

SEXUAL HARASSMENT AND STUDENTS

The Board of Education recognizes that sexual harassment of students on the basis of sex, gender and/or sexual orientation is abusive and illegal behavior that harms targets and negatively impacts the school culture by creating an environment of fear, distrust, intimidation and intolerance. The Board of Education further recognizes that preventing and remedying sexual harassment in schools is essential to ensure a healthy, nondiscriminatory environment in which students can learn productively. Sexual harassment includes acts of sexual violence. Sexual violence is defined as physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent. Note that use of the term "sexual harassment" throughout the policy includes sexual violence unless otherwise noted.

Sex-based harassment can be comprised of two types of behavior: sexual harassment and/or gender-based harassment. Sexual harassment is unwelcome conduct of a sexual nature, which can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature (see regulation 5020.1-R for examples). Gender-based harassment includes verbal, nonverbal or physical aggression, intimidation or hostility that is based on actual or perceived gender and sexual stereotypes (see regulation 5020.1-R for examples). Sexual or gender-based harassment of a student can deny or limit the student's ability to participate in or to receive benefits, services, or opportunities from the school's program.

The Board of Education is committed to providing an educational environment that promotes respect, dignity and equality and that is free from all forms of sexual harassment. To this end, the Board of Education condemns and strictly prohibits all forms of sexual harassment on school grounds, school buses and at all school-sponsored activities, programs and events including those that take place at locations outside the district.

Because sexual harassment can occur staff to student, student to student, student to staff, male to female, female to male, male to male or female to female, it shall be a violation of this policy for any student, employee or third party (school visitor, vendor, etc.) to sexually harass any student.

In order for the Board of Education to effectively enforce this policy and to take prompt corrective measures, it is essential that all targets of sexual harassment and persons with knowledge of sexual harassment report the harassment immediately. The district will promptly investigate all complaints of sexual harassment, either formal or informal, verbal or written. To the extent possible, all complaints will be treated in a confidential manner. Limited disclosure may be necessary to complete a thorough investigation. If the complainant reports that they feel unsafe at school due to the nature of the complaint, the district will determine if accommodations need to be made until the issue is resolved.

If, after appropriate investigation, the district finds that a student, an employee or a third party has violated this policy, prompt corrective action will be taken in accordance with the applicable collective bargaining agreement, district policy and state and/or federal law.

All complainants and those who participate in the investigation of a complaint of sexual harassment have the right to be free from retaliation of any kind.

The Superintendent of Schools is directed to develop and maintain regulations for reporting, investigating and remedying allegations of sexual harassment. These regulations are to be attached to this policy. In addition, training programs shall be established for students and employees to raise awareness of the issues surrounding sexual harassment and to implement preventative measures to help reduce incidents of sexual harassment. Age-appropriate instructional materials will be incorporated into the curriculum to educate students so that they can recognize and reduce the incidence of sexual harassment.

This policy shall be posted in a prominent place in each district facility, on the district's website and shall also be published in student registration materials, student handbooks, and other appropriate school publications.

A committee of administrators, teachers, parents, and students shall be convened periodically to review this policy's effectiveness and compliance with applicable state and federal law, and to recommend revisions to the Board of Education.

Cross-ref: 9110.2, Sexual Harassment and Staff
Part 83, Commissioner's Regulations

Ref: Education Amendments of 1972, Title IX, 20 U.S.C. §1681 *et seq.*
Title VII of Civil Rights Act (1964), 42 U.S.C. §2000-e; 34 CFR §100 *et seq.*
Davis v. Monroe County Board of Education, ___ U.S. __; 119 S.Ct.1661 (1999)
Gebser v. Lago Vista Independent School District, 524 U.S. 274 (1998)
Faragher v. City of Boca Raton, 524 U.S. 775 (1998)
Burlington Industries v. Ellerth, 524 U.S. 742 (1998)
Oncale v. Sundowner Offshore Services, Inc., 523 U.S. 75 (1998)
Franklin v. ~~Gwent~~ Gwinnett County Public Schools, 503 U.S. 60 (1992)
Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57 (1986)
Office for Civil Rights *Revised Sexual Harassment Guidance (January 19, 2001)*

Office for Civil Rights, *Dear Colleague Letter: Sexual Harassment Issues*
(2006)

Office for Civil Rights, *Dear Colleague Letter: Bullying* (October 26,
2010)

Adoption date: June 6, 1994 (prior policy 9010.2)

Revision dates: May 22, 2000; Feb. 13, 2006; Dec. 15, 2008; June 18, 2012

SEXUAL HARASSMENT AND STUDENTS REGULATION

This regulation is intended to create and preserve an educational environment free from unlawful sexual harassment in furtherance of the district's commitment to provide a healthy and productive environment for all students that promotes respect, dignity and equality.

Sexual Harassment Defined

"Sexual harassment" means unwelcome sexual advances, requests for sexual favors, sexually motivated physical conduct or other verbal or physical conduct or communication of a sexual nature. Use of the term "sexual harassment" throughout the regulation includes sexual violence unless otherwise noted.

"Gender-based harassment" means verbal, non-verbal or physical aggression, intimidation or hostility that is based on actual or perceived gender identity or expression.

Sexual or gender-based harassment occurs when:

1. submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of a student's education (including any aspect of the student's participation in school-sponsored activities, or any other aspect of the student's education); or
2. submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting a student's education; or
3. the conduct or communication has the purpose or effect of substantially or unreasonably interfering with a student's academic performance or participation in school-sponsored activities, or creating an intimidating, hostile or offensive educational environment.

Unacceptable Conduct

School-related conduct that the district considers unacceptable and which may constitute sexual harassment includes, but is not limited to, the following:

1. rape, attempted rape, sexual assault, attempted sexual assault, forcible sexual abuse, hazing, and other sexual and gender-based activity of a criminal nature as defined under the State Penal Law;
2. unwelcome sexual invitations or requests for sexual activity in exchange for grades, preferences, favors, selection for extracurricular activities, homework, etc.;
3. unwelcome and offensive public sexual display of affection, including kissing, making out, groping, fondling, petting, inappropriate touching of one's self or others, sexually suggestive dancing, and massages;
4. any unwelcome communication that is sexually suggestive, sexually

- degrading or implies sexual motives or intentions, such as sexual remarks or innuendoes about an individual's clothing, appearance or activities; sexual jokes; sexual gestures; public conversations or use of electronic media (e.g. blogs, e-mails, etc.) to talk about sexual activities or exploits; sexual rumors and "ratings lists;" howling, catcalls, and whistles; sexually graphic computer files, messages or games, etc;
5. unwelcome and offensive name calling or profanity that is sexually suggestive, sexually degrading, implies sexual intentions, or that is based on sexual stereotypes or sexual orientation, gender identity or expression;
 6. unwelcome physical contact or closeness that is sexually suggestive, sexually degrading, or sexually intimidating such as the unwelcome touching of another's body parts, cornering or blocking an individual, standing too close, spanking, pinching, following, stalking, frontal body hugs, etc.;
 7. unwelcome and sexually offensive physical pranks or touching of an individual's clothing, such as hazing and initiation, "streaking," "mooning," "snuggies" or "wedgies" (pulling underwear up at the waist so it goes in between the buttocks), bra-snapping, skirt "flip-ups," "spiking" (pulling down someone's pants or swimming suit); pinching; placing hands inside an individual's pants, shirt, blouse, or dress, etc.;
 8. unwelcome leers, stares, gestures, or slang that are sexually suggestive; sexually degrading or imply sexual motives or intentions;
 9. clothing with sexually obscene or sexually explicit slogans or messages;
 10. unwelcome and offensive skits, assemblies, and productions that are sexually suggestive, sexually degrading, or that imply sexual motives or intentions, or that are based on sexual stereotypes;
 11. unwelcome written or pictorial display or distribution of pornographic or other sexually explicit materials such as magazines, videos, films, Internet material, etc.;
 12. any unwelcome behavior based on sexual stereotypes and attitudes that is offensive, degrading, intimidating, or demeaning, including, but not limited to:
 - a. disparaging remarks, slurs, jokes about or aggression toward an individual because the person displays mannerisms or a style of dress inconsistent with stereotypical characteristics of the person's sex;
 - b. ostracizing or refusing to participate in group activities with an individual during class projects, physical education classes or field trips because of the individual's sex, gender expression or gender identity;
 - c. taunting or teasing an individual because they are participating in an activity not typically associated with the individual's sex or gender

For purposes of this regulation, action or conduct shall be considered "unwelcome" if the student did not request or invite it and regarded the conduct as undesirable or offensive. In addition, in the remainder of this regulation, the term sexual harassment will refer to both sexual and gender-based harassment.

