

OFFICE OF THE SUPERINTENDENT

Millburn Public Schools

INFORMATION ITEM

February 1, 2010

To: Board of Education Members

From: Ellen E. Mauer, PhD

Subject: First Reading-Student Harrassment - Policy 7:20

This policy has been updated to expand protected group status and to change the names of the complaint managers and non-discrimination managers from Dr. Menzer to Ellen Mauer, Mary Taylor, and Jason Lind. Also, updated legal references are provided.

Students

Harassment of Students Prohibited ¹

No person, including a District employee or agent, or student, shall harass, intimidate or bully another student based upon a student's race, color, nationality, sex, sexual orientation, ancestry, age, religion, creed, physical or mental disability, gender identity, order of protection status, status of being homeless, or actual or potential marital or parental status, including pregnancy, or other protected group status. The District will not tolerate harassing, intimidating conduct, or bullying whether verbal, physical, or visual, that affects the tangible benefits of education, that unreasonably interferes with a student's educational performance, or that creates an intimidating, hostile, or offensive educational environment. Examples of prohibited conduct include name-calling, using derogatory slurs, causing psychological harm, threatening or causing physical harm, or wearing or possessing items depicting or implying hatred or prejudice of one of the characteristics stated above. ²

Complaints of harassment, intimidation or bullying are handled according to the provisions on sexual harassment below. ³ The Superintendent shall use reasonable measures to inform staff members and students that the District will not tolerate harassment, intimidation or bullying by including this policy in the appropriate handbooks. ⁴

The footnotes are not intended to be part of the adopted policy; they should be removed before the policy is adopted.

¹ State or federal law controls this policy's content.

² This sentence is optional. While *hate speech* is not specifically mentioned in this paragraph, any hate speech used to harass or intimidate is banned. Hate speech without accompanying misconduct may be prohibited in response to actual incidences when hate speech interfered with the educational environment. *West v. Derby Unified Sch. Dist.*, 206 F.3d 1358 (10th Cir. 2000). The following addition is based on this case; absent documentation of hate speech occurrences, this option's inclusion will probably violate the First Amendment:

District employees and students shall not at school, on school property, or at school activities, wear or have in their possession any material, either printed or in their own handwriting, that is divisive or creates ill will or hatred based on race, religion, or sexual orientation (See definition of *sexual orientation* discussed below). (Examples: clothing, articles, material, publications or any item that denotes Ku Klux Klan, Aryan Nation-White Supremacy, Black Power, Neo-nazi, or any other "hate" group. This list is not intended to be all-inclusive.)

The Ill. Human Rights Act and an ISBE rule prohibit schools from discriminating against students on the basis of *sexual orientation* and *gender identity* (775 ILCS 5/5-101(11), amended by P.A. 95-668; 23 Ill.Admin.Code §1.240). *Sexual orientation* is defined as the "actual or perceived heterosexuality, homosexuality, bisexuality, or gender related identity, whether or not traditionally associated with the person's designated sex at birth," (775 ILCS 5/1-103(O-1)). *Gender identity* is included in the definition of sexual orientation in the Act. The Act permits schools to maintain single-sex facilities that are distinctly private in nature, e.g., restrooms and locker rooms (775 ILCS 5/5-103). 775 ILCS 5/1-102(A), amended by P.A. 96-447, added *order of protection status* to its list of protected categories.

The Ill. Human Rights Act's jurisdiction is specifically limited to: (1) failing to enroll an individual, (2) denying access to facilities, goods, or services, or (3) failing to take corrective action to stop severe or pervasive harassment of an individual (775 ILCS 5/5-102.2, added by P.A. 96-814).

³ The State legislature has found that bullying behavior has been linked to other forms of antisocial behavior including sexual harassment and violence. The statute defines *bullying prevention* to mean and include instruction about: (1) intimidation, (2) student victimization, (3) sexual harassment, (4) sexual violence, and (5) strategies for student centered problem solving regarding bullying (105 ILCS 5/27-23.7(a), as amended by P.A. 95-349).

⁴ 105 ILCS 5/27-23.7(d), as amended by P.A. 95-349, requires school districts to communicate its policies on bullying to its students and their parents/guardians on an annual basis.

