

SUBJECT: SEXUAL HARASSMENT

The Greenburgh-Graham UFSD is committed to creating and maintaining a working and learning environment which is free of discrimination and violence. Based upon the principles that every employee and student are entitled to be treated with dignity and respect, and that sexual harassment including sexual violence is a violation of law and District policy, the District strictly prohibits conduct which constitutes sexual harassment including sexual violence in any form. Since sexual violence is a form of sexual harassment, the term "sexual harassment" in this regulation will implicitly include sexual violence even if it is not explicitly stated.

Anyone who is in violation of District policy and/or regulation will be subject to sanctions and/or disciplinary action as warranted. Should the offending individual be a student, appropriate disciplinary measures will be applied, up to and including suspension, in accordance with District policy and regulation, the Code of Conduct, and applicable laws and/or regulations. Should the offending individual be a school employee, appropriate disciplinary measures will be applied, up to and including termination of the offender's employment, in accordance with legal guidelines, District policy and regulation, and the applicable collective bargaining agreement(s). Third parties (such as school volunteers, vendors, etc.) who are found to have violated District policy and/or accompanying regulations will be subject to appropriate sanctions as warranted and in compliance with law.

Prohibition of Retaliatory Behavior (Commonly Known as "Whistle-Blower" Protection)

Retaliation against any individual for filing a sexual harassment charge or making a sexual harassment complaint is illegal and prohibited. Similarly, retaliation against any person who participates in an investigation or proceeding and/or hearing of a sexual harassment complaint is also prohibited. Any employee or student who retaliates against another shall be subject to disciplinary action, as warranted, in accordance with legal guidelines and applicable contractual mandates.

The District strictly prohibits all forms of sexual harassment on school grounds and at all school-sponsored programs, activities and events including those which take place off school premises and in another state.

Definitions/Examples of Prohibited Conduct

Sexual harassment consists of *unwanted and unwelcome* sexual or gender-based behavior which has the purpose or effect of:

- 1) Substantially or unreasonably interfering with a student's academic performance or participation in an educational or extracurricular activity;
- 2) Creating an intimidating, hostile or offensive learning environment;

SUBJECT: SEXUAL HARASSMENT (Cont'd.)

- 3) Effectively barring the student's access to an educational opportunity or benefit; and/or
- 4) Substantially or unreasonably interfering with an employee's ability to work, professional performance, productivity, physical security, career opportunities, services or other benefits of employment.

Sexual harassment includes, but is not limited to, overt or implicit bribes, requests for sexual favors, and other verbal or physical conduct or communication of a sexual nature or that is based on sexual/gender stereotypes. Sexual harassment does not depend on the "voluntary" nature of the behavior or activity, but instead focuses on whether the alleged advances or behavior were unwelcome. Sexual violence, a form of sexual harassment, as defined by New York Penal Law constitutes physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent. This definition includes but is not limited to acts such as rape, sexual assault, sexual battery and sexual coercion. A person may be unable to give consent to a sexual act due to his/her age, use of drugs or alcohol or due to intellectual or other disability.

Sexual harassment can originate from a person of either sex against a person of the opposite or same sex, and from students, supervisors, co-workers or third parties such as visitors and school volunteers. Sexual harassment may occur from student-to-student, from staff-to-student, from student-to-staff, as well as staff-to-staff. Prohibited conduct can be verbal, non-verbal, or physical (the latter may qualify as criminal sexual assault). Examples of such conduct include, but are not limited to, the following:

- 1) Verbal abuse or ridicule, including innuendoes, stories and jokes, which are of a sexual nature and/or gender-related. This might include inappropriate sex-oriented comments on appearance, including dress or physical features.
- 2) Direct or indirect threats or bribes for unwanted sexual activity.
- 3) Asking or commenting about a person's sexual activities.
- 4) Unwelcome and unwanted physical contact of a sexual nature including, but not limited to, physical acts such as assault, impeding or blocking movement, offensive touching, or any physical interference with normal work or movement.
- 5) Displaying or distributing pornographic or other sexually explicit materials such as magazines, pictures, internet material, cartoons, etc.
- 6) The use of profanity and/or other obscenities that are sexually suggestive or degrading in nature.

(Continued)

SUBJECT: SEXUAL HARASSMENT (Cont'd.)

- 7) Demanding sexual favors of a student, insinuating that refusal to acquiesce in such favors will adversely affect a student's grades, references, academic/scholastic placement, and/or participation in extracurricular activities.
- 8) Unwelcome staring, leering, or gesturing which is sexually suggestive in nature.
- 9) Unwelcome and/or offensive public displays of sexual/physical affection.
- 10) Clothing that reflects sexually obscene and/or sexually explicit messages, slogans, or pictures.
- 11) Any other unwelcome and unwanted sexually oriented and/or gender-based behavior which is sexually demeaning, belittling, intimidating, or perpetrates sexual stereotypes and attitudes.

Behavior shall be considered unwelcome and unwanted if the student or employee did not initiate, request or invite such conduct or communication and/or regarded such conduct or communication as undesirable or offensive.

Authority and Responsibility

It is the responsibility of all School District employees and students to ensure that their behavior and environment are maintained free of sexual harassment. Furthermore, each administrator and supervisor has the responsibility to maintain a non-threatening environment which includes discussing the District's policy and regulation pertaining to sexual harassment with all employees and students, and assuring students and staff that they are not required to endure insulting, degrading or exploitative sexual treatment.

All complaints of sexual harassment, whether written or verbal, formal or informal, will be thoroughly investigated to determine whether the totality of the alleged behavior and circumstances may constitute sexual harassment. It is recommended that any employee and/or student who believes he/she has been subjected to sexual harassment, or has reason to know of and/or witnesses any incident of sexual harassment, submit a *written* complaint; however, complaints may be filed verbally and the absence of a written complaint does not negate the District's responsibility to investigate such allegations as thoroughly as possible. School officials are required to provide a written report of investigation findings and any action taken to resolve the complaint within time frames as established by the District.

SUBJECT: SEXUAL HARASSMENT (Cont'd.)

Any student or employee, who believes he/she has been subjected to sexual harassment in the school environment, as well as any other person who is aware of and/or who has knowledge of or witnesses any possible occurrence of sexual harassment, shall promptly report such occurrence. The report is to be directed to or forwarded to the District's designated Compliance Officers or as otherwise indicated in this regulation. The District will designate, at a minimum, two (2) Compliance Officers, one of each gender. If the individual is in doubt as to the "seriousness" of the incident and/or whether such behavior constitutes sexual harassment, he/she is still encouraged to immediately report such conduct for resolution. If the Compliance Officer is the alleged offender, the report shall be directed to the next level of supervisory authority as indicated below. Allegations of sexual harassment may be reported through informal and/or formal complaint procedures. Utilization of the District's grievance guidelines does not preclude a student or employee from pursuing other avenues of legal recourse including the right to register complaints with the U.S. Department of Education's Office for Civil Rights, the federal Equal Employment Opportunity Commission or the New York State Department of Human Rights. These regulations are not to be construed as to limit the right of any individual to file a lawsuit in either federal or state court.

If there is some reason why a student or employee cannot make a report to the designated Compliance Officer, he/she may report the matter to the next level of supervisory authority or building administrator as appropriate. If a student reports such occurrence to any other school employee, the student shall be informed of the employee's obligation to report the complaint to administration. The administrator or supervisor who is made aware of the occurrence of possible sexual harassment, whether or not a complaint has been filed, is required to promptly report the incident(s) to the Superintendent and/or designated Compliance Officer.

Complaints of sexual harassment will be investigated thoroughly, promptly and equitably in accordance with applicable law and regulations as well as any applicable collective bargaining agreement(s). Acts of sexual harassment, particularly acts involving sexual violence may also need to be referred to appropriate law enforcement agencies as potential criminal conduct. A law enforcement investigation, however, does not relieve the District of its independent obligation to investigate the conduct stated in the complaint.

The Superintendent is to be informed as soon as possible regarding all complaints and/or reports regarding sexual harassment, and the status of any investigations.

Reporting of Complaints: General Guidelines

Any student or employee who believes that he/she has been subjected to sexual harassment or who is made aware of and/or witnesses any possible occurrence of sexual harassment shall report such complaint as soon as possible after the alleged incident occurs in order to help the District effectively

Personnel

SUBJECT: SEXUAL HARASSMENT (Cont'd.)

and promptly investigate and resolve the complaint. In order to assist in the investigation, victims and/or witnesses should document the harassment as soon as it occurs, providing as much detail as possible including, but not limited to, the following:

- 1) The name, address and telephone number of the complainant.
- 2) The name and/or description of the alleged offender or offenders.
- 3) The specific nature of the alleged harassment including the complainant's explanation of why he/she believes it to be harassment.
- 4) A thorough and detailed account of the actions and/or dialogue which occurred between the alleged harasser/offender and the complainant. This account should include the frequency of the conduct, the date, time, location of the incident, and the complainant's actions and responses during the incident(s).
- 5) The names of witnesses or of persons who have knowledge of the incident, including the names of persons with whom the complainant discussed the incident, and the time and date of this discussion.
- 6) Written material, documents, or other evidence related to the incident.