Determining if Prohibited Conduct is Sexual Harassment

Complaints of sexual harassment will be thoroughly investigated to determine whether the totality of the behavior and circumstances meet any of the elements of the above definition of sexual harassment and should therefore be treated as sexual harassment. Not all unacceptable conduct with sexual connotations may constitute sexual harassment. If the behavior doesn't rise to the level of sexual harassment, but is found to be objectionable behavior, the individual will be educated and counseled in order to prevent the behavior from continuing.

In many cases (other than quid pro quo situations where the alleged harasser offers academic or employment rewards or threatens punishment as an inducement for sexual favors), unacceptable behavior must be sufficiently severe, pervasive and objectively offensive to be considered sexual harassment.

In evaluating the totality of the circumstances and making a determination of whether conduct constitutes sexual harassment, the individual investigating the complaint should consider:

1. the degree to which the conduct affected the ability of the student to participate in or benefit from his or her education or altered the conditions of the student's learning environment;
2. the type, frequency and duration of the conduct;
3. the identity of and relationship between the alleged harasser and the subject of the harassment (e.g., sexually based conduct by an authority figure is more likely to create a hostile environment than similar conduct by another student);
4. the number of individuals involved;
5. the age and sex of the alleged harasser and the subject of the harassment;
6. the location of the incidents and context in which they occurred;
7. other incidents at the school; and
8. incidents of gender-based, but non-sexual harassment.

Reporting Complaints

Any person who believes he or she has been the target of sexual harassment by a student, district employee or third party related to the school is required to report complaints as soon as possible after the incident in order to enable the district to effectively investigate and resolve the complaint. Targets are encouraged to submit the complaint in writing; however, complaints may initially be filed verbally.

5020.1-R

Complaints should be filed with the Title IX compliance officer or the

second designee.

Any school employee who receives a complaint of sexual harassment from a student shall inform the student of the employee's obligation to report the complaint to the school administration, and then shall immediately notify the Title IX compliance officer or the second designee.

In order to assist investigators, targets should document the harassment as soon as it occurs and with as much detail as possible including: the nature of the harassment; dates, times, places it has occurred; name of harasser(s); witnesses to the harassment; and the target's response to the harassment.

Confidentiality

It is district policy to respect the privacy of all parties and witnesses to complaints of sexual harassment. To the extent possible, the district will not release the details of a complaint or the identity of the complainant or the individual(s) against whom the complaint is filed to any third parties who do not need to know such information. However, because an individual's need for confidentiality must be balanced with the district's legal obligation to provide due process to the accused, to conduct a thorough investigation, or to take necessary action to resolve the complaint the district retains the right to disclose the identity of parties and witnesses to complaints in appropriate circumstances to individuals with a need to know. The staff member responsible for investigating complaints will discuss confidentiality standards and concerns with all complainants.

If a complainant requests that his/her name not be revealed to the individual(s) against whom a complaint is filed, the staff member responsible for conducting the investigation shall inform the complainant that:

1. the request may limit the district's ability to respond to his/her complaint;
2. district policy and federal law prohibit retaliation against complainants and witnesses;
3. the district will attempt to prevent any retaliation; and
4. the district will take strong responsive action if retaliation occurs.

If the complainant still requests confidentiality after being given the notice above, the investigator will take all reasonable steps to investigate and respond to the complaint consistent with the request as long as doing so does not preclude the district from responding effectively to the harassment and preventing the harassment of other students.

Investigation and Resolution Procedure

A. Initial (Building-level) Procedure

The Title IX compliance officer or the second designee shall conduct a

5020.1-R

preliminary review when they receive a verbal or written complaint of sexual harassment, or if they observe sexual harassment. Except in the case of severe or

criminal conduct, the Title IX compliance officer or second designee should make all reasonable efforts to resolve complaints informally at the school level. The goal of informal investigation and resolution procedures is to end the harassment and obtain a prompt and equitable resolution to a complaint. In the case of student to student sexual harassment, the initial investigation will be conducted by the building principal or his/her designee, following the steps outlined below.

