

413 HARASSMENT AND VIOLENCE

~~[Note: State law (Minnesota Statutes section 121A.03) requires that school districts adopt a sexual, religious, and racial harassment and violence policy that conforms with the Minnesota Human Rights Act, Minnesota Statutes section 363A (MHRA). This policy complies with that statutory requirement and addresses the other classifications protected by the MHRA and/or federal law. While the recommendation is that school districts incorporate the other protected classifications, in addition to sex, religion, and race, into this policy, they are not specifically required to do so by Minnesota Statutes section 121A.03. The Minnesota Department of Education (MDE) is required to maintain and make available a model sexual, religious, and racial harassment policy in accordance with Minnesota Statutes section 121A.03. MDE's policy differs from that of MSBA and imposes greater requirements upon school districts than required by law. For that reason, MSBA recommends the adoption of its model policy by school districts. Each school board must submit a copy of the policy the board has adopted to the Commissioner of MDE.]~~

I. PURPOSE

The purpose of this policy is to maintain a learning and working environment free from harassment and violence on the basis of race, color, creed, religion, national origin, sex, age, marital status, familial status, status with regard to public assistance, sexual orientation, or disability (Protected Class).

II. GENERAL STATEMENT OF POLICY

- A. The policy of the school district is to maintain a learning and working environment free from harassment and violence on the basis of Protected Class. The school district prohibits any form of harassment or violence on the basis of Protected Class.
- B. A violation of this policy occurs when any student, teacher, administrator, or other school district personnel harasses a student, teacher, administrator, or other school district personnel or group of students, teachers, administrators, or other school district personnel through conduct or communication based on a person's Protected Class, as defined by this policy. (For purposes of this policy, school district personnel include school board members, school employees, agents, volunteers, contractors, or persons subject to the supervision and control of the district.)
- C. A violation of this policy occurs when any student, teacher, administrator, or other school district personnel inflicts, threatens to inflict, or attempts to inflict violence upon any student, teacher, administrator, or other school district personnel or group of students, teachers, administrators, or other school district personnel based on a person's Protected Class.
- D. The school district will act to investigate all complaints, either formal or informal, verbal or written, of harassment or violence based on a person's Protected Class, and to discipline or take appropriate action against any student, teacher, administrator, or other school district personnel found to have violated this policy.

III. DEFINITIONS

- 1 A. "Assault" is:
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- 3 1. an act done with intent to cause fear in another of immediate bodily harm or
- 4 death;
- 5 2. the intentional infliction of or attempt to inflict bodily harm upon another; or
- 6
- 7 3. the threat to do bodily harm to another with present ability to carry out the
- 8 threat.
- 9 B. "Harassment" prohibited by this policy consists of physical or verbal conduct, including,
- 10 but not limited to, electronic communications, relating to an individual's or group of
- 11 individuals' race, color, creed, religion, national origin, sex, age, marital status, familial
- 12 status, status with regard to public assistance, sexual orientation, including gender
- 13 identity or expression, or disability, when the conduct:
- 14
- 15 1. has the purpose or effect of creating an intimidating, hostile, or offensive
- 16 working or academic environment;
- 17 2. has the purpose or effect of substantially or unreasonably interfering with an
- 18 individual's work or academic performance; or
- 19 3. otherwise adversely affects an individual's employment or academic
- 20 opportunities.
- 21 C. "Immediately" means as soon as possible but in no event longer than 24 working hours.
- 22 D. Protected Classifications; Definitions
- 23 1. "Disability" means, with respect to an individual who
- 24
- 25 a. a physical sensory or mental impairment that materially limits one or
- 26 more major life activities of such individual;
- 27
- 28 b. has a record of such an impairment; or
- 29
- 30 c. is regarded as having such an impairment.
- 31 2. "Familial status" means the condition of one or more minors being domiciled
- 32 with:
- 33
- 34 a. their parent or parents or the minor's legal guardian; or
- 35
- 36 b. the designee of the parent or parents or guardian with the written
- 37 permission of the parent or parents or guardian. The protections
- 38 afforded against harassment or discrimination on the basis of family
- 39 status apply to any person who is pregnant or is in the process of
- 40 securing legal custody of an individual who has not attained the age of
- 41 majority.
- 42 3. "Marital status" means whether a person is single, married, remarried, divorced,
- 43 separated, or a surviving spouse and, in employment cases, includes protection
- 44 against harassment or discrimination on the basis of the identity, situation,
- 45 actions, or beliefs of a spouse or former spouse.
- 46
- 47 4. "National origin" means the place of birth of an individual or of any of the
- 48 individual's lineal ancestors.
- 49 5. "Sex" includes, but is not limited to, pregnancy, childbirth, and disabilities
- 50 related to pregnancy or childbirth.
- 51 6. "Sexual orientation" means having or being perceived as having an emotional,

