

****506- Student Harassment.** The phrase "or sexual orientation" has been placed in italics as optional for districts. Sexual orientation is not defined nor included as a protected class under Idaho law. However, other states and federal court decisions interpreting the term "sex" under Title VII of the Civil Rights Act and other civil rights laws have defined sexual orientation as a protected class. To date the 9th Circuit Court of Appeal (which establishes precedential federal law in Idaho and other western states) has not taken up the question. Therefore, we are making this language optional in this revised policy.

It is the policy of this district to maintain a learning environment that is free from harassment. Each student and employee has the right to attend school and work in an atmosphere that promotes equal opportunities and that is free from all forms of discrimination and conduct that can be considered harassing, coercive, or disruptive.

Students attending district schools are:

- 1. Prohibited from engaging in any conduct which could reasonably be construed as constituting harassment on the basis of sex (including sexual orientation), race, color, national origin, age, religious beliefs, ethnic background, or disability;*
- 2. Prohibited from sexually harassing other students, district employees, and patrons; and*
- 3. Required to report, to the school principal or designee, harassment of which the student becomes aware.*

This policy applies to all conduct on the district's premises and at school-sponsored events, conduct during transportation to and from school and school-sponsored events, and conduct off the district's premises that has an adverse affect upon a student's educational environment.

DEFINITION OF HARASSMENT

Harassment is defined to include verbal, written, graphic, photographic, audio or video depictions of any kind, or physical conduct relating to an individual's sex *or sexual orientation*, race, color, national origin, age, religious beliefs, ethnic background, or disability that is sufficiently severe, pervasive, or persistent so as to interfere with or limit the ability of an individual to participate in or benefit from the district's programs that:

1. Has the purpose or effect of creating an intimidating or hostile environment.
2. Unreasonably interferes with an individual's educational performance.
3. Otherwise adversely affects an individual's educational opportunities.

Harassment includes, but is not limited to:

1. Physical acts of aggression or assault, damage to property, or intimidation and implied or overt threats of violence motivated by the victim's sex *or sexual orientation*, race, color, national origin, age, religious beliefs, ethnic background, or disability;
2. Demeaning jokes, taunting, slurs, and derogatory "nicknames," innuendos, or other negative remarks relating to the victim's sex *or sexual orientation*, race, color, national origin, age, religious beliefs, ethnic background, or disability;
3. Graffiti and/or slogans or visual displays such as cartoons or posters depicting slurs or derogatory sentiments related to the victim's sex *or sexual orientation*, race, color, national origin, age, religious beliefs, ethnic background, or disability; and
4. Criminal offenses directed at persons because of their sex *or sexual orientation*, race, color, national origin, age, religious beliefs, ethnic background, or disability;

Harassment also includes an act of retaliation taken against (1) any person bringing a complaint of harassment, (2) any person assisting another person in bringing a complaint of harassment, or (3) any person participating in an investigation of an act of harassment.

DEFINITION OF SEXUAL HARASSMENT

Sexual harassment is a form of misconduct that undermines the student's relationship with educators and with other students. No student, male or female, should be subject to unasked for and unwelcome sexual overtures or conduct, either verbal or physical. Sexual harassment refers to sexual overtures or conduct, including those that relate to the student's sexual orientation, that is unwelcome, personally offensive, and affecting morale, thereby interfering with a student's ability to study or participate in school activities.

Sexual harassment is a form of misconduct that includes unwelcome sexual advances, requests for sexual favors, sexually motivated physical conduct, or other verbal or physical 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 participation in the educational process;
2. Submission to or rejection of such conduct by an individual is used as a factor for educational decisions affecting the individual; or
3. Such conduct has the purpose or effect of unreasonably interfering with an individual's education, or creating an intimidating, hostile, or offensive educational environment.

