

General Personnel

Workplace Harassment Prohibited ¹

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 race, religion², national origin, sex, sexual orientation, age, citizenship status, disability, or 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*.

Commented [MB1]: Changes to f/n 1 made to more accurately reflect content of regulations cited therein.

Commented [MB2]: Added to clarify that harassment is a form of discrimination.

Sexual Harassment Prohibited ³

The School District shall provide a workplace environment free of unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct, or communications constituting harassment on the basis of sex as defined and otherwise prohibited by State and federal law.

The footnotes are not intended to be part of the adopted policy; they should be removed before the policy is adopted.

¹ State or federal law controls this policy's content. Federal law requires districts to take action to prevent/eliminate sexual harassment and to disseminate a policy regarding its prohibition of sex discrimination. 29 C.F.R. §1604.11(f); 34 C.F.R. §106.9). Harassment based on a protected status is a form of discrimination that violates many State and federal laws (see the policy's Legal References).

Workplace harassment policies have typically focused on *sexual* harassment since it receives the most attention. However, the broad prohibitions against discrimination in State and federal civil rights laws will cover harassing conduct that is motivated by animus against any protected status. See *Porter v. Erie Foods International, Inc.*, 576 F.3d 629 (7th Cir. 2009) (recognizing a cause of action for race harassment). For a list of protected statuses, see policy 5:10, *Equal Employment Opportunity and Minority Recruitment*. This policy prohibiting harassment has a separate section on sexual harassment because of the extensive statutory and case law regarding it.

An employer is liable under Title VII of the Civil Rights Act of 1964 (Title VII) for an employee's harassment of a co-worker if the employer was negligent with respect to the offensive behavior by, for example, failing to take remedial action when it knew or should have known about the harassment. 42 U.S.C. §2000e et seq. However, when the perpetrator is the victim's supervisor, the employer will be vicariously liable for the supervisor's actions. Lack of knowledge of a supervisor's misconduct is no defense. *Burlington Industries v. Ellerth*, 418 S.Ct. 2257524 U.S. 742 (1998); *Faragher v. City of Boca Raton*, 418 S.Ct. 2275524 U.S. 775 (1998). A *supervisor* is someone who has the authority to demote, discharge, or take other negative job action against the victim. *Vance v. Ball State University*, No. 11-556 (U.S. Sup. Ct. 6/24/13) 133 S.Ct. 2434 (2013). Note that the Ill. Human Rights Act (IHRA, 775 ILCS 5/2-102(D)); imposes strict liability on the employer when an employee has been sexually harassed by supervisory personnel regardless of whether the harasser has any authority over the complainant. *Sangamon County Sheriff's Dept. v. Ill. Human Rights Com'n.*, 908 N.E.2d 39233 Ill.2d 125 (Ill.: 2009).

Not all harassing conduct is unlawful discrimination, even if it is disruptive and hurtful. If a board wants to include language in this policy prohibiting employees from engaging in intimidating or offensive conduct that is *not* a civil rights violation, it should consult the board attorney.

² Section 2-102 of the IHRA, amended by P.A. 100-100, contains a new *religious discrimination* subsection. It expressly prohibits employers from requiring a person to violate a sincerely held religious belief to obtain or retain employment unless, after engaging in a bona fide effort, the employer demonstrates that it is unable to reasonably accommodate the employee's or prospective employee's sincerely held religious belief, practice, or observance without undue hardship on the conduct of the employer's business. Religious beliefs include, but are not limited to: the wearing of any attire, clothing, or facial hair in accordance with the requirements of his/her religion. 775 ILCS 5/2-102(E-5). Employers may, however, enact a dress code or grooming policy that restricts attire, clothing, or facial hair to maintain workplace safety or food sanitation. Id.

³ The Ill. Human Rights Act (IHRA) (775 ILCS 5/2-102(D)) provides that sexual harassment is a civil rights violation:

For any employer, employee, agent of any employer, employment agency or labor organization to engage in sexual harassment; provided, that an employer shall be responsible for sexual harassment of the employer's employees by non-employees or non-managerial and non-supervisory employees only if the employer becomes aware of the conduct and fails to take reasonable corrective measures.