Investigation of Complaints

In investigating the complaint, the designated Compliance Officer will meet separately with the complainant and the alleged harasser/ offender, and will follow applicable law and regulations as well as any applicable collective bargaining agreement(s). Both parties will have the opportunity to separately present relevant witnesses and other relevant evidence to the Compliance Officer.

All parties will be assured that complaints and discussions will remain as confidential as possible, and will be disclosed only on a "need to know" basis in order to effectively investigate the complaint and/or as mandated by law or court order. However, a written record of the investigation and any action taken will be established. The complainant, the alleged harasser/offender and any witnesses will be directed to refrain from talking about the investigation while it is pending.

Parents of students subjected to possible sexual harassment and/or students filing a sexual harassment complaint, as well as parents of accused students, may be notified by the appropriate administrator of such occurrence and/or allegations as warranted and in accordance with legal guidelines. If the accused student has been identified as having a disability (or is suspected of having a disability) pursuant to Section 504/Individuals with Disabilities Education Act, a student referral shall

(Continued)

SUBJECT: SEXUAL HARASSMENT (Cont'd.)

be made to the Section 504 Team/Committee on Special Education for evaluation/assessment and/or a manifestation determination, as may be applicable in accordance with state and federal law and regulations, to determine whether the student's conduct is caused or affected by his/her disability.

The designated Compliance Officer will begin investigating the allegations of sexual harassment no later than three (3) working days following receipt of the complaint; and will report the findings of the investigation to the Superintendent no later than twenty (20) working days following receipt of the complaint. If necessary, the Compliance Officer is authorized to enlist the aid of additional investigators. In the case of extenuating circumstances, the Compliance Officer will file a status report with the Superintendent/designee if it becomes necessary to extend the timeline for completion of the investigation.

During the course of the investigation and thereafter, the Compliance Officer will instruct the alleged harasser/offender to have no contact or communication regarding the complaint with the victim and/or any witnesses; and that retaliation, whether direct or indirect, against the victim and/or witnesses is prohibited and may be subject to disciplinary action. Similarly, the Compliance Officer will instruct the victim and/or witnesses to refrain from contacting or communicating with the alleged harasser/offender regarding the complaint. The Compliance Officer will ask the victim what specific action the victim wants taken by the District in order to satisfactorily resolve the complaint.

If the complainant attempts to withdraw a complaint, the Compliance Officer will determine that the withdrawal is not caused by retaliation and then document the complainant's reasons and ask the complainant to sign the documentation. A copy of all written material pertaining to the case/investigation will be retained in a separate confidential file. Such records will be maintained for the period of time required by law.

Standard of Proof

The standard of proof to be utilized for sexual harassment complaints is the preponderance of the evidence standard (i.e., it is more likely than not that sexual harassment occurred). Therefore, while police investigative reports may be useful for fact gathering, they are not determinative of whether sexual harassment occurred and do not relieve a school from its responsibility to respond to a complaint.

Step 1 – Informal Complaints

A complainant who believes that he/she has been subjected to sexual harassment or anyone else who is aware of or who has knowledge of or who witnesses an occurrence of sexual harassment may file an informal complaint, whether verbal or written. They may request a meeting between himself/herself and the Compliance Officer (or report such occurrence as otherwise indicated in this

(Continued)

Personnel

SUBJECT: SEXUAL HARASSMENT (Cont'd.)

regulation) in order to discuss the allegations and further appropriate actions. The Compliance Officer will discuss the complaint with the alleged harasser/offender. If the alleged harasser/offender is a District employee, the investigation will be in accordance with any applicable collective bargaining agreement. All complaints, whether formal or informal, concerning allegations of sexual harassment are to be reported immediately to the Building Principal* and Superintendent for his/her information. The Compliance Officer will keep the Building Principal and Superintendent informed throughout all stages of the investigation including knowledge of the complainant's and/or accused's response and recommended course of action.

If the initial investigation results in a finding that sexual harassment did occur, the Compliance Officer will notify the Building Principal and Superintendent of his/her recommendations. If the Superintendent concurs with the report of the Compliance Officer, the Superintendent will then take prompt disciplinary action in accordance with the terms of District policy and regulations, federal and state law and regulations, and/or the applicable collective bargaining agreement. The Compliance Officer will notify the complainant and the accused, in person and in writing, as to the finding and/or course of action within twenty (20) working days following receipt of the complaint.

If the complainant is satisfied with the report of the Compliance Officer, the complainant will so indicate in writing. If not satisfied with the Compliance Officer's report, the complainant and/or the harasser/offender may proceed to file a formal complaint.

