

SUBJECT: SEXUAL HARASSMENT IN THE WORKPLACE

The District is committed to maintaining a discrimination-free work environment. Sexual harassment is one form of workplace discrimination. This policy addresses sexual harassment in the workplace and is one component of the District's commitment to a discrimination-free work environment. The District will provide this policy to all employees upon adoption (for all employees) and upon hire (for new employees).

Sexual harassment is (1) a form of employee misconduct, (2) a violation of District policy, and (3) unlawful. Employees who engage in sexual harassment will be subject to remedial and/or disciplinary action by the District. Furthermore, supervisory personnel who knowingly allow such behavior to continue, or fail to report suspected sexual harassment will be subject to remedial and/or disciplinary action by the District.

This policy applies to all instances of sexual harassment in the workplace perpetrated against a covered person. For purposes of this policy, covered persons include, but are not limited to:

- a) Employees;
- b) Applicants for employment;
- c) Paid or unpaid interns;
- d) Non-employees, which include anyone who is (or is employed by) a contractor, subcontractor, vendor, consultant, or other person providing services pursuant to a contract in the workplace; and
- e) Students, parents, and volunteers.

Unlawful sexual harassment is not limited to the physical workplace itself. Sexual harassment can occur on school grounds, school buses or District vehicles, and at school-sponsored events, programs, or activities, including those that take place at locations off school premises. It can also occur while employees are traveling for District business. Calls, texts, emails, and social media usage can constitute unlawful workplace harassment, even if they occur away from school grounds, on personal devices, or during non-work hours.

What Constitutes Sexual Harassment

Sexual harassment is a form of sex discrimination and is unlawful under federal, state, and (where applicable) local law. Sexual harassment includes harassment on the basis of sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity, and the status of being transgender.

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Sexual harassment includes unwelcome conduct which is either of a sexual nature, or which is directed at an individual because of that individual's sex when:

- a) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment, even if the reporting individual is not the intended target of the sexual harassment;
- b) Such conduct is made either explicitly or implicitly a term or condition of employment; or
- c) Submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual's employment.

A sexually harassing hostile work environment includes, but is not limited to, words, signs, jokes, pranks, intimidation or physical violence which are of a sexual nature, or which are directed at an individual because of that individual's sex. Sexual harassment also consists of any unwanted verbal or physical advances, sexually explicit derogatory statements or sexually discriminatory remarks made by someone which are offensive or objectionable to the recipient, which cause the recipient discomfort or humiliation, or which interfere with the recipient's job performance.

Sexual harassment also occurs when a person in authority tries to trade job benefits for sexual favors. This can include hiring, promotion, continued employment or any other terms, conditions or privileges of employment. This is also called "quid pro quo" harassment.

Any covered person who feels harassed should report the conduct so that any violation of this policy can be corrected promptly. Any harassing conduct, even a single incident, can be addressed under this policy.

Examples of Sexual Harassment

The following describes some actions that may constitute unlawful sexual harassment and that are strictly prohibited:

- a) Physical acts of a sexual nature, such as touching, pinching, patting, kissing, hugging, grabbing, brushing against another person's body or poking another person's body;
- b) Unwanted sexual advances or propositions, such as:
 1. Requests for sexual favors accompanied by implied or overt threats concerning the target's job performance evaluation, a promotion or other job benefits or detriments; and
 2. Subtle or obvious pressure for unwelcome sexual activities.

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- c) Visual, verbal, nonverbal and/or written harassment or abuse including but not limited to sexually oriented images or gestures, noises, leering, ogling, remarks, ridicule, or jokes, or comments about a person's sexuality or sexual activities or experience, which are unwelcome or create a hostile work environment.
- d) Sex stereotyping, which occurs when conduct or personality traits are considered inappropriate simply because they may not conform to other people's ideas or perceptions about how individuals of a particular sex should act or look.
- e) Sexual or discriminatory displays or publications anywhere in the workplace, such as pictures, posters, calendars, graffiti, objects, promotional material, reading materials, or other materials that are sexually demeaning or pornographic. This includes such sexual displays on workplace computers or cell phones and sharing such displays while in the workplace.
- f) Hostile actions taken against an individual because of that individual's sex, sexual orientation, gender identity, and the status of being transgender, such as:
 - 1. Interfering with, destroying or damaging a person's workstation, tools or equipment, or otherwise interfering with the individual's ability to perform the job;
 - 2. Sabotaging an individual's work; and
 - 3. Bullying, yelling, or name-calling.

Prohibition of Retaliatory Behavior (Whistle-Blower Protection)

The District prohibits any retaliatory behavior directed against complainants, victims, witnesses, and/or any other individuals who participate in the investigation of a complaint of sexual harassment. Such retaliation is unlawful under federal, state, and (where applicable) local law.

