

SEXUAL/GENDER DISCRIMINATION/HARASSMENT/VIOLENCE POLICY

I. PROHIBITION AND DEFINITION

a.) Prohibition.

It is the policy of X SCHOOL that there shall be no discrimination, harassment or violence (DHV) on the basis of sex/gender at X SCHOOL or that affects the X SCHOOL community (hereinafter defined as students, faculty, staff, and third parties who visit or conduct business with 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 WILL BE SUBJECT TO THE SAME SUBSTANTIVE AND PROCEDURAL GRIEVANCE AND DISCIPLINARY RULES AS DHV THAT OCCURS ON THE BASIS OF ALL OTHER PROTECTED CLASS CATEGORIES, SUCH AS RACE, NATIONAL ORIGIN, ETC. THE PREVENTION AND REDRESS OF ALL SUCH HARM SHALL BE EQUITABLE, WHICH MEANS THE EXACT SAME STANDARDS 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.) Definition.

DHV is actionable when it occurs:

1. 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 or 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. Where 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 identity.

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

c.) 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 the circumstances including the severity, frequency, and pervasiveness of the conduct:

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) would constitute DHV
2. Direct or implied requests by a faculty or staff member for sexual favors in exchange for actual or promised academic benefits also constitute DHV. As an example, 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 may constitute DHV. As an example, if a faculty member made repeated and unwelcome comments of a sexual nature about a student's or a staff member's body, which made it difficult for the recipient to focus on his or her work, this would constitute DHV.
4. Other examples of unwanted or unwelcome conduct that may constitute DHV:

Sexual advances or propositions, whether they involve physical touching or not; Sexual and/or gender epithets, jokes, written or oral references or 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.

UNWELCOME OR UNWANTED TOUCHING OF A SEXUAL NATURE INCLUDING UNWELCOME PENETRATION OF BODY PARTS, UNWELCOME SEVERE OR PERVASIVE NON-PENETRATING CONTACT BASED ON SEX OR GENDER, UNWELCOME SEVERE OR PERVASIVE COMMUNICATION VIA ANY MEANS, WHETHER ANONYMOUSLY OR SURREPTITIOUSLY, INCLUDING ELECTRONIC OR OTHER TECHNOLOGICAL MEANS.

WHETHER CONDUCT OR ACTIONS ARE "UNWELCOME" OR "UNWANTED" SHALL BE ASSESSED SOLELY FROM THE SUBJECTIVE PERSPECTIVE OF THE RECIPIENT OF ALLEGED HARM. THE ALLEGED OFFENDER'S PERCEPTION, WHETHER MISTAKEN OR REASONABLE, SHALL NOT BE CONSIDERED RELEVANT TO A DETERMINATION OF "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 X SCHOOL THAT A PERSON IS PRESUMED TO BE ACTING WITHOUT KNOWING, INTELLIGENT AND VOLUNATRY CAPACITY WHEN SUCH CAPACITY IS DIMINISHED. WHILE WORDS AND CONDUCT DURING SUCH INCAPACITY IS NOT ALWAYS ACTIONABLE, IT IS THE POLICY OF X SCHOOL THAT INCAPACITY IS A VULNERABILITY NOT A LIABILITY, AND THAT EXPLOITATION OF VULNERABILITIES WILL BE PRESUMED HARMFUL.

d.) Retaliation.

Any action taken in retaliation against a person who makes a complaint of DHV, who cooperates in an investigation of a complaint of sexual harassment, or who 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 procedures and remedies applicable to DHV itself. **RETALIATION IS A SEPARATE OFFENSE THAT SHALL BE REDRESSED EVEN IF THE UNDERLYING CONDUCT OR ACTIONS DO NOT CONSTITUTE DHV, OR THE EVIDENCE IS INSUFFICIENT TO ESTABLISH DHV.**

II. PROCEDURES AND REMEDIES

a.) Initiation of Complaint.

A member of the X SCHOOL 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 MAY ALSO RESPOND TO UNREPORTED DHV WHEN CIRCUMSTANCES MERIT A RESPONSE IN THE ABSENCE OF AN ACTUAL COMPLAINT OR ACTUAL KNOWLEDGE BUT WHERE A SCHOOL OFFICIAL KNOWS OF 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 Where the Alleged Offender Is a Student.

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

ALL DETERMINATIONS OF FACT AND LAW DURING THE INVESTIGATION, RESOLUTION, APPEAL (IF ANY) AND FINAL DETERMINATION SHALL BE MADE UNDER A PREPONDERANCE OF THE EVIDENCE STANDARD. THE INVESTIGATION, RESOLUTION, APPEAL AND FINAL DETERMINATION SHALL ALL BE COMPLETED WITHIN SIXTY DAYS UNLESS EXTRAORDINARY CIRCUMSTANCES WARRANT A BRIEF DELAY BUT IN NO CASE SHALL THE FINAL DETERMINATION EXCEED 90 DAYS.

d.) Procedures Where the Alleged Harasser 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. Employees

may also have rights under Title IX, Title VI and Title IV if they experience employment-related retaliation in connection with Title IX, Title VI and Title IV.

e.) State and Federal Remedies

WHEN CONDUCT COVERED BY THIS POLICY **MAY ALSO CONSTITUTE CRIMINAL ACTIVITY, A WRITTEN REPORT SHALL BE SENT TO CIVILIAN LAW ENFORCEMENT OFFICIALS WITH JURISDICITON OVER THE MATTER.**

IN ADDITION TO THIS POLICY, REMEDIES MAY BE SOUGHT IN FEDERAL AND STATE COURT, and/or from the following government agencies:

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
[CONTACT INFO]

EEOC
[LOCAL CONTACT INFO]

ATTORNEY GENERAL'S CIVIL RIGHTS DIVISION
[LOCAL CONTACT INFO]

LIMITATION PERIODS MAY APPLY AND agencies generally have a short time period for filing a claim, often within 180 days, **ALTHOUGH COMPLAINTS FILED AFTER THE EFFECTIVE DATE WILL BE ACCEPTED IN CERTAIN CIRCUMSTANCES WHERE THE DELAY IS JUSITIFIED**

Policy of Nondiscrimination

It is the policy of X SCHOOL to provide equality of access to and opportunity in legal education for all persons, including faculty, other employees, applicants for admission, enrolled students, and graduates, 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, HARASSMENT AND VIOLENCE AGAINST ALL PROTECTED CLASS CATEGORIES SHALL BE SUBJECT TO EXACTLY THE SAME SUBSTANTIVE AND PROCEDURAL STANDARDS AND POLICIES IN CONNECTION WITH DISCIPLINARY, REDRESS AND GRIEVANCE PURPOSES.**