1 physical, or sexual attachment to another person without regard to the sex of
2 that person or having or being perceived as having an orientation for such
3 attachment, or having or being perceived as having a self-image or identity not
4 traditionally associated with one's biological maleness or femaleness. "Sexual
5 orientation" does not include a physical or sexual attachment to children by an
6 adult.
7

- 8 7. "Status with regard to public assistance" means the condition of being a recipient
9 of federal, state, or local assistance, including medical assistance, or of being a
10 tenant receiving federal, state, or local subsidies, including rental assistance or
11 rent supplements.
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13 E. Protected-Class-Based Harassment or Discrimination; Definition.
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- 15 1. Protected-class-based harassment or discrimination shall be defined to include
16 any physical or verbal conduct, including, but not limited to, electronic
17 communications, relating to a protected class under Minn. Stat. 363A.13, which
18 may include, but is not limited to:
19

20 a. Unwelcome verbal harassment or abuse, including teasing, joking, or
21 making derogatory or dehumanizing remarks;
22

23 b. Displaying offensive pictures, posters, apparel and accessories, or other
24 graphics;
25

26 c. Threats or actions related to an individual's protected class;
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28 d. Unwelcome physical contact, other than necessary restraint of pupil(s)
29 by teachers, administrators, or other school personnel to avoid physical
30 harm to persons or property; and physical violence or abuse.
31

32 E.F. "Remedial response" means a measure to stop and correct acts of harassment or
33 violence, prevent acts of harassment or violence from recurring, and protect, support,
34 and intervene on behalf of a student who is the target or victim of acts of harassment
35 or violence.
36

37 F.G. Sexual Harassment; Definition
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- 39 1. Sexual harassment includes unwelcome sexual advances, requests for sexual
40 favors, sexually motivated physical conduct, or other verbal or physical conduct
41 or communication of a sexual nature when:
42

43 a. submission to that conduct or communication is made a term or
44 condition, either explicitly or implicitly, of obtaining employment or an
45 education; or
46

47 b. submission to or rejection of that conduct or communication by an
48 individual is used as a factor in decisions affecting that individual's
49 employment or education; or
50

51 c. that conduct or communication has the purpose or effect of substantially
52 interfering with an individual's employment or education, or creating an
53 intimidating, hostile, or offensive employment or educational
54 environment.
55

- 56 2. Sexual harassment may include, but is not limited to:
57

58 a. unwelcome verbal harassment or abuse;

- b. unwelcome pressure for sexual activity;
- c. unwelcome, sexually motivated, or inappropriate patting, pinching, or physical contact, other than necessary restraint of student(s) by teachers, administrators, or other school district personnel to avoid physical harm to persons or property;
- d. unwelcome sexual behavior or words, including demands for sexual favors, accompanied by implied or overt threats concerning an individual's employment or educational status;
- e. unwelcome sexual behavior or words, including demands for sexual favors, accompanied by implied or overt promises of preferential treatment with regard to an individual's employment or educational status; or
- f. unwelcome behavior or words directed at an individual because of sexual orientation, including gender identity or expression.

G.H. Sexual Violence; Definition

1. Sexual violence is a physical act of aggression or force or the threat thereof that involves the touching of another's intimate parts or forcing a person to touch any person's intimate parts. Intimate parts, as defined in Minnesota Statutes section 609.341, includes the primary genital area, groin, inner thigh, buttocks, or breast, as well as the clothing covering these areas.
2. Sexual violence may include, but is not limited to:
 - a. touching, patting, grabbing, or pinching another person's intimate parts
 - b. coercing, forcing, or attempting to coerce or force the touching of anyone's intimate parts;
 - c. coercing, forcing, or attempting to coerce or force sexual intercourse or a sexual act on another; or
 - d. threatening to force or coerce sexual acts, including the touching of intimate parts or intercourse, on another.

