

POLICY PROHIBITING SEXUAL HARASSMENT OF STUDENTS

I. GENERAL STATEMENT OF POLICY

It is the policy of the Cleveland Municipal School District to maintain an educational environment that is free from sexual harassment.<sup>1</sup> The District prohibits any and all forms of sexual harassment and strives to provide an environment free from illegal harassment. Any verbal, nonverbal or physical conduct that harasses, disrupts, or interferes with another's educational environment, or creates an intimidating, offensive, or hostile educational environment, is unacceptable and will not be tolerated.

District policy forbids any student, teacher, administrator, or other school personnel of this District from harassing a student through conduct of a sexual nature, as defined by this policy. It shall also be a violation of District policy for any teacher, administrator or other school personnel of this District to tolerate sexual harassment, as defined by this policy, by a student, teacher, administrator, or other school personnel.

The term "school personnel," for purposes of this policy, includes school board members, school employees, agents, volunteers, contractors, or persons subject to the supervision and control of the District.

The District will promptly investigate all complaints of sexual harassment, either formal or informal, verbal or written, and will promptly and appropriately discipline any student, teacher, administrator or other school personnel who is found to have violated this policy.

II. DEFINITION

**Sexual Harassment**

For purposes of this policy, sexual harassment of a student consists of unwelcome and unsolicited sexual advances, requests for sexual favors, sexually motivated physical conduct, or other verbal or physical conduct or communication of a sexual nature when;

- a) Submission to such conduct is made either explicitly or implicitly a term or condition of a person's educational environment;

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<sup>1</sup>This policy should not be read to abrogate other District policies prohibiting other forms of unlawful discrimination, inappropriate behavior and/or hate crimes within the District. All such policies shall be read consistently to provide the highest level of protection from unlawful discrimination in the provision of educational opportunities.

- b) Submission to or rejection of such conduct is used as the basis for education decisions affecting such individual; or
- c) Such unwelcome sexual conduct is so severe, persistent or pervasive that it affects a student's ability to participate in or benefit from an educational program or activity, or creates an intimidating, hostile or offensive educational environment.

Sexual harassment may involve the behavior of a person of either sex against a person of the opposite sex or same sex.

Conduct alleged to be sexual harassment will be evaluated by considering the totality of the particular circumstances, including the nature, frequency, intensity, location, context and duration of the questioned behavior. Although repeated incidents generally create a stronger claim of sexual harassment, a serious incident, even if isolated, can be sufficient. For example, a single suggestion that academic or other educational rewards or reprisals will follow the granting or refusal of sexual favors will constitute sexual harassment and grounds for action under this policy.

Sexually-related conduct forms the basis of a sexual harassment claim if a reasonable person, in view of all the surrounding circumstances, would consider it sufficiently severe or pervasive to interfere unreasonably with academic or other educational performance or participation in District activities.

Examples of conduct, which may constitute sexual harassment, include:

- unwelcome pressure for sexual activity
- coercing, forcing or attempting to coerce or force a sexual act on another
- graffiti of a sexual nature
- sexual gestures
- sexually explicit or obscene jokes
- touching oneself sexually or talking about ones' sexual activity in front of others
- spreading rumors about or rating other students as to sexual activity or performance
- unwelcome, sexually motivated or inappropriate physical contact. This prohibition does not preclude legitimate, nonsexual physical conduct such as the use of necessary restraints to avoid physical harm or the demonstration of a sports move requiring contact with another student.

### III. PROCEDURE

The Chief Executive Officer (CEO) shall adopt appropriate procedures for the implementation of this policy. Such procedures shall provide for conciliation of complaints to the fullest extent possible, but shall also provide clear and simple mechanisms for complaints to be resolved by the appropriate inside administrators or by an outside compliance officer. The CEO or his/her designee shall report to the Board periodically pursuant to the procedures established in Policy CL regarding such complaints.

### IV. INVESTIGATION

Upon receipt of a complaint alleging discrimination or harassment, the Director of EEO, shall immediately undertake or authorize an investigation. That investigation may be conducted by District officials or by a third party designated by the District.

In determining whether the alleged conduct constitutes a violation of this policy, the District shall consider:

- the nature of the behavior
- the relationship between the parties involved
- the sex and age of the victim
- the age of the alleged harasser
- where the harassment occurred
- any past incidents involving the same individuals
- whether the conduct adversely affects the student's education or educational environment
- the context in which the alleged incidents occurred.

