

## **4015R - Prohibiting Harassment, and Violence and bullying**

### **I. SEXUAL, SEXUAL ORIENTATION, RELIGIOUS, ETHNIC/RACIAL AND DISABILITY HARASSMENT, VIOLENCE and BULLYING DEFINED**

#### **A. Sexual Harassment:**

**Definition** Sexual harassment consists of unwelcome sexual attention, unwelcome requests for sexual favors, unwelcome sexually motivated physical conduct, or other unwelcome verbal or physical conduct or communication of a sexual or gender biased nature when:

1. submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining or retaining employment or of obtaining an education, or of transacting business with ISD 709; or
2. submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's employment, education, or business with ISD 709; or
3. that conduct or communication has the purpose or effect of substantially or unreasonably interfering with an individual's employment, education, business with ISD 709, or creating an intimidating, hostile, or offensive employment, educational, or business environment.

This policy pertains to students and school personnel. It equally protects male and female students/personnel from harassment - including when males sexually harass males or when females sexually harass females.

Sexual harassment may include but is not limited to the following behaviors:

1. unwelcome verbal statements of a sexual nature;
2. intimidation by words or actions of a sexual nature;
3. unwelcome pressure for sexual activity;
4. unwelcome sexually motivated or inappropriate touching, patting, pinching, or other physical contact that does not meet the definition of sexual assault; other than necessary restraint of pupil(s) by school personnel to avoid physical harm to persons or property; or
5. unwelcome sexual behavior or words, including requests for sexual favors, accompanied by implied or overt threats concerning an individual's employment, business, or educational status; or
6. 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, business, or educational status; or
7. distribution or display of pornographic or other inappropriate written materials, pictures, graffiti, or other graphics of a sexual or gender-based nature; or
8. unwelcome behavior or words directed at an individual because of gender, or self-identified gender; or
9. unwelcome behavior or words directed at an individual because of sexual experiences or perceived sexual experiences.

#### **B. Sexual Orientation Harassment:**

**Definition** Sexual orientation harassment consists of physical or verbal conduct relating to

an individual's sexual orientation or perceived sexual orientation when the conduct:

1. has the purpose or effect of creating an intimidating, hostile, or offensive work, business, or academic environment;
2. has the purpose or effect of substantially or unreasonably interfering with an individual's work, business, or academic performance; or
3. otherwise adversely affects an individual's employment, business, or academic opportunities.

#### **C. Racial/Ethnic Harassment:**

**Definition.** Racial/ethnic harassment consists of physical or verbal conduct relating to an individual's race or ethnicity when the conduct:

1. has the purpose or effect of creating an intimidating, hostile, or offensive work, business, or academic environment;
2. has the purpose or effect of substantially or unreasonably interfering with an individual's work, business, or academic performance; or
3. otherwise adversely affects an individual's employment, business, or academic opportunities.

#### **D. Religious Harassment:**

**Definition** Religious harassment consists of physical or verbal conduct which is related to an individual's religion or religious practices, when the conduct:

1. has the purpose or effect of creating an intimidating, hostile, or offensive work, business, or academic environment;
2. has the purpose or effect of substantially or unreasonably interfering with an individual's work, business, or academic performance; or
3. otherwise adversely affects an individual's employment, business, or academic opportunities.

#### **E. Disability Harassment:**

**Definition** Disability harassment consists of physical or verbal conduct which is related to an individual's disability when the conduct:

1. has the purpose or effect of creating an intimidating, hostile, or offensive work, business, or academic environment;
2. has the purpose or effect of substantially or unreasonably interfering with an individual's work, business, or academic performance; or
3. otherwise adversely affects an individual's employment, business, or academic opportunities.

#### **F. Other Forms of Harassment:**

**Definition** General harassment is defined as conduct of a derogatory nature directed towards an individual which is usually associated with, but not limited to, an individual's accent or language background, weight, height, status with regard to public assistance, gender, national origin, association with persons who are subjected to harassment based on

the categories identified above, subordinate relationship (in class or on the work site), student to staff relationships, and peer to peer relationships, when the conduct:

1. has the purpose or effect of creating an intimidating, hostile, or offensive work, business, or academic environment;
2. has the purpose or effect of substantially or unreasonably interfering with an individual's work, business, or academic performance; or
3. otherwise adversely affects an individual's employment, business, or academic opportunities.

The District reserves the right to investigate any complaint filed under this section on a case-by-case basis.

#### **G. Sexual Violence:**

**Definition** Sexual violence is any sexual contact without consent. Sexual contact includes, but is not limited to, touching of either party's primary genital area, groin, inner thigh, buttocks, or breast, including the clothing covering these areas, as well as, anal, vaginal, or oral penetration, with a body part or an object. Sexual violence includes contact between members of the same sex.

Consent is verbal active permission from both parties to engage in a particular sexual act without the presence of coercion, intimidation, physical force, or trickery. Consent is only applicable when there is a balance of power. Consent is not affected by a prior social relationship, nor is it contingent upon physical resistance to the act.

#### **H. Sexual Orientation Violence:**

**Definition.** Sexual orientation violence is a physical act of aggression or assault upon another because of, or in a manner reasonably related to sexual orientation.

#### **I. Racial/Ethnic Violence:**

**Definition.** Racial/ethnic violence is a physical act of aggression or assault upon another because of, or in a manner reasonably related to, race or ethnicity.

#### **J. Religious Violence:**

**Definition.** Religious violence is a physical act of aggression or assault upon another because of, or in a manner reasonably related to, religion or religious practices.

#### **K. Disability Violence:**

**Definition** Disability violence is a physical act of aggression or assault upon another because of, or in a manner reasonably related to, the person's disability.

#### **L. Assault:**

**Definition.** Assault is:

1. an act done with intent to cause fear in another of immediate bodily harm or death;
2. the intentional infliction of or attempt to inflict bodily harm upon another; or
3. the threat to do bodily harm to another with present ability to carry out the threat.

## **II. RETALIATION**

Retaliatory or intimidating conduct against any individual who has made a harassment or violence complaint or who has testified or assisted in any manner in an investigation is specifically prohibited. ISD 709 will investigate and, if appropriate, discipline or take appropriate action against any student or school personnel who retaliates against any person because the person:

1. reports sexual, sexual orientation, racial/ethnic, religious, or disability harassment or violence;
2. testifies, assists, or participates in an investigation or in a proceeding or hearing relating to harassment or violence;
3. opposes a practice prohibited by this policy; or
4. associates with people who are specifically protected by this policy. (Based on sex, sexual orientation, race/ethnicity, religion, or religious practices, disability.)

Retaliation includes, but is not limited to, any form of intimidation, reprisal or harassment.

## **III. CONFIDENTIALITY**

ISD 709 will respect the confidentiality of the complainant, the individual(s) against whom the complaint is filed, and the witnesses as much as possible, consistent with ISD 709's legal obligations to investigate, to take appropriate disciplinary action, and to comply with any discovery or disclosure obligations, including valid requests for data under the Minnesota Government Data Practices Act.

## **IV. INDIVIDUALS COVERED BY THIS POLICY**

All teachers, teaching assistants, coaches, administrators, contract employees, guest speakers, volunteers, janitorial or cafeteria staff, independent contractors, community members participating in school activities, or any other school personnel, as well as current students are bound by this policy. This policy equally protects male and female students/employees from harassment or violence - including when males harass males or when females harass females.

## **V. FORMAL COMPLAINT PROCEDURES** (In cases of sexual harassment/violence, and sexual orientation harassment/violence, please utilize specific protocol.)

Any person who believes he or she has been the victim of sexual, sexual orientation, ethnic/racial, religious, and/or disability harassment or violence by a pupil or other school personnel of ISD 709, or any person with knowledge or belief of conduct which may constitute sexual, sexual orientation, ethnic/racial, religious, or disability harassment or violence toward a pupil or other school personnel should report the alleged acts immediately to an appropriate ISD 709 official designated by this policy. Such persons are also encouraged to seek corrective action by telling the individual instigating the harassment to stop. Any third person with knowledge or belief of conduct which may constitute sexual, sexual orientation, ethnic/racial, religious, or disability harassment or violence should report

the alleged acts to an appropriate ISD 709 official as designated by this policy. ISD 709 encourages the reporting party or complainant to use the report form available from the principal of each building or available from the ISD 709 office, but oral reports shall be considered complaints as well. Nothing in this policy shall prevent any person from reporting harassment or violence directly to the Director of Labor Relations/Human Resources or to the Superintendent.

#### **A. Form of Complaint.**

Complaints of harassment will be accepted verbally or in writing. Anonymous complaints will be accepted and investigated to the extent possible. Complaint forms are available in the ISD 709 office, and in each school's principals' and counselors' offices. A copy of the form may also be found in the student handbook. A report need not be made on an official form in order for the administration to accept it.

#### **B. Reporting the Complaint.**

1. A student who believes she or he has been a victim of harassment or violence by any individual covered by this policy, may report the alleged harassing behavior to any school personnel.
2. Any person who believes he or she has been the victim of sexual, sexual orientation, ethnic/racial, or religious harassment or violence by a pupil or school personnel of ISD 709 should report the alleged acts immediately to an appropriate ISD 709 official designated by this policy.
3. ISD 709 encourages the reporting party or complainant:
  - a. Whenever it is a safe or reasonable alternative, to first seek corrective action by telling the individual initiating the harassment to stop.
  - b. To use the report form available from the principal of each building or available from the ISD 709 office, but oral reports shall be considered complaints as well. Nothing in this policy shall prevent any person from reporting harassment or violence directly to the Director of Labor Relations/Human Resources or to the Superintendent.
4. The building principal is the person responsible for receiving oral or written reports of harassment or violence under this policy at the building level.
5. Any person with knowledge or belief of conduct which may constitute harassment or violence as defined in this policy should report the alleged acts immediately to an appropriate school district official designated by this policy.
6. Any ISD personnel who receive a report of harassment or violence under this policy are obligated to report the incident in writing to the building principal immediately.
7. If a complainant is uncomfortable bringing the report to the building principal, he/she may report directly to the Director of Labor Relations/Human Resources or to the Superintendent.
8. Upon receipt of a complaint involving ISD 709 personnel, the building principal must notify the Director of Labor Relations/Human Resources immediately. The principal may request, but may not insist upon a written complaint. A written statement of the alleged facts will be forwarded as soon as possible by the principal to the Director of Labor Relations/Human Resources. If the complaint was given verbally, the principal shall personally reduce the report to written form and file it with the Director of Labor Relations/ Human Resources within 24 hours. Failure of the principal or other adult ISD 709 personnel to forward any harassment or violence report or complaint as provided herein may result in investigation and disciplinary action as appropriate.
9. If the report involves the building principal, it should be made or filed directly with

- the Superintendent or the Director of Labor Relations/Human Resources.
10. Failure to act on a report involving ISD 709 personnel will result in an investigation and disciplinary action as appropriate.

**C. Content of the Report.** A report of harassment or violence in violation of this policy shall include the following information, if known:

1. the name of the complainant,
2. a brief description of the offending behavior - including times, places, and names,
3. the name of or identifying information about the alleged perpetrator, and
4. the names or descriptions of any witnesses to the harassment or violence.

**D. Processing of Complaints.** The designated investigator for each report, whether a member of building administration, a third party, the Director of Labor Relations/Human Resources, or the Superintendent, is responsible for overseeing the processing of the harassment or violence complaint. The investigator shall conduct an investigation of the charges and attempt to resolve the matter in a timely fashion.

1. **Timing** The investigator should make a decision about whether the harassment or violence reported can be substantiated as soon as possible. If the investigation exceeds 30 calendar days, the investigator must report the reason that the investigation has exceeded 30 days to the Director of Labor Relations/Human Resources, and the Administrator may take over the investigation. If the Director of Labor Relations/Human Resources was the initial investigator, the Director of Labor Relations/Human Resources must report the reason that the investigation has exceeded 30 days to the Superintendent, and the Superintendent may take over the investigation. An impartial third party may also be appointed to complete the investigation if the 30 days limit is exceeded.
2. **Standard of Proof** In determining whether the alleged conduct can be substantiated, the totality of the circumstances, the nature of the conduct, and the context in which the alleged conduct occurred will be investigated. Allegations of the harassment and violence will be evaluated using a preponderance of the evidence standard - meaning that prior to imposing any sanctions the investigator must conclude that it is more likely than not that the harassment or violence occurred.
3. **School District Action** Based on results of the investigation, ISD 709 will take appropriate action. Such action will be taken in accordance with the Pupil Fair Dismissal Act, ISD 709 policies, any applicable collective bargaining agreements, and other Minnesota and federal laws. Such action may include, but is not limited to, warning, suspension, exclusion, expulsion, transfer, remediation, termination or discharge.
4. **Release of Data to the Complainant** Consistent with the requirements of the Minnesota Government Data Practices Act, Minnesota Statute Section 13.01 et seq., the results of the School District's investigation will be made available to the complainant. The information provided to the complainant and the timing of the dissemination of information may be significantly limited by the requirements of the Minnesota Government Data Practices Act, and in certain circumstances, by the attorney-client privilege and/or the attorney-work product doctrine.
5. **Release of Data to the Subject of the Investigation and Others** The release of data regarding a harassment or violence complaint, including data regarding the resultant investigation and ISD 709 action, shall be governed by the requirements of the Minnesota Government Data Practices Act. In certain circumstances, the Government Data Practices Act may require the classification of the data as private

and/or confidential. In certain circumstances, data may also be protected by the attorney-client privilege and/or may constitute attorney-work product.