H.I. Violence; Definition

Violence prohibited by this policy is a physical act of aggression or assault upon another or group of individuals because of, or in a manner reasonably related to an individual's Protected Class.

IV. REPORTING PROCEDURES

- A. Any person who believes they have been the target or victim of harassment or violence on the basis of Protected Class by a student, teacher, administrator, or other school district personnel, or any person with knowledge or belief of conduct which may constitute harassment or violence prohibited by this policy toward a student, teacher, administrator, or other school district personnel or group of students, teachers, administrators, or other school district personnel should report the alleged acts immediately to an appropriate school district official designated by this policy. A person may report conduct that may constitute harassment or violence anonymously. However,

the school district may not rely solely on an anonymous report to determine discipline or other remedial responses. The District will follow these policies and procedures regardless of whether the complaint or alleged perpetrator is identified.

- B. The school district encourages the reporting party or complainant to use the report form available from the principal or building supervisor of each building or available from the school district office, but oral reports shall be considered complaints as well.
- C. Nothing in this policy shall prevent any person from reporting harassment or violence directly to a school district human rights officer or to the superintendent. If the complaint involves the building report taker, the complaint shall be made or filed directly with the superintendent or the school district human rights officer by the reporting party or complainant.
- D. In Each School Building. The building principal, the principal's designee, or the building supervisor (hereinafter the "building report taker") is the person responsible for receiving oral or written reports of harassment or violence prohibited by this policy at the building level. Any adult school district personnel who receives a report of harassment or violence prohibited by this policy shall inform the building report taker immediately. If the complaint involves the building report taker, the complaint shall be made or filed directly with the superintendent or the school district human rights officer by the reporting party or complainant. The building report taker shall ensure that this policy and its procedures, practices, consequences, and sanctions are fairly and fully implemented and shall serve as a primary contact on policy and procedural matters.
- E. A teacher, school administrator, volunteer, contractor, or other school employee shall be particularly alert to possible situations, circumstances, or events that might include acts of harassment or violence. Any such person who witnesses, observes, receives a report of, or has other knowledge or belief of conduct that may constitute harassment or violence shall make reasonable efforts to address and resolve the harassment or violence and shall inform the building report taker immediately. School district personnel who fail to inform the building report taker of conduct that may constitute harassment or violence or who fail to make reasonable efforts to address and resolve the harassment or violence in a timely manner may be subject to disciplinary action.
- F. Upon receipt of a report, the building report taker must notify the school district human rights officer immediately, without screening or investigating the report. The building report taker may request, but may not insist upon, a written complaint. A written statement of the facts alleged will be forwarded as soon as practicable by the building report taker to the human rights officer. If the report was given verbally, the building report taker shall personally reduce it to written form within 24 hours and forward it to the human rights officer. Failure to forward any harassment or violence report or complaint as provided herein may result in disciplinary action against the building report taker.
- G. In the District. The school board hereby designates the Executive Director of Administrative Services as the school district human rights officer(s) to receive reports or complaints of harassment or violence prohibited by this policy. If the complaint involves a human rights officer, the complaint shall be filed directly with the superintendent.¹

¹In some school districts the superintendent may be the human rights officer. If so, an alternative individual should be designated by the school board.

- 1 H. The school district shall conspicuously post the name of the human rights officer(s),
2 including mailing addresses and telephone numbers.
- 3
- 4 I. Submission of a good faith complaint or report of harassment or violence prohibited by
5 this policy will not affect the complainant or reporter's future employment, grades, work
6 assignments, or educational or work environment.
- 7
- 8 J. Use of formal reporting forms is not mandatory.
- 9
- 10 K. Reports of harassment or violence prohibited by this policy are classified as private
11 educational and/or personnel data and/or confidential investigative data and will not be
12 disclosed except as permitted by law.
- 13
- 14 L. The school district will respect the privacy of the complainant(s), the individual(s)
15 against whom the complaint is filed, and the witnesses as much as possible, consistent
16 with the school district's legal obligations to investigate, to take appropriate action, and
17 to comply with any discovery or disclosure obligations. The school district will determine
18 when an incident or series of incidents of alleged harassment of a particular student or
19 group of students rises to a level of severity or persistence such that school district staff
20 will notify the parent(s)/guardian(s) of the harassed student(s), and the individual
21 tasked with notifying parents/guardians of the harassment shall remain sensitive to any
22 personal concerns of the student in discussing the basis/bases of the harassment with
23 the harassed student's parent/guardian. The school district will also determine when an
24 incident or series of incidents of harassment by a particular student or group of students
25 rises to a level of severity or persistence such that it requires school district staff to
26 notify the parent/guardian of the harassing student(s).
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- 28 M. Retaliation against a victim, good faith reporter, or a witness of violence or harassment
29 is prohibited.
- 30
- 31 N. False accusations or reports of violence or harassment against another person are
32 prohibited.
- 33
- 34 O. A person who engages in an act of violence or harassment, reprisal, retaliation, or false
35 reporting of violence or harassment, or permits, condones, or tolerates violence or
36 harassment shall be subject to discipline or other remedial responses for that act in
37 accordance with the school district's policies and procedures.
- 38
- 39 Consequences for students who commit, or are a party to, prohibited acts of violence or
40 harassment or who engage in reprisal or intentional false reporting may range from
41 remedial responses or positive behavioral interventions up to and including suspension
42 and/or expulsion.
- 43
- 44 Consequences for employees who permit, condone, or tolerate violence or harassment
45 or engage in an act of reprisal or intentional false reporting of violence or harassment
46 may result in disciplinary action up to and including termination or discharge.
- 47
- 48 Consequences for other individuals engaging in prohibited acts of violence or
49 harassment may include, but not be limited to, exclusion from school district property
50 and events and/or termination of services and/or contracts.

51 V. INVESTIGATION

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- 53 A. By authority of the school district, the human rights officer, within three (3) days of the
54 receipt of a report or complaint alleging harassment or violence prohibited by this policy,
55 shall undertake or authorize an investigation. The investigation may be conducted by
56 school district officials or by a third party designated by the school district.

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2 B. The investigation may consist of personal interviews with the complainant, the
3 individual(s) against whom the complaint is filed, and others who may have knowledge
4 of the alleged incident(s) or circumstances giving rise to the complaint. The investigation
5 may also consist of any other methods and documents deemed pertinent by the
6 investigator.
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8 C. In determining whether alleged conduct constitutes a violation of this policy, the school
9 district should consider the surrounding circumstances, the nature of the behavior, past
10 incidents or past or continuing patterns of behavior, the relationships between the
11 parties involved, and the context in which the alleged incidents occurred. Whether a
12 particular action or incident constitutes a violation of this policy requires a determination
13 based on all the facts and surrounding circumstances.
14
15 D. In addition, the school district may take immediate steps, at its discretion, to protect
16 the target or victim, the complainant, and students, teachers, administrators, or other
17 school district personnel pending completion of an investigation of alleged harassment
18 or violence prohibited by this policy. The Human Rights Officer, in consultation with
19 Building Leadership, will determine whether and how to separate the alleged
20 perpetrator(s) of the act(s) of harassment or violence from the complainant(s), to the
21 extent possible, without harming the educational opportunities of the alleged
22 perpetrator(s).
23
24 E. The alleged perpetrator of the act(s) of harassment or violence shall be allowed the
25 opportunity to present a defense during the investigation or prior to the imposition of
26 discipline or other remedial responses.
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28 F. The investigation will be completed as soon as practicable. The school district human
29 rights officer shall make a written report to the superintendent upon completion of the
30 investigation. If the complaint involves the superintendent, the report may be filed
31 directly with the school board. The report shall include a determination of whether the
32 allegations have been substantiated as factual and whether they appear to be violations
33 of this policy.

34 VI. SCHOOL DISTRICT ACTION

- 35
36 A. Upon completion of an investigation that determines a violation of this policy has
37 occurred, the school district will take appropriate action. Such action may include, but
38 is not limited to, warning, suspension, exclusion, expulsion, transfer, remediation,
39 termination, or discharge. Disciplinary consequences will be sufficiently severe to try to
40 deter violations and to appropriately discipline prohibited behavior. School district action
41 taken for violation of this policy will be consistent with requirements of applicable
42 collective bargaining agreements, Minnesota and federal law, and applicable school
43 district policies and regulations.
44
45 B. The school district is not authorized to disclose to a victim private educational or
46 personnel data regarding an alleged perpetrator who is a student or employee of the
47 school district. School officials will notify the targets or victims and alleged perpetrators
48 of harassment or violence, the parent(s) or guardian(s) of targets or victims of
49 harassment or violence and the parent(s) or guardian(s) of alleged perpetrators of
50 harassment or violence who have been involved in a reported and confirmed harassment
51 or violence incident of the remedial or disciplinary action taken, to the extent permitted
52 by law.
53
54 C. In order to prevent or respond to acts of harassment or violence committed by or
55 directed against a child with a disability, the school district shall, where determined
56 appropriate by the child's individualized education program (IEP) or Section 504 team,

allow the child's IEP or Section 504 plan to be drafted to address the skills and proficiencies the child needs as a result of the child's disability to allow the child to respond to or not to engage in acts of harassment or violence.

