

## Model Sexual Harassment/Gender Discrimination Policy

### I. PROHIBITION AND DEFINITIONS

#### a. Prohibition

It is the policy of \_\_\_\_\_ that there shall be no discrimination, harassment or violence (DHV) against any person on the basis of sex or gender at \_\_\_\_\_. Nor shall there be DHV that affects the \_\_\_\_\_ community (hereinafter defined as students, faculty, staff, and third parties who visit or conduct business within the school or participate in its activities.) DHV are civil rights offenses under federal law (and state law if applicable). DHV on the basis of sex or gender will be addressed under the same substantive and procedural grievance and disciplinary rules as DHV when it occurs on the basis of all other protected class categories, such as race and national origin. The prevention and redress of such harm shall be addressed “equitably,” which means the exact same standards and protocol shall apply equally to all protected class categories.

This policy forbids DHV on the basis of sex/gender in school, against school employees and/or students, employees or third persons in any school-related or work-related activity.

#### b. Definitions

DHV is actionable when:

- 1) It occurs in connection with submission to, or rejection of, sexual or gender-motivated advances, requests, words or actions made explicitly or implicitly a term or condition of a student’s status of evaluation, or of an employee’s employment or is used as a basis for an academic or other decision affecting a student, or as a basis for an employment or other decision affecting an employee;
- 2) Such advances, requests, words or actions have the purpose or effect of interfering with a student’s academic performance or educational experience or an employee’s work performance by creating an intimidating, hostile, humiliating or offensive academic or working environment. For a one-time incident to rise to the level of actionable, it must ordinarily be severe. A single unwanted or unwelcome sexual touching, whether or not it involves penetration, is per se severe.

DHV includes conduct, words and actions between individuals of the same sex and irrespective of any person’s sexual orientation or gender identity.

DHV occurs when sexual or gender-motivated advances, requests, words or actions are unwelcome or unwanted and offensive.

Examples;

While it is not possible to list all circumstances that may constitute DHV, the following are examples of conduct, which, as defined in Section (b), may constitute DHV. Whether particular conduct is sufficient to constitute DHV will depend upon the totality of circumstances, including the severity, frequency, and pervasiveness of the conduct. A single unwanted and offensive sexual touching is per se DHV:

- 1) Direct or implied requests by a supervisor for sexual favors in exchange for actual or promised job benefits (such as favorable reviews, salary increases, promotions, increased benefits, or continued employment, or the denial of a promotion to an employee because he or she refused to date his/her supervisor);
- 2) Direct or implied requests by a faculty or staff member for sexual favors in exchange for actual or promised academic benefits. For instance, a poor grade awarded to a student because he or she did not date his/her instructor would constitute DHV;
- 3) Conduct of a sexual nature that adversely affects the educational environment or the workplace. For instance, a faculty member making repeated and unwelcome comments of a sexual nature about a student's or staff member's body;
- 4) Other examples that may constitute DHV include sexual advances or propositions, whether they involve physical touching or not; sexual and/or gender epithets, jokes; written or verbal references to sexual conduct, or gossip regarding one's sex life; comments on an individual's body, appearance or clothing; comments about an individual's sexual activity, deficiencies, or prowess; displaying of sexually suggestive objects, pictures, cartoons; actions such as leering, whistling, brushing against the body, sexual gestures, suggestive or insulting comments; and inquiries into or discussions of one's sexual experiences.
- 5) Unwelcome and offensive, severe or pervasive communication via any means, whether anonymously or surreptitiously, including electronic or other technological means.

Whether conduct or words are "unwelcome" or "unwanted" shall be assessed solely from the subjective perspective of the recipient of alleged harm. An observer's perception or opinion of the recipient's experience of harm as "unwelcome" or "unwanted," even if mistaken or reasonable, is not relevant and may not be considered in a determination of whether conduct or words are "unwelcome" or "unwanted."

