

## *Document Status: Draft Update*

### **5:20 Workplace Harassment Prohibited**

The School District expects the workplace environment to be productive, respectful, and free of unlawful discrimination, including harassment. District employees shall not engage in harassment or abusive conduct on the basis of an individual's actual or perceived race, color, religion, national origin, ancestry, sex, sexual orientation, age, citizenship status, disability, pregnancy, marital status, order of protection status, military status, or unfavorable discharge from military service, nor shall they engage in harassment or abusive conduct on the basis of an individual's 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*.[PRESSPlus1](#)

The District will take remedial and corrective action to address unlawful workplace harassment, including sexual harassment.

#### Sexual Harassment Prohibited

The School District shall provide a workplace environment free of verbal, physical, or other conduct or communications constituting harassment on the basis of sex as defined and otherwise prohibited by State and federal law. The District provides annual sexual harassment prevention training in accordance with State law.[PRESSPlus2](#)

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 environment. Sexual harassment prohibited by this policy includes, but is not limited to, verbal, physical, or other 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

Section 1: The Board adopts Board policies 2:105, Ethics and Gift Ban, and 5:20, Workplace Harassment Prohibited, attached as Exhibit A, which collectively contains the following: (1) a prohibition on sexual harassment; (2) detail regarding how an individual can report an allegation of sexual harassment, including options for making a confidential report to an immediate supervisor, the Building Principal, an administrator, the Nondiscrimination Coordinator, a Complaint Manager, or the Ill. Dept. of Human Rights; (3) a prohibition on retaliation for reporting sexual harassment allegations and a statement regarding the availability of whistleblower protections under the State Officials and Employees Ethics Act, the Whistleblower Act, and the Ill. Human Rights Act; and (4) the consequences: (a) of a violation of the prohibition on sexual harassment; and (b) for knowingly making a false report, and (5) a mechanism for reporting and independent review of allegations of sexual harassment made against a Board member by a fellow Board member or other elected official.

Section 2: Any prior versions of Board policies 2:105, Ethics and Gift Ban, and 5:20, Workplace Harassment Prohibited, adopted by the Board are superseded by this Resolution.

#### Whom to Contact with a Report or Complaint

An employee should report claims of harassment, including making a confidential report, to any of the following: his/her immediate supervisor, the Building Principal, an administrator, the Nondiscrimination Coordinator, and/or a Complaint Manager. Employees may also report claims using Board policy 2:260, *Uniform Grievance Procedure*. If a claim is reported using Board policy 2:260, then the Complaint Manager shall process and review the complaint according to that policy, in addition to any response required by this policy 5:20, Workplace Harassment Prohibited.

#### **Nondiscrimination Coordinator and Complaint Managers:**

Please refer to either the student handbook or faculty handbook to obtain the names and contact information for the current district discrimination coordinator and complaint Managers.

#### Investigation Process

Supervisors, Building Principals, or administrators who receive a report or complaint of harassment must promptly forward the report or complaint to the Nondiscrimination Coordinator or a Complaint Manager. A supervisor or administrator who fails to



Reports and complaints of harassment will be confidential to the greatest extent practicable, subject to the District's duty to investigate and maintain a workplace environment that is productive, respectful, and free of unlawful discrimination, including harassment. The District shall investigate alleged workplace harassment when the Nondiscrimination Coordinator or a Complaint Manager becomes aware of an allegation, regardless of whether a written report or complaint is filed.

#### Enforcement

A violation of this policy may result in discipline, up to and including discharge. A violation of this policy by a third party will be addressed in accordance with the authority of the Board in the context of the relationship of the third party to the District, i.e., vendor, parent, invitee, etc. Any employee making a knowingly false accusation regarding harassment will likewise be subject to disciplinary action, up to and including discharge.

#### Retaliation Prohibited

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*), and whistleblower protection may be available under the State Officials and Employees Ethics Act ([5 ILCS 430/](#)), the Whistleblower Act ([740 ILCS 174/](#)), and the Ill. Human Rights Act ([775 ILCS 5/](#)).

An employee should report allegations of retaliation to his/her immediate supervisor, the Building Principal, an administrator, the Nondiscrimination Coordinator, and/or a Complaint Manager.

Employees who retaliate against others for reporting or complaining of violations of this policy or for participating in the reporting or complaint process will be subject to disciplinary action, up to and including discharge.