Sexual Harassment Prohibited

Sexual harassment of students is prohibited. ⁵ Any person, including a district employee or agent, or student, engages in sexual harassment whenever he or she makes sexual advances, requests sexual favors, and engages in other verbal or physical conduct of a sexual or sex-based nature, imposed on the basis of sex, that:

1. Denies or limits the provision of educational aid, benefits, services, or treatment; or that makes such conduct a condition of a student's academic status; or
2. Has the purpose or effect of:
 - a. Substantially interfering with a student's educational environment;
 - b. Creating an intimidating, hostile, or offensive educational environment;
 - c. Depriving a student of educational aid, benefits, services, or treatment; or
 - d. Making submission to or rejection of such conduct the basis for academic decisions affecting a student.

The terms "intimidating," "hostile," and "offensive" include conduct that has the effect of humiliation, embarrassment, or discomfort. Examples of sexual harassment include touching, crude jokes or pictures, discussions of sexual experiences, teasing related to sexual characteristics, and spreading rumors related to a person's alleged sexual activities.

Students who believe they are victims of sexual harassment or have witnessed sexual harassment, are encouraged to discuss the matter with the student Nondiscrimination Coordinator, Building Principal, Assistant Building Principal, Dean of Students, or a Complaint Manager. Students may choose to report to a person of the student's same sex. Complaints will be kept confidential to the extent possible given the need to investigate. Students who make good faith complaints will not be disciplined.

An allegation that one student was sexually harassed by another student shall be referred to the Building Principal, Assistant Building Principal, or Dean of Students for appropriate action.

The Superintendent shall insert into this policy the names, addresses, and telephone numbers of the District's current Nondiscrimination Coordinator and Complaint Managers. ⁶ At least one of these individuals will be female, and at least one will be male.

The footnotes are not intended to be part of the adopted policy; they should be removed before the policy is adopted.

⁵ Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in any educational program or activity receiving federal financial assistance (20 U.S.C. §1681). The sample policy's definition of sexual harassment does not distinguish between welcome and unwelcome behaviors - each is prohibited if it has a result described in sub-paragraph 1 or 2. See Mary M. v. North Lawrence Community School Corp., 131 F.3d 1220 (7th Cir., 1997) (An eighth grade student did not need to show that a school employee's sexual advances were *unwelcome* in order to prove sexual harassment.).

School districts are liable for damage awards for an employee's sexual harassment of a student in limited situations. Liability occurs only when a district official who, at a minimum, has authority to institute corrective action, has actual notice of and is deliberately indifferent to the employee's misconduct. Gebser v. Lago Vista Independent School District, 118 S.Ct. 1989 (1998). Schools are liable in student-to-student sexual harassment cases when school agents are deliberately indifferent to sexual harassment, of which they have actual knowledge, that is so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the school. Davis v. Monroe County Board of Education, 119 S.Ct. 1661 (1999). The Ill. Dept. of Human Rights now has jurisdiction over allegations that a school failed to take corrective action to stop severe or pervasive harassment of an individual based upon a protected category (775 ILCS 5/5-102.2, added by P.A. 96-814).

⁶ Title IX regulations require districts to identify the person, address, and telephone number of the individual responsible for coordinating the district's compliance efforts.

Nondiscrimination Coordinator:

Ellen Mauer

Name

18550 Millburn Road

Address

Wadsworth, IL 60083

847-245-2900

Telephone

Complaint Managers:

Mary Taylor

Name

18550 Millburn Road

Address

Wadsworth, IL 60083

847-245-2899

Telephone

Jason Lind

Name

18550 Millburn Road

Address

Wadsworth, IL 60083

847-245-2800

Telephone

The Superintendent shall use reasonable measures to inform staff members and students that the District will not tolerate sexual harassment, such as by including this policy in the appropriate handbooks. ⁷

Any District employee who is determined, after an investigation, to have engaged in sexual harassment will be subject to disciplinary action up to and including discharge. Any District student who is determined, after an investigation, to have engaged in sexual harassment will be subject to disciplinary action, including but not limited to, suspension and expulsion consistent with the discipline policy. Any person making a knowingly false accusation regarding sexual harassment will likewise be subject to disciplinary action up to and including discharge, with regard to employees, or suspension and expulsion, with regard to students.