Even if the alleged harassment does not turn out to rise to the level of a violation of law, the individual is protected from retaliation if the person had a good faith belief that the practices were unlawful. However, the retaliation provision is not intended to protect persons making intentionally false charges of harassment.

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Reporting Sexual Harassment

Preventing sexual harassment is everyone's responsibility. Employees or students who have complaints of sexual harassment by anyone in the school environment are urged to report such conduct to a supervisor, building principal or other administrator, or the Civil Rights Compliance Officer (CRCO) so that the District may investigate and resolve the problem.

Reports of sexual harassment may be made verbally or in writing. A form for submission of a written complaint is posted on the District website, and all covered persons are encouraged to use this complaint form. Persons who are reporting sexual harassment on behalf of another person should use the complaint form and note that it is being submitted on another person's behalf.

Any person who believes they have been a target of sexual harassment may also seek assistance in other available forums, as explained below in the section on Legal Protections.

Supervisory Responsibilities

All supervisors, building principals, and other administrators who receive a complaint or information about suspected sexual harassment, observe what may be sexually harassing behavior or for any reason suspect that sexual harassment is occurring, are required to report such suspected sexual harassment to the CRCO. In the event the CRCO is the alleged harasser, the report will be directed to another CRCO, if the District has designated another individual to serve in that capacity, or to the Superintendent.

Supervisors, building principals, and other administrators will be subject to discipline for failing to report suspected sexual harassment or otherwise knowingly allowing sexual harassment to continue.

Supervisors, building principals, and other administrators will also be subject to discipline for engaging in any retaliation.

Investigating Complaints

The District will endeavor to investigate all complaints of sexual harassment as expeditiously and as professionally as possible.

While the investigation will be kept confidential to the extent possible, some disclosure may be necessary to complete a thorough investigation of the charges and/or notify law enforcement officials.

All persons involved, including complainants, witnesses, and alleged harassers will be afforded due process, as outlined below, and in accordance with any applicable collective bargaining agreements to protect their rights to a fair and impartial investigation.

The District will not tolerate retaliation against anyone who files complaints, supports another's complaint, or participates in an investigation regarding a violation of this policy.

It is strongly recommended that complainants follow the District's Two-Tiered investigation process before filing a complaint through other governmental agencies. Upon written complaint, the District will promptly investigate alleged sexual harassment in accordance with these guidelines:

Level One:

1. The complainant shall put the complaint in writing using the designated form, which sets forth the nature of the complaint, the facts upon which the complaint is based and the relief requested. The formal complaint should be submitted to the CRCO. The complainant may contact any staff member or other person of his/her choosing for help and support through this process.
2. Upon receipt of a complaint, the CRCO will conduct an immediate review of the allegations, and take any interim actions (e.g., instructing the respondent to refrain from communications with the complainant), as appropriate.
3. Upon receipt of the formal complaint, the CRCO will contact the accused person and inform the accused person of the basis of the complaint. The accused person will then have up to seven working days to respond to the complaint in writing.
4. Upon receipt of the accused person's response, the CRCO will conduct an investigation to determine whether sexual harassment has occurred.
 - a) The CRCO will request and review all relevant documents, including all electronic communications.
 - b) If documents, emails, or phone records are relevant to the investigation, the CRCO will take steps to obtain and preserve them.
 - c) The CRCO will interview all parties involved, including any relevant witnesses. If a student is involved, the District will follow all applicable District policies and procedures regarding questioning students.
5. The CRCO's investigation of a sexual harassment complaint should be concluded within 30 calendar days after the formal complaint is made. If it is not reasonably possible to conclude an investigation within that amount of time, the CRCO will notify the complainant and the accused, in writing, of the delay and reasons for the delay.
6. Upon conclusion of the investigation the CRCO will prepare a written summary of his/her findings. If the investigation results in a finding of sexual harassment, recommendations will be made to take prompt and effective action, consistent with the severity of the offense. This report will be provided to the appropriate administrative official for remediation and/or discipline.
7. A copy of the CRCO's findings shall be provided to the complainant and the accused.
8. The CRCO will inform the complainant (in writing) of his/her right to accept the CRCO's findings or to request a Level Two review of the complaint.
9. Failure of the Complainant to respond, in writing, within 7 calendar days of the CRCO's findings will be considered as his/her acceptance of the decision.