Evidence of a person's diminished capacity, however slight, whether by mental illness or other medical or psychological condition, or by alcohol, drugs or any substance, shall be considered presumptive proof of "unwantedness" or "unwelcomeness." It is the policy of the \_\_\_\_\_ school district that a person is

presumed to be without knowing, intelligent and voluntary capacity when such capacity is diminished to any extent by any means. While words and conduct during such incapacity may not rise to a level of “offensive” such that a violation of civil rights laws can be established, it is the policy of \_\_\_\_\_ school district that incapacity is a vulnerability not a liability, and that exploitation of vulnerabilities will be presumed harmful.

**c. Retaliation**

Any retaliation, whether by words or action, against a person who makes a complaint of DHV or who cooperates in an investigation of a complaint of DHV, or who advocates for or openly supports the enforcement of policies, procedures and standards related to DHV, whether on his or her own behalf or on behalf of another, is also unlawful and will be subject to the same policies applicable in the redress of DHV itself. Retaliation is a **separate offense** that shall be redressed even if the underlying facts do not constitute DHV, and irrespective of whether the underlying facts are credible enough to establish a violation.

II. PROCEDURES AND REMEDIES

**a. Initiation of Complaint**

A member of the \_\_\_\_\_ school district community who believes that he or she has been the victim of DHV (the complainant) should first bring the matter to the attention of X or Y, as the complainant prefers. [This section should specifically note that whomever the victim reports to is an authorized “Civil Rights/Title IX Coordinator” and is obligated to perform all relevant tasks.]

A complaint need not be in writing. Complaints can be filed anonymously and by third parties. The school must also respond to unreported DHV when circumstances merit a response in the absence of an actual complaint or actual knowledge, where a school official knows or reasonably should know of possible DHV.

**b. Duties of the Civil Rights/Title IX Coordinator**

Once the coordinator knows or reasonably should know of possible DHV, he or she shall take prompt, equitable and effective steps to investigate, resolve and finally determine the matter. The coordinator may also take interim measures, including suspension of the alleged offender, reasonably calculated to end any DHV, prevent retaliation and prevent DHV from recurring.

**c. Procedures When the Alleged Offender is a Student**

Where it has been determined that an incident(s) should be treated as cause for disciplinary action, the coordinator shall initiate proceedings before the Civil Rights Disciplinary Committee.

All determinations of fact and law during the investigation, resolution, appeal (if any) and final determinations shall be made under a preponderance of the evidence standard. The investigation, resolution, appeal and final determination shall all be completed within sixty days (60) unless extraordinary circumstances warrant a brief delay but in no case shall the final determination exceed ninety days (90).

**d. Procedures When the Alleged Offender is an Employee**

Where it has been determined that an incident(s) should be treated as cause for disciplinary action, the coordinator shall initiate such action pursuant to the Employee Manual or Faculty Rules.

**e. Other Remedies**

When conduct covered by this policy may also constitute criminal activity, a written report shall be sent to civilian law enforcement officials with jurisdiction over the matter.

School-based remedies are not exclusive, nor may a person who suffered harm be forced to choose between legal options as redress may simultaneously be sought in federal and state court, and/or with federal and state oversight agencies including the following:

Office for Civil Rights at the Department of Education  
[Local Contact Info]

Office for Civil Rights at the Department of Health and Human Services  
[Local Contact Info]

Department of Justice  
[Local Contact Info]

State Department of Education  
[Local Contact Info]

EEOC  
[Local Contact Info]

Attorney General's Civil Rights Division  
[Local Contact Info]

**LIMITATION PERIODS** may apply as oversight agencies generally have a short time period for filing complaints, typically within 180 days, although complaints filed after the effective date will be accepted in certain circumstances where the delay is justified.

### **Policy of Nondiscrimination**

It is the policy of \_\_\_\_\_ school district to provide equal access to education for all persons, including faculty, employees, applicants for admission, enrolled students, graduates, and visitors to campus, without discrimination on the basis of race, color, religion, national or ethnic origin, sex, age, handicap or disability, or sexual orientation. All forms of discrimination, including harassment and violence, when it occurs against a member of a protected class category, shall be subject to exactly the same prompt, equitable and effective substantive and procedural standards in connection with disciplinary, redress and grievance procedures.