Examples of sexual harassment include, but are not limited to, the following:

1. *Unwelcome verbal statements of a sexual or abusive nature, including requests or demands for sexual activity, sexual jokes, and obscene comments, etc.;*

2. *Unwelcome, sexually motivated or inappropriate touching, pinching, or other physical contact;*
3. *Unwelcome cyber communications, including, but not limited to, sending sexually explicit photographs or messages via any electronic communication devices (“sexting”);*
4. *Unwelcome sexual behavior or communications, regardless of the method of such communication, accompanied by implied or overt threats concerning an individual’s education;*
5. *Unwelcome behavior or communications directed at an individual because of his/her gender; and*
6. *Stalking or unwelcome, sexually motivated attention.*

REPORTING PROCEDURES

1. *Any student, and/or parents of a student, who believe the student is being harassed should immediately report the situation to school personnel.*
2. *Any district employee who receives a report of harassment from a student, becomes aware that a student is being subjected to harassment, or in good faith believes that a student is being subjected to harassment, is required to report the matter to the building principal immediately. In the event the complaint involves the principal, the matter must be immediately reported to the superintendent.*
3. *Any district employee who witnesses harassment of a student should take immediate, appropriate action to intervene to stop the harassment.*
4. *Any student who becomes aware that a fellow student is being subjected to harassment should immediately report the incident to a counselor, teacher, or the principal.*

INVESTIGATION AND REPORT

[Option A—the board must choose either Option A or Option B.]

When a report of harassment is received by the principal or the superintendent, immediate steps will be taken to follow the policy entitled “Civil Rights Grievance Procedure,” Policy No. ___ (294P1).

[Option B—the board must choose either Option A or Option B.]

When a report of harassment is received by the principal or the superintendent, immediate steps will be taken to do the following:

1. Obtain a written statement from the complainant regarding the allegations;
2. Obtain a written statement from the accused;
3. Obtain written statements from witnesses, if any; and
4. Prepare a written report detailing the investigation.

An investigator may be appointed to conduct the investigation, or the principal or superintendent may conduct the investigation. The investigation should be completed within ten (10) workdays.

DISCIPLINARY ACTION

If the allegation of harassment involves a teacher or other school employee, the principal will submit the report of the investigation to the superintendent. If there is sufficient evidence to support the allegation, disciplinary action, up to and including dismissal, may be taken against the offender.

If the allegation of harassment is against a student and there is sufficient evidence to support the allegation, disciplinary action, up to and including suspension or expulsion, may be taken against the offender.

If there is insufficient evidence to support the allegation, no record will be made of the allegation in the complaining student's permanent record. No record of the allegation will be placed in the accused employee's personnel record or in an accused student's permanent record if insufficient evidence supports the allegation.

In the event the investigation discloses that the complaining student has falsely accused another individual of harassment knowingly or in a malicious manner, the complaining student may be subject to disciplinary action, up to and including expulsion.

In the event the harassment involves violent or other conduct which could be reasonably considered to be criminal in nature, the principal/superintendent will refer the matter to the local law enforcement agency.

PROTECTION AGAINST RETALIATION

No retaliation will be taken by this district or by any of its employees or students against a student who reports harassment in good faith. Any person found to have retaliated against another individual for reporting an incident of harassment may be subject to the same disciplinary action provided for harassment offenders. Those persons who assist or participate in an investigation of harassment are also protected from retaliation under this policy.

CONFIDENTIALITY

Any investigation will be conducted, to the maximum extent possible, in a manner that protects the privacy of both the complainant and the accused. However, if it is suspected that child abuse has occurred, such abuse will be reported to the proper authorities as required by state law.

RECORD OF ALLEGATIONS

This district will keep and maintain a written record, including, but not limited to, witness statements, investigative reports, and correspondence, from the date any allegation of harassment is reported to district personnel. The information in the written record will also include the action taken by the district in response to each allegation. The written record will be kept in the district's administrative offices and will not, at any time, be purged by district personnel.



LEGAL REFERENCE:

Idaho Code Sections

16-1619

18-917A

33-205

33-512(6)

Title IX of the Education Amendments of 1972

Franklin v. Gwinnett Co. Public Schools, 112 S. Ct. 1028 (1992)

Gebser v. Lago Vista Independent School District, 118 S. Ct. 1989 (1998)

Davis v. Monroe County Board of Education, 119 S. Ct. 1661 (1999)

Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties (U.S. Dept. of Education Office of Civil Rights, January 2001)

ADOPTED: August 28, 2002

AMENDED: July 7, 2010, August 2018

**Language in text set forth in italics is optional.*