Whether a particular incident constitutes a violation of this policy requires a determination based on all the facts and surrounding circumstances.

The District's obligation to conduct this investigation shall not be extinguished by the fact that a criminal investigation involving the same or similar allegations is also pending or has been concluded.

### V. SCHOOL DISTRICT ACTION

- A. Upon receipt of a report that a violation has occurred, the District will take prompt, appropriate action to address any violation. Appropriate actions may include but are not limited to counseling, awareness training, parent-teacher conferences, warning, suspension, exclusion, transfer or expulsion. District action taken

for violation of this policy shall be consistent with the requirements of applicable collective bargaining agreements, state and federal law, and the District's policy on Student Discipline.

In the event that the evidence suggests that the harassment at issue is also a crime in violation of an Ohio criminal statute, the Director of EEO shall report the results of the investigation to the appropriate law enforcement agency charged with responsibility for handling such crimes.

- B. The results of the District's investigation of each complaint filed under these procedures will be reported in writing to the complainant and other parties by the District in accordance with state and federal laws regarding data or records privacy, and consistent with the privacy rights of the alleged harasser.
- C. If the District's evaluation of a complaint of harassment results in a conclusion that an individual has engaged in unlawful harassment in violation of this policy, that individual may appeal this determination by use of established District procedures. If the District's evaluation of a complaint of harassment results in a conclusion that no unlawful harassment has occurred, an individual who was allegedly subjected to harassment and believes that this conclusion is erroneous may appeal this determination by use of established District procedures.
- D. Copies of all complaints of harassment and the investigations conducted pursuant to them shall be maintained for a period in accordance with state statutes of limitations at the main administrative offices of the District.

## VI. REPRISAL

Submission of a good faith complaint or report of harassment will not affect the complainant or reporter's future employment, grades, learning or working environment or work assignments.

Retaliation of any type against any person who reports an incident of alleged harassment or violence, or any person who testifies, assists or participates in a proceeding, investigation or hearing related to such harassment or violence is not tolerated by the District. The District will discipline any teacher, administrator or other school personnel who engages in retaliation, including possible termination. Retaliation includes, but is not limited to, any form of intimidation, reprisal or harassment.

## VII. ACADEMIC FREEDOM

The District has a strong interest in preserving academic freedom and an obligation as a public entity to observe First Amendment free speech rights of students and teachers.

In cases of alleged harassment, the protections of the First Amendment must be considered if issues of speech or artistic expression are involved. But, even in the context of public discussion and educational instruction, speech or conduct of a sexual or hostile nature may exceed the protections of academic freedom and free speech. Sexual speech in the classroom that does not further the learning process or is not germane to the academic subject matter is not protected by the First Amendment and is subject to the restrictions of this policy.

[Adoption date: October 4, 2001]

### CONTACTS:

#### **Director of Equal Employment Opportunity**

1380 East Sixth Street  
Cleveland, Ohio 44114  
Telephone: (216) 574-8210

#### **U.S. Department of Education, Office for Civil Rights**

Bank One Center, Room 750  
600 Superior Avenue East  
Cleveland, Ohio 44114-2611  
Telephone: (216) 522-4970

### LEGAL REFERENCES

Education Amendments of 1972, Title IX, 20 USC 1681  
Department of Education Notice, Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students or Third Parties, 62 Federal Register 12034.

**REPORT FORM FOR REPORTS OR COMPLAINTS OF  
DISCRIMINATION OR HARASSMENT**

Complainant \_\_\_\_\_

Home Address \_\_\_\_\_

Work  
Address \_\_\_\_\_

Home Phone \_\_\_\_\_

Work Phone \_\_\_\_\_

Date of Alleged incident(s) \_\_\_\_\_

Name of person you believe discriminated against or harassed you or another person:

\_\_\_\_\_

If the alleged discrimination or harassment was toward another person, identify that other person:

\_\_\_\_\_

Describe the incident as clearly as possible, including such things as what force, if any, was used, any verbal statements (i.e., threats, requests, demands, etc.), what, if any physical contact was involved. Attach additional pages as necessary: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

When and where did the incident occur: \_\_\_\_\_

\_\_\_\_\_

List any witnesses who were present: \_\_\_\_\_

\_\_\_\_\_

This complaint is based upon my honest belief that \_\_\_\_\_  
has discriminated against or harassed me or another person. I hereby certify that the  
information I have provided in this complaint is true, correct and complete to the best of  
my knowledge.

\_\_\_\_\_  
Complainant's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Received By

\_\_\_\_\_  
Date