As soon as possible, but no later than three working days following receipt of a complaint, the Title IX compliance officer or the second designee should begin an investigation of the complaint according to the following steps:

1. Interview the target and document the conversation. Instruct the target to have no contact or communication regarding the complaint with the alleged harasser. Ask the target specifically what action he/she wants taken in order to resolve the complaint. Refer the target, as appropriate, to school social workers, school psychologists, crisis team managers, other school staff, or appropriate outside agencies for counseling services.
2. Review any written documentation of the harassment prepared by the target. If the target has not prepared written documentation, instruct the target to do so, providing alternative formats for individuals with disabilities and young children, who have difficulty writing and need accommodation.
3. Interview the alleged harasser regarding the complaint and inform the alleged harasser that if the objectionable conduct has occurred, it must cease immediately. Document the conversation. Provide the alleged harasser an opportunity to respond to the charges in writing.
4. Instruct the alleged harasser to have no contact or communication regarding the complaint with the target and to not retaliate against the target. Warn the alleged harasser that if he/she makes contact with or retaliates against the target, he/she will be subject to immediate disciplinary action.
5. Interview any witnesses to the complaint. Where appropriate, obtain a written statement from each witness. Caution each witness to keep the complaint and his/her statement confidential.
6. Review all documentation and information relevant to the complaint.
7. Where appropriate, suggest mediation as a potential means of resolving the complaint. In addition to mediation, use appropriate informal methods to resolve the complaint, including but not limited to:
 - a. discussion with the accused, informing him or her of the district's policies and indicating that the behavior must stop;
 - b. suggesting counseling and/or sensitivity training;
 - c. conducting training for the department or school in which the behavior occurred, calling attention to the consequences of engaging in such behavior;
 - d. requesting a letter of apology to the complainant;
 - e. writing letters of caution or reprimand; and/or
 - f. separating the parties.

5020.1-R

8. Parent/Student/Employee Involvement and Notification

- a. Parents of student targets and accused students shall be notified within one school day of allegations that are serious or involve repeated conduct.
- b. The parents of students who file complaints are welcome to participate at each stage of both informal and formal investigation and resolution procedures.
- c. If either the target or the accused is a disabled student receiving special education services under an IEP or section 504/Americans with Disabilities Act accommodations, the committee on special education will be consulted to determine the degree to which the student's disability either caused or is affected by the discrimination or policy violation. In addition, due process procedures required for persons with disabilities under state and federal law shall be followed.
- d. The Title IX Compliance Officer or second designee (i.e., the investigator) shall submit a copy of all investigation and interview documentation to the Superintendent.
- e. The investigator shall report back to both the target and the accused, notifying them in writing, and also in person as appropriate regarding the outcome of the investigation and the action taken to resolve the complaint. The investigator shall instruct the target to report immediately if the objectionable behavior occurs again or if the alleged harasser retaliates against him/her.
- f. The investigator shall notify the target that if he/she desires further investigation and action, he/she may request a district level investigation by contacting the Superintendent of Schools. The investigator shall also notify the target of his/her right to contact the U.S. Department of Education's Office for Civil Rights and/or a private attorney.

If the initial investigation results in a determination that sexual harassment did occur, the investigator will promptly notify the Superintendent, who shall then take prompt disciplinary action in accordance with district policy, the applicable collective bargaining agreement or state law.

If a complaint received by the Title IX Compliance officer or the second designee contains evidence or allegations of serious or extreme harassment, such as employee to student harassment, criminal touching, quid pro quo (e.g., offering an academic or employment reward or punishment as an inducement for sexual favors), or acts which shock the conscience of a reasonable person, the complaint shall be referred promptly to the Superintendent. In addition, where Title IX compliance officer or the second designee has a reasonable suspicion that the

5020.1-R

alleged harassment involves criminal activity, he/she should immediately notify the Superintendent, who shall then contact appropriate child protection and law enforcement authorities. Where criminal activity is alleged or suspected by a district employee, the accused employee shall be suspended pending the outcome

of the investigation, consistent with all contractual or statutory requirements.

Any party who is not satisfied with the outcome of the initial investigation by the Title IX compliance officer or the second designee may request a district-level investigation by submitting a written complaint to the Superintendent within 30 days.