- D. In situations where a specific alleged perpetrator or group of alleged perpetrators are not able to be identified, the school district may consider whether group training or lessons are appropriate and may take steps to implement such training or lessons.

VII. RETALIATION OR REPRISAL

The school district will discipline or take appropriate action against any student, teacher, administrator, or other school district personnel who commits an act of reprisal or who retaliates against any person who asserts, alleges, or makes a good faith report of alleged harassment or violence prohibited by this policy, who testifies, assists, or participates in an investigation of retaliation or alleged harassment or violence, or who testifies, assists, or participates in a proceeding or hearing relating to such harassment or violence. Retaliation includes, but is not limited to, any form of intimidation, reprisal, harassment, or intentional disparate treatment. Disciplinary consequences will be sufficiently severe to deter violations and to appropriately discipline the individual(s) who engaged in the harassment or violence. Remedial responses to the harassment or violence shall be tailored to the particular incident and nature of the conduct.

VIII. RIGHT TO ALTERNATIVE COMPLAINT PROCEDURES

These procedures do not deny the right of any individual to pursue other avenues of recourse which may include filing charges with the Minnesota Department of Human Rights or another state or federal agency, initiating civil action, or seeking redress under state criminal statutes and/or federal law.

IX. HARASSMENT OR VIOLENCE AS ABUSE

- A. Under certain circumstances, alleged harassment or violence may also be possible abuse under Minnesota law. If so, the duties of mandatory reporting under Minnesota Statutes chapter. 260E may be applicable.
- B. Nothing in this policy will prohibit the school district from taking immediate action to protect victims of alleged harassment, violence, or abuse.

X. DISSEMINATION OF POLICY AND TRAINING

- A. This policy shall be conspicuously posted throughout each school building in areas accessible to students and staff members.
- B. This policy shall be given to each school district employee and independent contractor who regularly interacts with students at the time of initial employment with the school district.
- C. This policy shall appear in the student handbook.
- D. The school district will develop a method of discussing this policy with students and employees.
- E. The school district may implement violence prevention and character development education programs to prevent and reduce policy violations. Such programs may offer instruction on character education including, but not limited to, character qualities such as attentiveness, truthfulness, respect for authority, diligence, gratefulness, self-discipline, patience, forgiveness, respect for others, peacemaking, resourcefulness,

1 and/or sexual abuse prevention.

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3 F. This policy shall be reviewed at least annually for compliance with state and federal law.
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6 **Legal References:** Minn. Stat. § 120B.232 (Character Development Education)
7 Minn. Stat. § 120B.234 (Child Sexual Abuse Prevention Education)
8 Minn. Stat. § 121A.03, Subd. 2 (Sexual, Religious, and Racial Harassment and
9 Violence Policy)
10 Minn. Stat. § 121A.031 (School Student Bullying Policy)
11 Minn. Stat. Ch. 363A (Minnesota Human Rights Act)
12 Minn. Stat. § 609.341 (Definitions)
13 Minn. Stat. Ch. 260E (Reporting of Maltreatment of Minors)
14 20 U.S.C. §§ 1681-1688 (Title IX of the Education Amendments of 1972)
15 29 U.S.C. § 621 *et seq.* (Age Discrimination in Employment Act)
16 29 U.S.C. § 794 (Section 504 of the Rehabilitation Act of 1973)
17 42 U.S.C. § 1983 (Civil Action for Deprivation of Rights)
18 42 U.S.C. § 2000d *et seq.* (Title VI of the Civil Rights Act of 1964)
19 42 U.S.C. § 2000e *et seq.* (Title VII of the Civil Rights Act)
20 42 U.S.C. § 12101 *et seq.* (Americans with Disabilities Act)