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⁷ In addition to notifying students of the Uniform Grievance Procedure, a district must notify them of the person(s) designated to coordinate the district's compliance with Title IX (34 C.F.R. Part 106.8(a)). A comprehensive student handbook can provide required notices, along with other important information to recipients. The handbook can be developed by the building principal, but should be reviewed and approved by the superintendent and school board.

LEGAL REF.: 20 U.S.C. §1681 et seq., Title IX of the Educational Amendments.
34 C.F.R. Part 106.
105 ILCS 5/10-20.12, 10-22.5, 5/27-1, and 5/27-23.7.
775 ILCS 5/1-101 et seq., Illinois Human Rights Act.
23 Ill.Admin.Code §1.240 and Part 200.
Davis v. Monroe County Board of Education, 119 S.Ct. 1661 (1999).
Franklin v. Gwinnett Co. Public Schools, 112 S.Ct. 1028 (1992).
Gebser v. Lago Vista Independent School District, 118 S.Ct. 1989 (1998).
West v. Derby Unified School District No. 260, 206 F.3d 1358 (10th Cir., 2000).

CROSS REF.: 2:260 (Uniform Grievance Procedure), 5:20 (Sexual Harassment), 7:10 (Equal Educational Opportunities), 7:190 (Student Discipline)

Students

Harassment of Students Prohibited

No person, including a District employee or agent, or student, shall harass or intimidate another student based upon a student's sex, sexual orientation, color, race, religion, creed, ancestry, national origin, physical or mental disability, or other protected group status. The District will not tolerate harassing or intimidating conduct, whether verbal, physical, or visual, that affects tangible benefits of education, that unreasonably interferes with a student's educational performance, or that creates an intimidating, hostile, or offensive educational environment. Examples of prohibited conduct include name-calling, using derogatory slurs, or wearing or possessing items depicting or implying hatred or prejudice of one of the characteristics stated above.

Complaints of harassment or intimidation are handled according to the provisions on sexual harassment below. The Superintendent shall use reasonable measures to inform staff members and students that the District will not tolerate harassment, such as by including this policy in the appropriate handbooks.

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1. denies or limits the provision of educational aid, benefits, services, or treatment; or that makes such conduct a condition of a student's academic status; or
2. has the purpose or effect of:
 - a. substantially interfering with a student's educational environment;
 - b. creating an intimidating, hostile, or offensive educational environment;
 - c. depriving a student of educational aid, benefits, services, or treatment; or
 - d. making submission to or rejection of such conduct the basis for academic decisions affecting a student.

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The Superintendent shall insert into this policy the names, addresses, and telephone numbers of the District's current Nondiscrimination Coordinator and Complaint Managers. At least one of these individuals will be female, and at least one will be male.

Nondiscrimination Coordinator:

Name Dr. James Menzer
Address 18550 Millburn Road
Wadsworth, IL 60083
Telephone No. 847/356-8331

Complaint Managers:

Name	<u>Dr. James Menzer</u>	<u>Ms. Julie Vroman</u>
Address	<u>18550 Millburn Road</u> <u>Wadsworth, IL 60083</u>	<u>18550 Millburn Road</u> <u>Wadsworth, IL 60083</u>
Telephone No.	<u>847/356-8331</u>	<u>847/356-8331</u>

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LEGAL REF.: Title IX of the Educational Amendments, 20 U.S.C. § 1681 et seq.
34 C.F.R. Part 106.
105 ILCS 5/10-22.5 and 5/27-1.
23 Ill. Admin. Code § 200.10 et seq.
Davis v. Monroe County Board of Education, ___ U.S. ___ (1999).
Franklin v. Gwinnett Co. Public Schools, 112 S.Ct. 1028 (1992).
Gebser v. Lago Vista Independent School District, 118 S.Ct. 1989 (1998).
West v. Derby Unified School District No. 260, 10th Cir. App, 3/21/2000.

CROSS REF.: 2:260 (Uniform Grievance Procedure), 5:20 (Sexual Harassment), 7:10 (Equal Educational Opportunities)

ADOPTED: May 20, 2002