

POLICY 3.31

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

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Development

- The DOE's Education Equity Monitoring Plan has requested that this Policy allow 60 days for initial reporting of alleged discrimination or harassment, in order to reflect the recent recommendations of the federal Office for Civil Rights.
- The new Section (4) provides a procedure tailored to discrimination and harassment grievances, which includes the aforementioned 60-day limit and is based on the employee-related portions of Policies 5.001 and 5.81.

CONSENT ITEM

PROPOSED REVISIONS TO POLICY 3.31

GRIEVANCE PROCEDURE FOR EMPLOYEES

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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 ~~D~~department 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 supervisor's 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.~~
- 110 iv. In an effort to resolve the grievance, ~~W~~within ten (10) work days after the
111 ~~C~~committee is designated, the ~~C~~committee shall meet with the grievant
112 and the 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 Employee Labor Relations, and the Superintendent.
- 121 v. ~~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 final and binding and is not subject
129 to appeal.

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 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**

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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) 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 directly with the District's Equal
144 Employment Opportunity Coordinator ("EEO Coordinator"). The EEO
145 Coordinator is located at: 3370 Forest Hill Boulevard, Suite A-115, West
146 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.

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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.

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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.

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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:**

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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;

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

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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.

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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.

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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:

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194 A. Superintendent/designee;

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196 B. chief officer;

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198 C. area superintendent/designee ;

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D. associate superintendents;

E. chief of School Police;

F. chief personnel officer;

G. director of labor relations;

H. another employee whose knowledge of the persons involved may help determine the truth;

I. legal counsel for the Board;

J. exclusive bargaining representative or their legal counsel, if appropriate; and

K. the accused/employee.

c. **Decision of the EEO Coordinator.**--Upon completion of the investigation, the EEO Coordinator/designee shall make a decision about the validity of the allegations in the complaint. The EEO Coordinator shall discuss the determination and any recommended corrective action with the principal/designee, or other immediate supervisor as applicable. In reaching a decision about the complaint, the following should be taken into account:

i. statements made by the persons identified above Section (4)(b);

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

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

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

- 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 are to be considered, the principal/designee/supervisor must review in
239 their entirety the files regarding those past incidents); and
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- 241 vi. case law, state and federal laws and regulations, and Board Policies
242 prohibiting harassment and discrimination.
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- 244 d. To determine the severity of the harassment or discrimination, factors such as
245 the following may be considered:
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- 247 i. how the misconduct affected an employee's work;
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- 249 ii. the type, frequency, and duration of the misconduct;
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- 251 iii. the number of persons involved;
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- 253 iv. the subject(s) of harassment or discrimination;
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- 255 v. the place and situation where the incident occurred; and
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- 257 vi. other incidents at the site.
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- 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:
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- 264 i. no action, if the complaint is unsubstantiated;
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- 266 ii. training requirements for the accused/employee;
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- 268 iii. oral reprimand of the accused/employee;
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- 270 iv. written reprimand of the accused/employee;
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- 272 v. suspension of the accused/employee; or
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274 vi. termination of the accused/employee.

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276 **f. Level Two: Appeal to the Chief Operating Officer.--** If the complainant or
277 accused/employee wishes to appeal the action taken in resolution of the
278 complaint, such appeal shall be filed in accordance either with this Policy or
279 relevant collective bargaining agreement, as applicable. For those employees
280 not in a bargaining unit, the appeal shall be filed in accordance with the
281 following procedures:

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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 within ten (10) work days after receipt of the decision.

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

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

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

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

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

- 311 i. Notice of the appeal shall be given to the opposite party within two (2)
312 work days of receipt of appeal.
- 313 ii. The Superintendent/designee shall appoint an ad hoc grievance review
314 committee as specified in Section (3)(d)(ii), above.
- 315 A. In an effort to resolve the grievance, within ten (10) work days after
316 the committee is designated, the committee shall meet with the
317 appealing party and, if deemed appropriate, may also meet with the
318 opposite party. Other persons may be presented as witnesses at the
319 meeting by either the appealing party or the opposite party.
- 320 B. The committee shall issue a written recommendation within ten (10)
321 work days after the meeting, determining whether any violation has
322 occurred, and if so, recommending an appropriate remedy. A copy
323 of the recommendation shall be provided to both parties, the
324 grievant's supervisor and the director of labor relations (if
325 appropriate), and the Superintendent.
- 326 iii. The Superintendent/designee shall review the recommendation of the
327 grievance review committee and the record of the grievance. If the
328 Superintendent/designee finds that a meeting with the grievant and/or
329 accused/employee would assist in the final determination, the
330 Superintendent/ designee may schedule a meeting for the purposes of
331 this review. The Superintendent/designee's decision is final and binding
332 and not subject to appeal.
- 333 h. If the complainant is not satisfied with the results of the procedures contained
334 in this Section, he/or she may utilize other means for resolution as provided by
335 law, including seeking recourse through the federal Office for Civil Rights
336 ("OCR") or Equal Employment Opportunity Commission ("EEOC").

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

- 338 a. During any of the grievance levels, the employee (including an applicant as
339 defined in Section (2)(e)) may be represented by a person of the
340 employee's/applicant's choice once the grievance is filed with the supervisor.
341 Department of Employee Labor relations For grievances governed by Section
342 (3) that are filed by employees/applicants who choose to be represented by

343 legal counsel, the process will begin at the chief officer phase of Level 3 under
344 Section (3)(c).

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

348 6. **General Provisions**

349 a. Grievance report forms for filing a grievance shall be available in the
350 Department of Employee labor relations.

351 b. Failure of the employee/applicant to advance the grievance through the
352 procedure within the time lines designated will result in immediate dismissal of
353 the grievance.

354 c. All records pertaining to a grievance shall be filed in a separate grievance file
355 and will not be kept in the official personnel file of the employee/applicant, but
356 this grievance file will be treated as provided by §§ 119.07 and 231.291, Fla.
357 Stat. All decisions of management are to be forwarded to the labor relations
358 department, which is designated as the custodian of those records for
359 grievances involving a bargaining unit member. However, said This file is
360 subject to disclosure pursuant to the Public Records law.

361 d. If a grievance is filed under the grievance procedure in a collective bargaining
362 agreement, the employee may not pursue a the grievance under this
363 procedure.

364 e. The grievant is precluded from processing a grievance when the subject of the
365 grievance and/or the relief requested has been, or currently is, the subject of
366 another administrative action or appeal before a governmental body or agency
367 or a court proceeding.

368 f. The filing of a grievance shall not interfere with the right of the School Board to
369 carry out its responsibilities, subject to the final decision on a grievance.

370 g. Employees who report directly to the Board (Superintendent, Internal Auditor,
371 and Chief Counsel) shall file any grievance with the Board chair.

372 h. Employees of the Officer of Internal Auditor and Officer of Chief Counsel shall

Legal Signoff:

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

Attorney

Date