#### Recourse to State and Federal Fair Employment Practice Agencies

The District encourages all employees who have information regarding violations of this policy to report the information pursuant to this policy. The following government agencies are available to assist employees: the Ill. Dept. of Human Rights and the U. S. Equal Employment Opportunity Commission.

The Superintendent shall also use reasonable measures to inform staff members, and applicants, and nonemployees of this policy, which shall include posting on the District website and/or making this policy available in the District's administrative office, and reprinting including this policy in the appropriate handbooks.

#### PRESSPlus3

Informing nonemployees is not required by law. However, given the potential for employer liability under the IHRA for harassment of nonemployees, best practice is to publicize this policy to those individuals as well. **Issue 102, October 2019**

#### LEGAL REF.:

Title VII of the Civil Rights Act of 1964, [42 U.S.C. §2000e](#) et seq., implemented by [29 C.F.R. §1604.11](#).

Title IX of the Education Amendments of 1972, [20 U.S.C. §1681](#) et seq., implemented by [34 C.F.R. Part 106](#).

State Officials and Employees Ethics Act, [5 ILCS 430/70-5\(a\)](#).

Ill. Human Rights Act, [775 ILCS 5/2-101\(E\)](#) and [\(E-1\)](#), [5/2-102\(A\)](#), [\(A-10\)](#), [\(D-5\)](#), [5/2-102\(E-5\)](#), [5/2-109](#), [5/5-102](#), and [5/5-102.2](#).

[56 Ill. Admin.Code Parts 2500](#), [2510](#), [5210](#), and [5220](#).

[Burlington Industries v. Ellerth](#), 524 U.S. 742 (1998).

[Crawford v. Metro. Gov't of Nashville & Davidson County](#), 555 U.S. 271 (2009).

[Faragher v. City of Boca Raton](#), 524 U.S. 775 (1998).

[Franklin v. Gwinnett Co. Public Schools](#), 503 U.S. 60 (1992).

[Harris v. Forklift Systems](#), 510 U.S. 17 (1993).

[Jackson v. Birmingham Bd. of Educ.](#), 544 U.S. 167 (2005).

[Meritor Savings Bank v. Vinson](#), 477 U.S. 57 (1986).

*Porter v. Erie Foods International, Inc.*, 576 F.3d 629 (7th Cir. 2009).

*Sangamon County Sheriff's Dept. v. Ill. Human Rights Com'n*, 233 Ill.2d 125 (Ill. 2009).

*Vance v. Ball State University*, 133 S. Ct. 2434 (2013).

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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## **PRESSPlus Comments**

PRESSPlus 1. Updated in response to the Ill. Human Rights Act (IHRA), 775 ILCS 5/, amended by P.A. 101-221, eff. 1-1-20, expanding the definition of unlawful harassment and employer liability for certain categories of employees and nonemployees (persons who are not otherwise employees and are directly performing services for the District pursuant to a contract with the District, including contractors and consultants).

*Working environment* is not limited to a physical location to which an employee is assigned. Harassment is unlawful on the basis of the specifically-listed categories in this policy whether that status is *actual* or *perceived*. An employer is liable under the IHRA for harassment by its nonmanagerial and nonsupervisory employees or if it becomes aware of the conduct and fails to take reasonable corrective measures. **Issue 102, October 2019**

PRESSPlus 2. Updated in response to the Ill. Human Rights Act (IHRA), 775 ILCS 5/2-109, added by P.A. 101-221, eff. 1-1-20. Districts may use a free, online model program to be offered by the Ill. Dept. of Human Rights (IDHR), develop their own program, or utilize a combination of the two, as long as it includes the following, at a minimum: (1) an explanation of sexual harassment consistent with the IHRA, (2) examples of conduct that constitutes unlawful harassment, (3) a summary of relevant federal and State law concerning sexual harassment and remedies available to victims of sexual harassment, and (4) a summary of responsibilities of employers in the prevention, investigation, and corrective measures of sexual harassment.

Employers that fail to comply with this training requirement may face financial penalties. Training on other types of workplace harassment is not required by law, however it is best practice. **Issue 102, October 2019**

PRESSPlus 3. 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.

Informing nonemployees is not required by law. However, given the potential for employer liability under the IHRA for harassment of nonemployees, best practice is to publicize this policy to those individuals as well.

**Issue 102, October 2019**