

Personnel

SUBJECT: SEXUAL AND OTHER HARASSMENT, DISCRIMINATION AND RETALIATION (EMPLOYEES AND THIRD PARTIES)

The Board of Education affirms its commitment to equal opportunity and non-discrimination and recognizes its responsibility to provide for all District employees an environment that is free of discrimination and harassment based on sex (with or without sexual conduct), gender, sexual orientation, race, color, creed, religion, national origin, political affiliation, age, marital status, military status, veteran status including Vietnam Era or disabled veteran status, disability, use of a recognized guide dog, hearing dog or service dog, or any other category protected by law. The District also does not tolerate any actual or attempted reprisals or retaliation against an employee who raises a sincere and valid concern regarding harassment or discrimination. All such discrimination, harassment, and/or retaliation is, therefore, strictly prohibited by the District.

Sexual orientation is defined as heterosexuality, homosexuality, bisexuality, or asexuality, whether actual or perceived.

The Board also prohibits harassment based on an individual's opposition to discrimination or participation in a related investigation or complaint proceeding under the anti-discrimination statutes. This policy of nondiscrimination and anti-harassment will be enforced on School District premises and in school buildings; and at all school-sponsored events, programs and activities, including those that take place at locations off school premises and in another state.

This policy and its accompanying regulations also apply to third parties of the District, including but not limited to vendors/contractors, other individuals who do business with the District, students, volunteers, visitors or guests. In the remainder of this policy, references to employees also include any third parties.

Anyone engaging in the prohibited conduct is subject to appropriate disciplinary action by the District including, but not limited to, termination of employment in accordance with contractual and legal guidelines and the District Code of Conduct; loss of District business; expulsion from the District premises and/or school activities or events. The application of such disciplinary measures by the District does not preclude the filing of civil and/or criminal charges as may be warranted.

Harassment Prohibited - Definition

As used in this policy "harassment" refers to the conduct relating to or based upon a person's sex (with or without sexual conduct), gender, sexual orientation, race, color, creed, religion, national origin, political affiliation, age, marital status, military status, veteran status including Vietnam Era or disabled veteran status, disability, use of a recognized guide dog, hearing dog or service dog, domestic violence victim status or any other category protected by law which fails to respect the dignity and feelings of the individual. Harassment that is forbidden by this policy can take several forms, including but not limited to:

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Sexual Harassment

There are two (2) types of sexual harassment: quid pro quo harassment and hostile environment harassment. Quid pro quo harassment occurs when some benefit, such as promotions, continued or additional benefits, or continued employment, is conditioned upon the receipt of sexual favors, or when some punishment is threatened for refusing to comply with a demand for sexual favors. Hostile environment harassment occurs when sexual conduct is sufficiently severe, persistent or pervasive that it either has the purpose or effect of unreasonably interfering with an employee's work performance or creates an intimidating, hostile, offensive, or abusive work environment.

The District will not tolerate sexual harassment between members of the same or opposite sex. This policy protects and covers the conduct of all employees, without regard to job title or status. While not exhaustive, the following is a list of some examples of conduct which may constitute sexual harassment:

- a) Offering employment benefits in exchange for sexual favors.
- b) Making or threatening reprisals after a negative response to sexual advances.
- c) Graphic verbal comments about an individual's body or appearance.
- d) Unwelcome sexual flirtations or propositions for sexual activity or unwelcome demands for or suggestions of sexual favors, including but not limited to repeated unwelcome requests for dates.
- e) Spreading sexual rumors.
- f) Touching an individual's body or clothes (including one's own) in a sexual way, including but not limited to, grabbing, brushing against, patting, pinching, bumping, rubbing, kissing, and fondling.
- g) Cornering or blocking of normal movements.
- h) Displaying or sending sexually suggestive drawings, images, pictures, written materials, cartoons, letters, notes and objects in the work/educational environment, regardless of the medium.
- i) Verbal conduct such as making or using sexually derogatory comments, epithets, slurs, or jokes, making graphic verbal comments about an individual's body or appearance.

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- j) Any act of retaliation against an individual who reports a violation of the District's sexual harassment policy or who participates in the investigation of a sexual harassment complaint.

Some conduct, even though consensual, may violate the harassment policy because it creates a hostile environment for others (e.g., a third-party overhearing a joke). Although sexual harassment is limited to unwelcome actions, private and consensual conduct may at some point become unwelcome. Employees who participate in a consensual relationship, and who at some point wish to discontinue the relationship, should tell the other participant, either verbally or in writing, that the conduct is no longer welcome and, therefore, must cease. Any employee or other party advised that certain conduct previously acceptable to an employee is now unwelcome shall cease such conduct immediately. Any conduct of a sexual nature following such notice may be determined to be sexual harassment.

Harassment Based on Race, Color, Creed, Religion, National Origin, Political Affiliation, Age, Marital Status, Gender, Sexual Orientation, Military Status, Veteran Status Including Vietnam Era or Disabled Veteran Status, Disability, Use of a Recognized Guide Dog, Hearing Dog or Service Dog, or Any Other Category Protected By Law

Harassment based on race, color, creed, religion, national origin, political affiliation, age, marital status, gender, sexual orientation, military status, veteran status including Vietnam Era or disabled veteran status, disability, use of a recognized guide dog, hearing dog or service dog, or any other category protected by law can include any verbal, written, or physical act in which such protected categories are used to make an employee uncomfortable at work or interferes with an employee's ability to perform their job.

Harassment based on race, color, creed, religion, national origin, political affiliation, age, marital status, gender, sexual orientation, military status, veteran status including Vietnam Era or disabled veteran status, disability, use of a recognized guide dog, hearing dog or service dog, or any other category protected by law may take many forms. While it is impossible for the District to provide an exhaustive list, the following is a list of some examples of harassing behavior that the District will not tolerate:

- a) Jokes that refer to gender, sexual orientation, race, color, creed, religion, national origin, political affiliation, age, marital status, military status, veteran status including Vietnam Era or disabled veteran status, disability, use of a recognized guide dog, hearing dog or service dog, or any other category protected by law.
- b) Posting or distributing cartoons, drawings, or any other material that negatively reflects a person's gender, sexual orientation, race, color, creed, religion, national origin, political affiliation, age, marital status, military status, veteran status including Vietnam Era or disabled veteran status, disability, use of a recognized guide dog, hearing dog or service dog, or any other category protected by law.

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- c) The use of slurs or other offensive language.
- d) Practical jokes, horseplay, or teasing that makes fun of or insults a person's gender, sexual orientation, race, color, creed, religion, national origin, political affiliation, age, marital status, military status, veteran status including Vietnam Era or disabled veteran status, disability, use of a recognized guide dog, hearing dog or service dog, or any other category protected by law.
- e) Any act of retaliation against an individual who reports a violation of this policy or who participates in the investigation of a complaint made pursuant to this policy.

Reporting, Investigating, and Handling of Discrimination, Harassment and Retaliation

Any employee who believes that he/she has been subjected to or has witnessed discrimination, harassment and/or retaliation of any kind, shall report all incidents of such conduct to Carol Townsend or James LiPuma (the District's designated Complaint Officers) or his/her Building Principal. The Complaint Officers are also responsible for educating employees about this policy. If the complaint is first received by the Building Principal or someone other than the designated Complaint Officer, that person shall relay the complaint to a Complaint Officer immediately, but no later than five (5) working days. In the event that one (1) Complaint Officer is the offender, the complainant shall report his/her complaint to the other person holding the same position. To the extent possible, within legal constraints, all such reports will remain as confidential as possible during the investigatory process.

Upon receipt of an informal/formal complaint, a Complaint Officer or a designee will conduct an immediate investigation of the charges. However, if a Complaint Officer has knowledge of or has reason to know of any alleged discrimination/harassment, the District is obligated, even in the absence of a complaint, to investigate such conduct promptly, thoroughly, and as confidentially as possible within the constraints of the law. However, disclosure may be necessary to complete a thorough investigation of the charges, and any disclosure will be provided on a "need to know" basis.

Based upon the results of the District's investigation, immediate and corrective action will be taken, up to and including termination of the offender's employment in accordance with contractual and legal guidelines. Employees are hereby placed on notice that if an employee engages in acts which the District determines to be acts of discrimination, harassment or retaliation such acts are outside of the course and scope of the employee's employment. Such conduct may result in the employee having to obtain his/her own legal counsel, and may result in a money judgment against the employee personally, or the filing of criminal charges.

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Prohibition of Retaliatory Behavior (Commonly Known as "Whistle-Blower" Protection)

The Board prohibits any retaliatory behavior directed against complainants, victims, witnesses, and/or any other individuals who participated in the investigation of a complaint of discrimination and/or harassment. Any such retaliation may result in discipline up to and including discharge. Complainants, victims, witnesses, and/or any other individuals who participated in an investigation who experience retaliation from anyone should report it to the Complaint Officer immediately. Follow-up inquiries shall be made to ensure that discrimination and/or harassment has not resumed and that all those involved in the investigation of the discrimination/harassment complaint have not suffered retaliation.

Knowingly Makes False Accusations

The District encourages the filing of good faith complaints. However, the filing of knowingly false complaints is prohibited. An employee or other third party who knowingly makes a false complaint of any form against any other person shall be subject to discipline, including but not limited to, suspension, transfer, or termination, consistent with applicable collective negotiations agreements and the Education Law.

Privacy Rights

As part of any investigation, the District has the right to search all school property and equipment including District computers. Rooms, desks, cabinets, lockers, computers, etc. are provided by the District for the use of staff and students, but the users do not have exclusive use of these locations or equipment and should not expect that materials stored therein will be private.

Finding That Discrimination/Harassment Did Not Occur

At any level/stage of investigation of alleged discrimination/harassment, if a determination is made that such discrimination/harassment did not occur, the Complaint Officer will so notify the complainant, the alleged offender and the Superintendent of this determination. Such a finding does not preclude the complainant from filing an appeal pursuant to District policy or regulation and/or pursuing other legal avenues of recourse.

However, even if a determination is made that discrimination/harassment did not occur, the Superintendent/designee reserves the right to initiate staff awareness and training, as applicable, to help ensure that the school community is not conducive to fostering discrimination/harassment in the workplace.

In all cases, the Superintendent will inform the Board of Education of the results of each investigation involving a finding that discrimination/harassment did not occur.

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Development and Dissemination of Administrative Regulations

The Board directs the Complaint Officers to develop and maintain regulations for resolving discrimination/harassment complaints by employees. The Superintendent and/or his/her designees shall affirmatively discuss the topic of discrimination/harassment with all employees, express the District's condemnation of such conduct and explain the sanctions for discrimination/harassment. A copy of this policy and its accompanying regulation will be available upon request and may be posted in various locations in each school building. The policy and regulation shall be made available to all employees and will be published in appropriate school publications such as teacher/employee handbooks, student handbooks, and/or school calendars.

Age Discrimination in Employment Act, 29 United States Code (USC) Section 621

Americans With Disabilities Act, 42 United States Code (USC) Section 12101 et seq.

Prohibits discrimination on the basis of disability.

Section 504 of the Rehabilitation Act of 1973, 29 United States Code (USC) Section 794 et seq.

Prohibits discrimination on the basis of disability.

Title VI of the Civil Rights Act of 1964, 42 United States Code (USC) Section 2000d et seq.

Prohibits discrimination on the basis of race, color or national origin.

Title VII of the Civil Rights Act of 1964, 42 United States Code (USC) Section 2000e et seq.

Prohibits discrimination on the basis of race, color, religion, sex or national origin.

Title IX of the Education Amendments of 1972, 20 United States Code (USC) Section 1681 et seq.

Prohibits discrimination on the basis of sex.

Civil Rights Law Section 40-c

Prohibits discrimination on the basis of race, creed, color, national origin, sex, sexual orientation, marital status or disability.

Civil Service Law Section 75-B

Education Law Section 2801(1)

Executive Law Section 290 et seq.

Prohibits discrimination on the basis of age, race, creed, color, national origin, sex, sexual orientation, disability, military status, marital status, use of a recognized guide dog, hearing dog or service dog, or domestic violence victim status.

Military Law Sections 242 and 243

NOTE: Refer also to Policies #6122 -- Complaints and Grievances by Employees
#7550 -- Complaints and Grievances by Students
#7551 -- Sexual and Other Harassment, Discrimination and Retaliation (Students)

Adopted: 7/12/11