Informal complaint procedures will generally take place at the building level and involve resolution steps short of a comprehensive investigation and/or formal hearing. For example, in attempting to resolve a complaint informally, the Compliance Officer may interview the alleged offender, inform the alleged harasser/offender of the complaint, question the harasser/offender about the alleged incidents, and review the District's policy and regulations regarding sexual harassment. The Compliance Officer will inform the alleged harasser/offender that he/she must immediately stop any offensive conduct or face appropriate disciplinary action. The Compliance Officer will follow the provisions of any applicable collective bargaining agreement(s) throughout the course of such investigation(s).

Some types of informal actions which may be instituted if agreeable to the victim include the following:

- 1) Conducting a workshop on the recognition and prevention of sexual harassment for the building or department.

*If the Building Principal is the alleged harasser/offender, then the Compliance Officer shall designate another school official who will take the place of the Building Principal in all applicable phases of the complaint process.

(Continued)

SUBJECT: SEXUAL HARASSMENT (Cont'd.)

- 2) Speaking to the alleged harasser/offender.
- 3) Separating the parties, if possible and appropriate.

Mediation

Where appropriate, the designated Compliance Officer may suggest mediation as an alternative means of resolving the complaint. The use of mediation is not intended to replace but, rather, is a supplement to utilization of the District's informal/formal complaint procedures. If mediation is requested and agreed to by the victim and the accused, the District will use qualified mediators as provided by an outside agency to help resolve the complaint.

For complaints involving cases of sexual violence, mediation is not appropriate, even if on a voluntary basis, and will not be used to resolve these complaints.

Step 2 – Formal Complaint

A complainant may file a formal complaint of sexual harassment as an initial step or as a result of an unsatisfactory resolution of an informal complaint. The formal complaint should include all applicable information, as indicated in this regulation, as well as any other pertinent information which may be helpful in the course of the investigation.

As noted above, the complainant, the alleged harasser/offender and any witnesses will be directed to refrain from talking about the investigation while it is pending. Disclosure of information will be on a "need to know" basis.

The formal complaint will be filed with the designated Compliance Officer who will submit a copy of the complaint to the Building Principal and Superintendent of Schools. The Compliance Officer will, in accordance with federal or state laws and regulations and any applicable collective bargaining agreement(s), conduct a prompt, equitable, and thorough investigation no later than three (3) working days following receipt of the complaint.

If the formal investigation results in a finding that sexual harassment did occur, the Compliance Officer will notify the Building Principal and Superintendent of his/her recommendations. If the Superintendent concurs with the report of the Compliance Officer, the Superintendent will then take prompt disciplinary action in accordance with the terms of District policy and regulations, federal and state law and regulations, and/or the applicable collective bargaining agreement. The Compliance Officer will notify the complainant and the harasser/offender, in person and in writing, as to the

SUBJECT: SEXUAL HARASSMENT (Cont'd.)

finding and/or course of action within twenty (20) working days following receipt of the formal complaint. If additional time is needed for good cause, a written status report shall be submitted to all parties indicating the need for additional time.

If the complainant is satisfied with the report of the Compliance Officer, the complainant will so indicate in writing. If not satisfied with the Compliance Officer's report, the complainant and/or the harasser/offender may appeal the determination to the Superintendent of Schools. The appeal should be in writing and submitted no later than ten (10) working days following receipt of the Compliance Officer's decision.

Step 3 – Appeal to the Superintendent of Schools

All formal complaints, if not satisfactorily resolved at the initial stage of investigation, may be appealed by any party to the Superintendent of Schools.

If the Superintendent/designee issues a finding that no sexual harassment has occurred, the complainant, if not satisfied with this resolution, may appeal the decision to the Board of Education within ten (10) working days following receipt of the report. If the complainant is satisfied with the Superintendent's finding, the complainant will so indicate in writing.

Should the Superintendent determine that corrective action is necessary, the Superintendent will follow all applicable law and regulations, District policy and guidelines, and appropriate collective bargaining agreements in the resolution of the complaint. If the harasser/offender is not satisfied with this resolution; he/she may appeal the decision to the Board of Education within ten (10) working days following receipt of the report.

The complainant and the harasser/offender will receive a copy of the reports issued by the Superintendent pertaining to the investigation/outcome of the formal complaint within thirty (30) working days following receipt of the complaint. If additional time is necessary to either complete the investigation or institute disciplinary/remedial action, the Superintendent will provide all parties and the Board of Education with a written status report requesting additional time to complete the investigation.

Step 4 – Appeal to the Board of Education

In the event that a complainant and/or harasser/offender files an appeal with the Board of Education following an investigation by the Superintendent of Schools, such appeal must be submitted in writing within ten (10) working days of receipt of the Superintendent's report. The Board of Education will conduct a session in conjunction with legal counsel to address the appeal and will base

SUBJECT: SEXUAL HARASSMENT (Cont'd.)

its decision on a review of the written record, and will issue a written response to the complainant and the harasser/offender following completion of their review within thirty (30) days of receipt of the appeal. If additional time is needed, a written status report shall be submitted to all parties, indicating the need for additional time.

Prohibition of Retaliation

Regardless of the stage of the investigation, the victim will be instructed by the Compliance Officer to report immediately if the offensive behavior occurs again and/or if the alleged harasser/offender retaliates against him/her. Any witnesses who cooperated in the investigation of the complaint will be similarly instructed to report to the Compliance Officer immediately as to any retaliatory action(s). Additionally, the designated Compliance Officer will make follow-up inquiries to ensure that harassment has not resumed and that no reprisals or retaliatory behavior has occurred to those involved in the investigation. Any act of retaliation is prohibited and subject to appropriate disciplinary action by the District.

Discipline/Penalties for Non-District Employees

Vendors/contractors and other individuals who do business with the District, who have been found to violate the terms of the sexual harassment policy and/or regulation by engaging in prohibited conduct, will be subject to appropriate sanctions up to and including loss of District business. School volunteers who are found to have violated District policy and regulation may face loss of volunteer status. The application of such disciplinary measures by the District does not preclude the appropriate filing of civil and/or criminal charges as may be warranted.

Finding That Sexual Harassment Did Not Occur

At any level/stage of investigation of alleged sexual harassment, if a determination is made that sexual harassment did not occur, the Compliance Officer will so notify the complainant, the alleged harasser/offender and the Superintendent of this determination. Such a finding does not preclude the complainant from filing an appeal pursuant to District policy or regulation and/or pursuing other legal avenues of recourse.

However, even if a determination is made that sexual harassment did not occur, the Superintendent/designee reserves the right to initiate staff awareness and training, as applicable, to help ensure that the school community is not conducive to fostering sexual harassment in the workplace.

In all cases, the Superintendent will inform the Board of Education of the results of each investigation involving a finding that sexual harassment did not occur.

(Continued)

SUBJECT: SEXUAL HARASSMENT (Cont'd.)

Knowingly Makes False Accusations

Employees and/or students who *knowingly* make false accusations against another individual as to allegations of sexual harassment may also face appropriate disciplinary action.

Privacy Rights

As part of the investigation, the District has the right to search all school property and equipment including District computers. Although rooms, desks, cabinets, lockers, computers, etc. are provided by the District for the use of students and staff, the users do not have exclusive use of these locations or equipment and should not expect that materials stored therein will be private.

District Responsibility/Training

Regardless of whether a complaint has been filed, if the District knows of the occurrence or reasonably should have known of the possible occurrence of any sexual harassment, the District will require a prompt, thorough, and equitable investigation by appropriate personnel. Even if an anonymous complaint has been filed, the District will respond to the greatest extent possible.

Principals in each school building and/or program supervisors will be responsible for informing students and staff on a yearly basis of District policy and regulations regarding the prohibition of sexual harassment, including the procedures established for the investigation and resolution of sexual harassment complaints, the general legal issues pertaining to sexual harassment, and the rights and responsibilities of employees and students.

Those administrators and/or supervisors who have specific responsibilities for the investigation and resolution of sexual harassment complaints will receive specialized training on conducting such investigations and the applicability of laws and collective bargaining agreements.

The District also has a responsibility to remedy any lingering effects the misconduct may have had on a student, including providing information about available support services.

Dissemination of District Policy/Regulation and Evaluation

A copy of District policy and regulations pertaining to prohibition of sexual harassment will be available upon request. A copy of District policy and regulations may be posted in various locations throughout each school building. Additionally, the District's policy and regulations will be published in appropriate school publications such as teacher/employee handbooks, student handbooks, the Code of Conduct and/or school calendars. The language that is disseminated should be appropriate to the age of the school's students and should be easily understood.

Year Adopted 6121
12 of 12

Personnel

SUBJECT: SEXUAL HARASSMENT (Cont'd.)

The Superintendent of Schools, or his/her designee(s), has a responsibility to review District policy and regulations to ensure continued effectiveness and compliance with applicable law. The Superintendent will recommend revisions as may be warranted to the Board of Education.

NOTE: Refer also to Regulations #3420 -- Anti-Harassment in the School District
#6122 -- Employee Discrimination Grievance Guidelines
#7550 -- Student Discrimination Grievance Guidelines