

(X) Required
 () Local
 (x) Notice

SEXUAL HARASSMENT OF STUDENTS

NEW NOTE: Due to recent changes in state law aimed at sexual harassment in the workplace, we have split our sample policy 0110 (and regulation 0110-R) into two policies and regulations, one addressing sexual harassment of students (0110.1) and one addressing sexual harassment of employees (0110.2). Policy 0110 has been reconfigured as an introductory statement.

This policy focuses on sexual harassment of students. In the interest of simplicity, we have not shown all of the deleted text from the original policy pertaining to employees. However, we have noted where substantive changes were made. In some instances, we have retained language addressing employees, where employees are involved in the prevention and reporting of student sexual harassment.

Due to a changing understanding and usage of the word “shall,” to avoid confusion we have changed all instances of “shall” to either “will” or “must” or other appropriate text to indicate that a particular action is required.

Additionally, we are recommending that for student complaints of sexual harassment, the district’s DASA complaint form be used. We have revised our sample DASA form (0115-E), and are referring to that form in the accompanying regulation.

The Board of Education recognizes that harassment of students on the basis of actual or perceived sex, sexual orientation, and/or gender identity and expression 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 further recognizes that preventing and remedying such harassment in schools is essential to ensure a healthy, nondiscriminatory environment in which students can learn.

NEW NOTE: We have kept the definition of sexual harassment from our previous sample policy. However, the state Department of Labor’s model policy for sexual harassment in the workplace specifically included the qualifier “self-identified” and the protected class of transgender status. We believe both concepts are included under the state’s Dignity for All Students Act (i.e., gender identity includes transgender individuals, and “actual or perceived” would cover how a person self identifies), but do not need to be stated explicitly.

Sexual harassment is a form of sex discrimination and is unlawful under federal and state law. For purposes of this policy, sexual harassment includes harassment on the basis of actual or perceived sex, sexual orientation, and/or gender identity and expression. Sexual 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.

Sexual harassment includes unwelcome conduct which is either of a sexual nature, or which is directed at an individual because of that individual's actual or perceived sex, sexual orientation, and/or gender identity and expression, when:

- a. submission to that conduct is made either explicitly or implicitly a term or condition of a student's education;
- b. submission to or rejection of such conduct is used as the basis for decisions affecting a student's education; or
- c. the conduct has the purpose or effect of unreasonably interfering with a student's school performance or creating an intimidating, hostile or offensive educational environment, even if the complaining individual is not the intended target of the sexual harassment;

Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, or verbal, nonverbal or physical aggression, intimidation or hostility that is based on actual or perceived gender and sexual stereotypes. Examples of sexual harassment can be found in the accompanying regulation (0110.1-R).

NEW NOTE: We have modified the last sentence in the paragraph below, regarding sanctions for engaging in harassment or retaliation, and the responsibilities of supervisory and managerial personnel. For sexual harassment against students, we believe it is good practice to include that all employees who knowingly allow harassment of students to continue will be subject to sanctions.

The Board 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 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, or outside the school setting if the harassment impacts the individual's education in a way that violates their legal rights, including when harassment is done by electronic means (including on social media). Sanctions will be enforced against all those who engage in sexual harassment or retaliation, and against district personnel who knowingly allow such behavior to continue.

NEW NOTE: While the paragraph below reflects the state Department of Labor's model policy for workplace sexual harassment, we believe it is a good idea to put people on notice of the potential for liability, which exists in the area of student sexual harassment as well.

Sexual harassment may subject the district to liability for harm done to targets. Harassers may also be individually subject to civil liability if sued in a court of law or criminal liability if prosecuted.

OLD NOTE: The reference to the Code of Conduct below is intended to address appropriate and inappropriate behavior, including sexual harassment, for all persons on school property, regardless of whether specific legal protections apply.

Under various state and federal laws, students have legal protections against sexual harassment in the school environment as described above. Those laws are listed in the references section. The district's Code of Conduct also addresses appropriate behavior in the school environment. Sexual harassment can occur between persons of all ages and genders.

In order for the Board 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.

NEW NOTE: We have simplified the paragraph below by using "person" instead of "student, employee, non-employee, or third party".

If, after appropriate investigation, the district finds that a person has violated this policy, prompt corrective action will be taken in accordance with the applicable collective bargaining agreement, contract, district policy and state law.

NEW NOTE: We have retained language pertinent to employees in the paragraph below, to protect employees from retaliation for reporting and participating in student sexual harassment complaints.

All complainants and those who participate in sexual harassment complaints or the investigation of a complaint of sexual harassment have the right to be free from retaliation of any kind, when they do so with a good faith belief that sexual harassment has occurred. Such prohibited retaliation can include, but is not limited to, discipline, discrimination, demotion, denial of privileges, or any action that would keep a person from coming forward to make or support a sexual harassment claim. Such actions need not be job- or education-related, or occur in the workplace or educational environment, to constitute unlawful retaliation.

NEW NOTE: We have retained text regarding annual employee training in the paragraph below. While this policy addresses harassment of students, employees have responsibilities in addressing student sexual harassment. Therefore, employees should receive training on their responsibilities under this policy and regulation.

The Superintendent of Schools is directed to develop and implement regulations for reporting, investigating and remedying allegations of sexual harassment. These regulations are to be attached to this policy. In addition, the Board directs that training programs be established for students, and annually for 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.

NEW NOTE: We have added text to the paragraph below to allow a simplified version of this policy to be publicized throughout the district.

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

OLD NOTE: The Board is not required to include the following statement in the policy. However, some language should be included that addresses periodic review of the district's sexual harassment policy and procedures.

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

NEW NOTE: We have added a cross-reference to the policy addressing DASA. We have retained only those legal citations that directly impact sexual harassment of students, and have added a citation to the state DASA law, as well as the "Cannon" case which involves a right to sue under Title IX.

Cross-ref: 0115, Student Harassment and Bullying Prevention and Intervention

Ref:

Education Amendments of 1972, Title IX, 20 U.S.C. §1681 *et seq.*; 34 CFR 106 *et seq.*

Education Law §§10-18 (The Dignity for All Students Act)

Davis v. Monroe County Board of Education, 526 U.S. 629, 652 (1999)

Gebser v. Lago Vista Independent School District, 524 U.S. 274 (1998)

Franklin v. Gwinnett County Public Schools, 503 U.S. 60 (1992)

Cannon v. University of Chicago, 441 U.S. 677 (1979)

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: