

OFFICE OF THE SUPERINTENDENT

Millburn Public Schools

INFORMATION ITEM

June 7, 2010

To: Board of Education Members

From: Ellen E. Mauer, PhD

Subject: First Reading-Work Place Harrassment Prohibited-5:20

This policy has been updated for changes. The title of Sexual Harassment has been changed to Work Place Harassment. Other changes include the addition of protected classes, updated language, addition of specific names for a non-discrimination coordinator and two complaint managers. All legal references have been updated.

We ask that you use this as your first reading period and then put this on the next BOE meeting agenda for a second reading and approval.

General Personnel

Workplace Harassment Prohibited 1

The School District expects the workplace environment to be productive, respectful, and free of unlawful harassment. District employees shall not engage in harassment or abusive conduct on the basis of an individual's race, religion, national origin, sex, sexual orientation, age, citizenship status, disability, or other protected status identified in Board policy 5:10, *Equal Employment Opportunity and Minority Recruitment*. Harassment of students, including, but not limited to, sexual harassment, is prohibited by Board policy 7:20, *Harassment of Students Prohibited*.

Sexual Harassment Prohibited 2

The School District shall provide a workplace environment free of unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct, or communications constituting harassment on the basis of sex as defined and otherwise prohibited by State and federal law.

District employees shall not make unwelcome sexual advances or request sexual favors or engage in any unwelcome conduct of a sexual nature when: (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or (3) such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working

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. Federal law requires districts to take action to eliminate sexual harassment (29 C.F.R. §1604.11(f); 34 C.F.R. §106.9). Harassment based on a protected status is a form of discrimination that violates many State and federal laws (see the policy's Legal References).

Workplace harassment policies have typically focused on *sexual* harassment since it receives the most attention. However, the broad prohibitions against discrimination in State and federal civil rights laws will cover harassing conduct that is motivated by animus against any protected status. See *Porter v. Erie Foods International, Inc.*, 576 F.3d 629 (7th Cir. 2009)(recognizing a cause of action for race harassment). For a list of protected statuses, see policy 5:10, *Equal Employment Opportunity and Minority Recruitment*. This policy prohibiting harassment has a separate section on sexual harassment because of the extensive statutory and case law regarding it.

If the perpetrator is a supervisor and s/he demotes, discharges, or takes other negative job action against the victim, the employer is liable. When no job injury occurs, the employer may raise the existence of an anti-harassment policy as a defense. Lack of knowledge of a supervisor's misconduct is no defense. See, *Burlington Industries v. Ellerth*, 118 S.Ct. 2257 (1998); *Faragher v. City of Boca Raton*, 118 S.Ct. 2275 (1998) and *Sangamon County Sheriff's Dept. v. Ill. Human Rights Com'n*, 908 N.E.2d 39 (Ill., 2009)(holding the Ill. Human Rights Act, 775 ILCS 5/2-102(D), imposes strict liability on the employer, regardless of whether the employer knew of the offending conduct, when an employee has been sexually harassed by supervisory personnel regardless of whether the harasser has any authority over the complainant). Lack of knowledge may, however, be a defense when the perpetrator and victim are co-workers.

Not all harassing conduct is unlawful discrimination, even if it is disruptive and hurtful. If a board wants to include language in this policy prohibiting employees from engaging in intimidating or offensive conduct that is *not* a civil rights violation, it should consult the board attorney.

² The Ill. Human Rights Act (775 ILCS 5/2-102(D) provides that sexual harassment is a civil rights violation:

For any employer, employee, agent of any employer, employment agency or labor organization to engage in sexual harassment; provided, that an employer shall be responsible for sexual harassment of the employer's employees by non-employees or non-managerial and non-supervisory employees only if the employer becomes aware of the conduct and fails to take reasonable corrective measures.

environment. ³ Sexual harassment prohibited by this policy includes verbal or physical conduct. The terms intimidating, hostile, or offensive include, but are not limited to, conduct that has the effect of humiliation, embarrassment, or discomfort. Sexual harassment will be evaluated in light of all the circumstances.

Making a Complaint; Enforcement ⁴

A violation of this policy may result in discipline, up to and including discharge. Any person making a knowingly false accusation regarding harassment will likewise be subject to disciplinary action, up to and including discharge. An employee's employment, compensation, or work assignment shall not be adversely affected by complaining or providing information about harassment. Retaliation against employees for bringing bona fide complaints or providing information about harassment is prohibited (see Board policy 2:260, *Uniform Grievance Procedure*).

Aggrieved persons, who feel comfortable doing so, should directly inform the person engaging in the harassing conduct or communication that such conduct or communication is offensive and must stop.

Employees should report claims of harassment to the Nondiscrimination Coordinator and/or use the Board policy 2:260, *Uniform Grievance Procedure*. Employees may choose to report to a person of the employee's same sex. There are no express time limits for initiating complaints and grievances under this policy; however, every effort should be made to file such complaints as soon as possible, while facts are known and potential witnesses are available.

Whom to Contact with a Report or Complaint ⁵

The Superintendent shall insert into this policy the names, addresses, and telephone numbers of the District's current Nondiscrimination Coordinator and Complaint Managers.

Nondiscrimination Coordinator:

Dr. Ellen E. Mauer

Name

18550 Millburn Road

Address

Wadsworth, IL 60083

847-356-8331

Telephone

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³ This definition is from State and federal law (775 ILCS 5/2-101(E) and 29 C.F.R. §1604.11). The harassing conduct must be severe or pervasive so as to alter the conditions of the employee's work environment by creating a hostile or abusive situation. *Williams v. Waste Management*, 361 F.3d 1021 (7th Cir. 2004). The surrounding circumstances, expectations, and relationships will distinguish between teasing or rough-housing and conduct that a reasonable person would find severely hostile or abusive. In addition, while same-sex gender harassment claims are actionable, the victim must show that s/he suffered disadvantageous employment conditions to which members of the other sex were not exposed. *Oncale v. Sundown Offshore Services*, 118 S.Ct. 998 (1998).

⁴ See *Berry v. Delta Airlines*, 260 F.3d 803, 811 (7th Cir.2001) ("If an employer takes reasonable steps to discover and rectify the harassment of its employees ... it has discharged its legal duty.")

In addition to violating other civil rights laws, a school district violates the *public accommodations* article in the Ill. Human Rights Act if it fails to take corrective action to stop severe or pervasive harassment (775 ILCS 5/5-102 and 5/5-102.2, amended by P.A. 96-814).

⁵ Title IX regulations require districts to identify the name, address, and telephone number of the person who is responsible for coordinating the district's compliance efforts. A policy should not be adopted with a person's name in it; rather, the identifying information can be added and amended as necessary.

Complaint Managers:

<u>Mary Taylor</u>	<u>Jason Lind</u>
Name	Name
<u>18550 Millburn Road</u>	<u>18550 Millburn Road</u>
Address	Address
<u>Wadsworth, IL 60083</u>	<u>Wadsworth, IL 60083</u>
847-356-8331	847-356-8331
Telephone	Telephone

The Superintendent shall also use reasonable measures to inform staff members and applicants of this policy, which shall include reprinting this policy in the appropriate handbooks. 6

LEGAL REF.: Title VII of the Civil Rights Act, 42 U.S.C. §2000e et seq., 29 C.F.R. §1604.11.
Title IX of the Education Amendments, 20 U.S.C. §1681 et seq.; 34 C.F.R. §1604.11.
Ill. Human Rights Act, 775 ILCS 5/2-101(E), 5/2-102(D), 5/5-102, and 5/5-102.2.
56 Ill. Admin.Code Parts 2500, 2510, 5210, and 5220.
Burlington Industries v. Ellerth, 118 S.Ct. 2257 (1998).
Faragher v. City of Boca Raton, 118 S.Ct. 2275 (1998).
Franklin v. Gwinnett Co. Public Schools, 112 S.Ct. 1028 (1992).
Harris v. Forklift Systems, 114 S.Ct. 367 (1993).
Jackson v. Birmingham Board of Education, 125 S.Ct. 1497 (2005).
Meritor Savings Bank v. Vinson, 106 S.Ct. 2399 (1986).
Oncale v. Sundown Offshore Services, 118 S.Ct. 998 (1998).
Porter v. Erie Foods International, Inc., 576 F.3d 629 (7th Cir. 2009).
Sangamon County Sheriff’s Dept. v. Ill. Human Rights Com’n, 908 N.E.2d 39 (Ill., 2009).

CROSS REF.: 2:260 (Uniform Grievance Procedure), 5:10 (Equal Employment Opportunity and Minority Recruitment), 7:20 (Harassment of Students Prohibited)

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6 A district must notify employees of the grievance procedure and the person(s) designated to coordinate the district’s compliance with Title IX (34 C.F.R. §§106.8(a)). The Nondiscrimination Coordinator can be the same individual for both this policy and policy 7:10, *Equal Educational Opportunities*, as well as the Complaint Manager in policy 2:260, *Uniform Grievance Procedure*. A comprehensive faculty 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 board. Any “working conditions” contained in the handbook may be subject to mandatory collective bargaining.

General Personnel

Sexual Harassment

It is illegal and against Board of Education policy for any employee, student or other person, male or female, to sexually harass an employee or student while that employee or student is on school property or engaging in school activities or school business, or as a result of the employment or educational relationship.

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

- a. submission to such conduct is made either explicitly or implicitly a term or condition of an employee's continued employment or a student's academic status; or
- b. submission to or rejections of such conduct by an employee or student is used as the basis for employment or academic decisions affecting that employee or student; or
- c. such conduct has the purpose or effect of substantially interfering with an employee's professional performance or a student's academic performance, or creating an intimidating, hostile or offensive working or educational environment.

An employee engaging in sexual harassment will be subject to discipline, up to and including termination. A student engaging in sexual harassment will be subject to discipline, up to and including expulsion. Other individuals engaging in sexual harassment of employees or students may be excluded from school property and/or school activities.

The initiation of a complaint of sexual harassment will not adversely affect the terms and conditions of the complainant's employment or academic status in the District.

The Superintendent is authorized to promulgate rules and regulations implementing this policy.

Sexual Harassment- Rules and Regulations Implementing Board Policy

I. Reporting of Sexual Harassment

- A. If an employee or student believes that he or she has been sexually harassed, the employee, student, or parent of the student should report the alleged act immediately to the Superintendent or any other teacher, principal, Title IX coordinator, personnel director, supervisor, or administrator. Any employee who receives a complaint of sexual harassment shall report the complaint to the Superintendent or designee.
- B. In the event that the Superintendent is the employee against whom the complaint is filed, the complainant may also report the alleged act to the President of the Board of Education. Any employee receiving such a complaint of sexual harassment against the Superintendent shall report the alleged act to the President of the Board of Education.
- C. There are no express time limits for initiating complaints under this Policy; however, every effort should be made to file such complaints as soon as possible, while facts are known and potential witnesses are available.
- D. All levels of administrators have a special responsibility for implementation of this Policy. If behavior is observed which violates this Policy, the person observing such behavior shall bring the matter to the attention of the Superintendent. In the event that

the Superintendent is the employee whose observed behavior violates this Policy, the person observing such behavior shall bring the matter to the attention of the President of the Board of Education.

- E. If a student or parent complains of sexual harassment, or if a responsible employee observes the harassment of a student, that employee shall explain to the student, or parent, the avenues for informal and formal resolution of the complaint, including a description of the complaint handling procedures outlined in these Rules and Regulations.

II. Investigation of Sexual Harassment Complaint

- A. The Superintendent (or the Board President, if appropriate) shall undertake an investigation of all complaints of sexual harassment or shall appoint an administrator or other qualified person to conduct the investigation. No complaint or identity of a complainant will be disclosed except when necessary to fully investigate the complaint and after notification to the complainant.
- B. The investigator shall file a written report of his/her findings with the Superintendent (or the Board of Education, if appropriate) within twenty-eight (28) days after the complaint has been made. In the event the report cannot be completed within twenty-eight (28) days, the report shall state the reasons for the delay. The complainant shall be notified of the findings of the investigation.
- C. The Superintendent, (or the Board of Education, if appropriate) shall review the report and initiate any necessary disciplinary or remedial action as promptly as possible after receiving the report.

III. Dissemination of Policy

- A. A copy of this Board Policy and implementing Rules and Regulations shall be distributed to each employee and student annually.
- B. The Superintendent, or designee, shall discuss this Policy and implementing Rules and Regulations with the District's employees each year.
- C. This Policy and implementing Rules and Regulations shall be discussed with students at appropriate intervals during their enrollment in the District.

LEGAL REF: Title VII of the Civil Rights Act of 1964 (42 U.S.C. Sec. 2000e et seq.; 29 CFR Sec. 1604.11(a))

Title IX of the Education Amendments of 1972 (20 U.S.C. Sec. 1681 et seq.)

Illinois Human Rights Act (775 ILCS 5/1-101 et. seq.)

ADOPTED: August 27, 2001