When allegations of harassment are made against an employee, the employee does not have access to data that would identify the complainant or their witnesses if ISD 709 determines that the employee's access to the data would:

- (1) threaten the personal safety of the complainant or witness; or (
- 2) subject the complainant or witness to harassment.

If the disciplinary proceeding is initiated against the employee, data on the complainant or witness shall be available to the employee as may be necessary to prepare for the proceeding.

6. **Appeals** Either party involved in the report who is dissatisfied with the investigation or resolution of an allegation of harassment or violence may appeal in writing to the Director of Labor Relations/Human Resources or the Superintendent within ten days of receiving written notice of the outcome of the investigation.
7. **Submission of a Complaint or Report** Submission of a good faith complaint or report of sexual, sexual orientation, racial/ethnic, religious, or disability harassment or violence by a student or school personnel will not affect the complainant or reporter's future employment, grades, access to educational or school activities or work assignments. ISD 709 does not tolerate retaliation as a result of the submission of a complaint or report.

## **VI. NON EXCLUSIVITY**

The internal procedures and remedies outlined in this policy are not the only options available to a complainant. Participation in the school's procedure is not a prerequisite to pursuing other legal or governmental remedies. In other words, a complainant may use the school's grievance procedure and then, whether she or he obtains a satisfactory finding or not, may file a suit in court under any applicable federal, state, or local law. She or he also may forego the internal procedure and directly pursue legal or administrative remedies, or may pursue both internal and external remedies simultaneously. External avenues of recourse may include filing charges with the Minnesota Department of Human Rights, the Equal Employment Opportunity Commission, initiating civil action or seeking redress under state criminal statutes and/or federal law.

## **VII. INTENT**

The fact that someone did not intend to harass or commit an act of violence against an individual is generally not considered a defense to a complaint of harassment or violence. In most cases, the effects and characteristics of the behavior determine if that behavior constitutes harassment or violence.

## **VIII. HARASSMENT ~~OR~~ VIOLENCE AND BULLYING AS ABUSE**

Under certain circumstances, alleged harassment or violence may also be possible abuse under Minnesota law. If so, ISD 709 shall comply with mandatory reporting requirements under Minnesota Statute Section 626.556, Reporting of Maltreatment of Minors and Minn. Statute Sections 121A.0695, Prohibiting Intimidation and Bullying. The statutes can be

found on the internet at <http://www.leg.state.mn.us/> .

Nothing in this policy will prohibit ISD 709 from taking immediate action to protect victims of alleged sexual, sexual orientation, racial/ethnic, religion or religious practices, or disability harassment, violence or bullying as abuse.

## **IX. BULLYING**

**Definition:** Bullying is intentionally hurting another person or group of people, either physically, psychologically or participating in or conspiring with others to engage in acts that injure, degrade, or disgrace other individuals or groups of people, including, but not limited to the use of technology. Intentionally or knowingly acting in a manner where they should reasonably believe that the other person or group of people will regard the act as offensive or provocative. This includes off-campus or cyber behavior that negatively impacts effective school operations or the rights of others to an education or instruction.

## **~~IX~~ X. DISSEMINATION OF POLICY AND TRAINING**

This policy will be distributed to all students and volunteers and to all employees, administrators, and independent contractors at the time of entering into the person's employment contract.

A. This policy, or a summary of this policy, shall be conspicuously posted throughout each school building in areas accessible to pupils and staff members. ISD 709 shall conspicuously post the name of the Director of Labor Relations/Human Resources and the Harassment and Violence Prevention Specialist, including mailing address and telephone number in each ISD 709 school building.

B. This policy shall be made available in each principal's office and in the ISD 709 Office.

C. This policy shall appear in the student handbook.

D. All ISD 709 employees and students who subsequently become part of the educational community shall be informed of this policy during their orientation.

All non-student recipients of this policy, now or in the future, shall be required to sign an acknowledgment form indicating that they have read this policy, understand it, and agree to abide by it.

E. Each administrator shall be responsible for promoting understanding and acceptance, monitoring of, and compliance with state and federal laws, board policies, and procedures governing harassment and violence in his or her building.

F. ISD 709 will provide policy training, including discussions of this policy with students and school personnel.

G. This policy shall be reviewed at least annually for compliance with state and federal law.

Approved: 4-17-90 ISD 709

Revised:



10-19-93  
6-20-95  
2-15-00  
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