant as  
340 defined in Section (2)(e)) may be represented by a person of the  
341 employee's/applicant's choice once the grievance is filed with the supervisor.  
342 Department of Employee Labor relations-For grievances governed by Section  
343 (3) that are filed by employees/applicants who choose to be represented by  
344 legal counsel, the process will begin at the chief officer phase of Level 3 under  
345 Section (3)(c).

346 b. **No retaliation or reprisals of any kind** shall be taken by any member of the  
347 administration or other employee against the employee, representative, or any  
348 other participant in the grievance procedure by reason of such participation.

349 **6. General Provisions**

- 350 a. Grievance report forms for filing a grievance shall be available in the  
351 Department of Employee labor relations. Employees are to be notified of the  
352 procedures in this Policy through the Policy's distribution to schools and  
353 departments and its posting on the School Board Policies web site.
- 354 b. Failure of the employee/applicant to advance the grievance through the  
355 procedure within the time lines designated will result in immediate dismissal of  
356 the grievance.
- 357 c. All records pertaining to a grievance shall may be filed in a separate grievance  
358 file and will may not be kept in the official "personnel file" of the  
359 employee/applicant, but this grievance file will be treated as provided by Fla.  
360 Stat. §§ 119.07 and 231.291. All decisions of management are to be  
361 forwarded to the labor relations department, which is designated as the  
362 custodian of those records for grievances involving a bargaining unit member.  
363 However, said This file is subject to disclosure pursuant to the Public Records  
364 law.
- 365 d. If a grievance is filed under the grievance procedure in a collective bargaining  
366 agreement, the employee may not pursue a the grievance under this  
367 procedure.
- 368 e. The grievant is precluded from processing a grievance when the subject of the  
369 grievance and/or the relief requested has been, or currently is, the subject of  
370 another administrative action or appeal before a governmental body or agency  
371 or a court proceeding.
- 372 f. The filing of a grievance shall not interfere with the right of the School Board to  
373 carry out its responsibilities, subject to the final decision on a grievance.

374 **7. Superintendent, Chief Counsel, and District Auditor**

- 375 a. When the Grievant is a Direct Board Report.-- Employees who report  
376 directly to the Board (Superintendent, Chief Counsel, and District Auditor)  
377 shall file any grievance in writing with the Board Chair. The Chair should  
378 request appropriate District personnel to begin the investigation/ resolution  
379 process set forth in Section (3) or (4) above, as applicable.

380 b. **When the Grievant is an Employee in the Office of a Direct Board**  
381 **Report.** -- Employees of the Office of Superintendent, Office of District Auditor,  
382 and Office of Chief Counsel should file any initial grievance with their direct  
383 supervisor (or the EEO Coordinator, if the allegation is based on harassment  
384 or discrimination) pursuant to Section (3) or (4) above (unless the grievance is  
385 against a direct Board report, in which case subsection (c) below shall apply).  
386 If the grievance is not resolved at this level, the grievance may be appealed as  
387 set forth under Section (3) or (4), as applicable.

388 c. **When the Accused is a Direct Board Report.** -- When a direct Board report  
389 (the Superintendent, Chief Counsel, or District Auditor) is the accused, the  
390 grievant shall file the complaint in writing with the Board Chair, who shall take  
391 prompt action as specified below:

392 i. First, the Chair shall notify the accused of the complaint.

393 ii. Second, the Chair shall notify the Board of the complaint. The Board  
394 shall determine if the complaint appears to merit formal investigation.

395 iii. If the Board deems the complaint to merit formal investigation, the Board  
396 shall set the parameters for the investigation. The investigation should  
397 seek the accused/employee's response as well as the statements of the  
398 grievant and witnesses.

399 iv. If a preliminary investigation is begun, the written complaint and  
400 documents relating to the investigation are confidential, pursuant to Fla.  
401 Stat. §§ 119.07(3)(p) & (u), 231.291(3)(a)1, and 231.262(1)(a), until the  
402 investigation is either concluded or ceases to be active.

403 v. To conduct the investigation, the Board may consider:

404 A. retaining outside special counsel (which should be an attorney or law  
405 firm that is not currently retained by the Board and has not handled  
406 any matters for or against the Board within the past five years):

407 B. requesting the personnel-investigation department of another Florida  
408 school district to conduct the inquiry:

409 C. contracting with the DOE Office of Inspector General; or



Legal Signoff:

The Legal Department has reviewed the proposed revisions to Policy 3.31 and finds them legally sufficient for development by the Board.

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
Date