Level Two:

Upon written request by either party (complainant or accused), the District will conduct a Level Two review of a sexual harassment complaint following these guidelines:

1. The CRCO shall forward the complaint and initial findings to the Superintendent of Schools.
2. The Superintendent of Schools (or his/her designee) will review the written records associated with the complaint and also may consider any new information not available during the Level One review.
3. The Superintendent (or designee) will meet, together or separately, with the involved parties (the Complainant, the CRCO, and the accused). The Complainant may invite a parent/guardian, a spouse, or a friend to the meeting, but it is expressly understood that the invited guest is attending in a supportive/comforting role for the complainant and will not be asked (nor permitted) to participate in the meeting.
3. Within 30 calendar days of a request for a Level Two review, the Superintendent will make a decision on the merits of the complaint. All parties (complainant, CRCO, and the accused) will receive written copies of the Superintendent's decision. If it is not reasonably possible to conclude a Level Two review within that amount of time, the Superintendent will notify all parties (complainant, CRCO, and the accused) in writing, of the delay and reasons for the delay.

If an investigation reveals that discrimination or harassment has occurred, the District will take immediate corrective action as warranted. This action will be taken in accordance with applicable laws and regulations, as well as any and all relevant codes of conduct, District policies and administrative regulations, collective bargaining agreements, and/or third-party contracts.

Record Keeping

Any person conducting an investigation will maintain a written record of all witness interviews, evidence gathered, and outcome of the investigation. Records of such investigation will not be maintained in personnel files or student files unless part of formal corrective action. Investigatory records will be maintained by the Office of the Superintendent.

Annual Training

The District will provide a sexual harassment prevention training program to all employees on an annual basis. The training will be interactive and will include:

- a) An explanation of sexual harassment consistent with guidance issued by the Department of Labor in consultation with the Division of Human Rights;
- b) Examples of conduct that would constitute unlawful sexual harassment;
- c) Information concerning the federal and state statutory provisions concerning sexual harassment and remedies available to victims of sexual harassment;
- d) Information concerning employees' rights of redress and all available forums for adjudicating complaints; and

- e) Information addressing conduct by supervisors and any additional responsibilities for such supervisors.

Legal Protections and External Remedies

Sexual harassment is not only prohibited by the District but is also prohibited by state, federal, and, where applicable, local law.

Aside from the District's internal process, individuals may choose to pursue remedies with the following governmental entities. While a private attorney is not required to file a complaint with a governmental agency, an individual may seek the legal advice of an attorney.

State Human Rights Law (HRL)

The Human Rights Law (HRL) applies to all employers in New York State and protects employees, students, and non-employees from sexual harassment. A complaint alleging violation of the Human Rights Law may be filed either with the Division of Human Rights (DHR) or in New York State Supreme Court. Individuals do not need an attorney to file a complaint with DHR, and there is no cost to file with DHR.

DHR's main office contact information is: NYS Division of Human Rights, One Fordham Plaza, Fourth Floor, Bronx, New York 10458. Individuals may call (718) 741-8400 or visit: www.dhr.ny.gov. The website has a complaint form that can be downloaded, filled out, notarized and mailed to DHR. The website also contains contact information for DHR's regional offices across New York State.

Civil Rights Act of 1964

The United States Equal Employment Opportunity Commission (EEOC) enforces federal anti-discrimination laws. An individual can file a complaint with the EEOC anytime within 300 days from the harassment. The EEOC has district, area, and field offices where complaints can be filed. Contact the EEOC by calling 1-800-669-4000 (TTY: 1-800-669-6820), visiting their website at www.eeoc.gov or via email at info@eeoc.gov.

If an individual filed an administrative complaint with DHR, DHR will file the complaint with the EEOC to preserve the right to proceed in federal court.

Title IX

Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in any federally funded education program or activity. The U.S. Department of Education's Office for Civil Rights (OCR) enforces Title IX of the Education Amendments of 1972.

For more information about how to file a complaint, contact OCR at 800-421-3481 (TDD 800-877-8339) or visit: <https://www2.ed.gov/about/offices/list/ocr/docs/howto.html>. The website contains information about filing the complaint online, by mail, or by email.

Local Protections

Many localities enforce laws protecting individuals from sexual harassment and discrimination. An individual should contact the county, city or town in which they live to find out if such a law exists.

Local Police Department

If the harassment involves unwanted physical touching, coerced physical confinement or coerced sex acts, the conduct may constitute a crime. Contact the local police department.

Title VII of the Civil Rights Act of 1964, 42 USC § 2000e et seq.
Title IX of the Education Amendments of 1972, 20 USC § 1681 et seq.
29 CFR § 1604.11(a)
34 CFR Subtitle B, Chapter I
Civil Service Law § 75-B
Executive Law Article 15
Labor Law § 201

NOTE: Refer also to Policies #3420 -- Non-Discrimination and Anti-Harassment in the District
#6122 -- Employee Grievances

REVISED POLICY

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