B. District-level Procedure

The Superintendent shall promptly investigate and resolve all sexual harassment complaints that are referred to him/her by a Title IX compliance officer or a second designee, as well as those appealed to the Superintendent following an initial investigation by a Title IX compliance officer or a second designee. In the event the complaint of sexual harassment involves the Superintendent, the complaint shall be filed with or referred to the Board of Education President, who shall refer the complaint to a trained investigator not employed by the district for investigation.

The district level investigation should begin as soon as possible but not later than three working days following receipt of the complaint by the Superintendent or Board of Education President.

In conducting the formal district level investigation, the district will use investigators who have received formal training in sexual harassment investigation or that have previous experience investigating sexual harassment complaints.

If a district investigation results in a determination that sexual harassment did occur, prompt corrective action will be taken to end the harassment. Where appropriate, district investigators may suggest mediation as a means of exploring options of corrective action and informally resolving the complaint.

No later than 30 days following receipt of the complaint, the Superintendent (or in cases involving the Superintendent, the Board of Education-appointed investigator) will notify the target and alleged harasser, in writing, of the outcome of the investigation. If additional time is needed to complete the investigation or take appropriate action, the Superintendent or Board of Education-appointed investigator will provide all parties with a written status report within 30 days following receipt of the complaint.

The target and the alleged harasser have the right to be represented by a person of their choice, at their own expense, during sexual harassment investigations and hearings. In addition, targets have the right to register sexual harassment complaints with the U.S. Department of Education's Office for Civil Rights. Nothing in these regulations shall be construed to limit the right of

5020.1-R

the complainant to file a lawsuit in either state or federal court.

Retaliation Prohibited

Any act of retaliation against any person who opposes sexually harassing

behavior, or who has filed a complaint, is prohibited and illegal, and therefore subject to disciplinary action. Likewise, retaliation against any person who has testified, assisted, or participated in any manner in an investigation, proceeding, or hearing of a sexual harassment complaint is prohibited. For purposes of this policy, retaliation includes but is not limited to: verbal or physical threats, intimidation, ridicule, bribes, destruction of property, spreading rumors, stalking, harassing phone calls, and any other form of harassment. Any person who retaliates is subject to immediate disciplinary action, up to and including suspension or termination.

Discipline/Penalties

Any individual who violates the sexual harassment policy by engaging in prohibited sexual harassment will be subject to appropriate disciplinary action and applicable law. Disciplinary measures available to school authorities include, but are not limited to the following:

Students: Discipline may range from a reprimand up to and including suspension from school, to be imposed consistent with the student conduct and discipline policy.

Employees: Discipline may range from a warning up to and including termination, to be imposed consistent with all applicable contractual and statutory rights.

Volunteers: Penalties may range from a warning up to and including loss of volunteer assignment.

Vendors: Penalties may range from a warning up to and including loss of district business.

Other individuals: Penalties may range from a warning up to and including denial of future access to school property.

False Complaints

False or malicious complaints of sexual harassment may result in corrective or disciplinary action taken against the complainant.

Training

All students shall be informed of this policy in student handbooks, on the district website and student registration materials. A poster summarizing the policy shall also be posted in a prominent location at each school. All secondary

5020.1-R

school student body officers shall receive district training about the policy at the beginning of each school year.

In addition, age-appropriate curricular materials will be made available so that it can be incorporated in instruction K-12 to ensure that all students are educated to recognize and report sexual harassment.

All new employees shall receive information about this policy and regulation at new employee orientation. All other employees shall be provided information at least once a year regarding this policy and the district's commitment to a harassment-free learning environment. Title IX compliance officers, second designees and other administrative employees who have specific responsibilities for investigating and resolving complaints of sexual harassment shall receive yearly training on this policy, regulation and related legal developments.

Principals in each school and program directors shall be responsible for informing students and staff on a yearly basis of the terms of this policy, including the procedures established for investigation and resolution of complaints, general issues surrounding sexual harassment, the rights and responsibilities of students and the impact of sexual harassment on the target.

Adoption date: June 6, 1994 (prior regulation 9010.2-R)

Revision dates: May 22, 2000; Feb. 13, 2006; June 18, 2012