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.⁴ Sexual harassment prohibited by this policy includes, but is not limited to, verbal or physical 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; Enforcement ⁵

A violation of this policy may result in discipline, up to and including discharge. Any person making a knowingly false accusation regarding harassment will likewise be subject to disciplinary action, up to and including discharge. 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*). ⁶

Aggrieved persons, who feel comfortable doing so, should directly inform the person engaging in the harassing conduct or communication that such conduct or communication is offensive and must stop.

Employees should report claims of harassment to the Nondiscrimination Coordinator and/or use the Board policy 2:260, *Uniform Grievance Procedure*. Employees may choose to report to a person of the employee's same sex. There are no express time limits for initiating complaints and grievances under this policy; however, every effort should be made to file such complaints as soon as possible, while facts are known and potential witnesses are available.

Whom to Contact with a Report or Complaint ⁷

The Superintendent shall insert into this policy the names, addresses, and telephone numbers of the District's current Nondiscrimination Coordinator and Complaint Managers.

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⁴ This definition is from State and federal law, (775 ILCS 5/2-101(E) and 29 C.F.R. §1604.11). The harassing conduct must be severe or pervasive so as to alter the conditions of the employee's work environment by creating a hostile or abusive situation. *Williams v. Waste Management*, 361 F.3d 1021 (7th Cir. 2004). The surrounding circumstances, expectations, and relationships will distinguish between teasing or rough-housing and conduct that a reasonable person would find severely hostile or abusive. In addition, while same-sex gender harassment claims are actionable, the victim must show that s/he suffered disadvantageous employment conditions to which members of the other sex were not exposed. *Oncale v. Sundown Offshore Services*, ~~118 S.Ct. 998~~535 U.S. 75 (1998).

⁵ See *Berry v. Delta Airlines*, 260 F.3d 803, 811 (7th Cir. 2001) ("If an employer takes reasonable steps to discover and rectify the harassment of its employees ... it has discharged its legal duty.")

In addition to violating other civil rights laws, a school district violates the *public accommodations* article in the ~~HH~~ Human Rights Act (HRA) if it fails to take corrective action to stop severe or pervasive harassment, (775 ILCS 5/5-102 and 5/5-102.2, ~~amended by P.A. 96-814~~).

⁶ *Crawford v. Metro. Gov't of Nashville & Davidson County*, ~~129 S.Ct. 846~~555 U.S. 271 (2009) (holding the anti-retaliation provision in ~~Title VII~~ EEOA protects an employee who spoke out about harassment, not only on his or her own initiative, but also in answering questions during an employer's internal investigation).

⁷ Title IX regulations require districts to identify the name, address, and telephone number of the person who is responsible for coordinating the district's compliance efforts. A policy should not be adopted with a person's name in it; rather, the identifying information can be added and amended as necessary.

Nondiscrimination Coordinator:

Name

Address

Email

Telephone

Complaint Managers:

_____ Name	_____ Name
_____ Address	_____ Address
_____ Email	_____ Email
_____ Telephone	_____ Telephone

The Superintendent shall also use reasonable measures to inform staff members and applicants of this policy, which shall include reprinting this policy in the appropriate handbooks. 8

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§1604.11.
 Ill. Human Rights Act, 775 ILCS 5/2-101(E), 5/2-102(D), 5/2-102(E-5), 5/5-102, and 5/5-102.2.
 56 Ill. Admin.Code Parts 2500, 2510, 5210, and 5220.
Burlington Industries v. Ellerth, 118 S.Ct. 2257 524 U.S. 742 (1998).
Crawford v. Metro. Gov't of Nashville & Davidson County, 129 S.Ct. 846 555 U.S. 271 (2009).
Faragher v. City of Boca Raton, 118 S.Ct. 2275 524 U.S. 775 (1998).
Franklin v. Gwinnett Co. Public Schools, 112 S.Ct. 1028 503 U.S. 60 (1992).
Harris v. Forklift Systems, 114 S.Ct. 367 510 U.S. 17 (1993).
Jackson v. Birmingham Board of Education Educ., 125 S.Ct. 1497 544 U.S. 167 (2005).
Meritor Savings Bank v. Vinson, 106 S.Ct. 2399 477 U.S. 57 (1986).
Oncale v. Sundown Offshore Services, 118 S.Ct. 998 523 U.S. 75 (1998).
Porter v. Erie Foods International, Inc., 576 F.3d 629 (7th Cir. 2009).

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8 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.

Sangamon County Sheriff's Dept. v. Ill. Human Rights Com'n, [908 N.E.2d 39233 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)