

## **Xavier High School Harassment Policy**

*As a Catholic and Jesuit institution, Xavier High School follows an educational tradition forged over the past 450 years which is based on respect and a commitment to justice. Xavier High School's commitment to the human dignity and human rights of each of its students and members of its faculty and staff is of paramount importance in formulating all of the educational policies that govern its community. It is with these rights in mind that we set out to provide and maintain an educational community in which all members can achieve their spiritual, scholastic, social, artistic and athletic goals in an environment free of any type of harassment. To this end, the Policy covers a broad range of behaviors that are considered to be harassing in nature. It is not meant to "label" people or to increase the group of people subject to disciplinary action, but rather it is our hope that by encompassing such a broad range of behavior, this Policy will help encourage and maintain an environment of mutual respect among all members of the learning community. This Policy shall supersede any and all harassment policies previously issued and contained in handbooks, policies, procedures and/or memoranda.*

### **GENERAL PROHIBITION OF HARASSMENT**

Xavier High School prohibits any and all forms of harassment, which includes behaviors commonly recognized as bullying, hazing, sexual harassment and sexual abuse/assault (defined below).

Harassment can take place in person or in writing and can be physical, verbal or electronic. Regardless of its form, Xavier prohibits it.

### **TO WHOM XAVIER'S HARASSMENT POLICY APPLIES**

This Policy applies to all Xavier students, their parents/guardians, faculty, administration, and other staff, whether full-time or part-time, whether in a supervisory position or other

superior position, (hereinafter, collectively, “Xavier employees”) volunteers, and employees of contracted service providers, regardless of immigration status, and covers their treatment of each other as well as others with whom they come into contact at Xavier and Xavier-affiliated events, including but not limited to visitors to Xavier and employee-applicants.

## **WHERE XAVIER'S HARASSMENT POLICY APPLIES**

Xavier's Policy applies to the school site itself, to all school-sponsored and affiliated activities and events, whether in school or out of school, including but not limited to special events, field/service trips, retreats and/or other overnight trips, sporting events and practices, to all forms of transportation used by Xavier personnel and students to come and go to the School and School-affiliated activities, and to all forms/use of technology.

Furthermore, since students' and employees' behavior, whether inside or outside of school, reflects on Xavier and can have a significant impact on life at school, there are times when it is appropriate and important for Xavier to respond to incidents that occur outside of school and beyond school hours. Therefore, Xavier reserves the right to discipline those in the community who engage in harassment of other Xavier community members at any location and at any time if such harassment takes the form of obscene, libelous, slanderous language or incites violence, invades the rights of others, or contributes to a substantial disruption of the Xavier school community. Therefore, if such harassment originates outside of school and it comes to the attention of Xavier staff, appropriate action will be taken to maintain a safe and respectful work and academic environment.

Xavier is a technology friendly learning environment that "provides students with the freedom to utilize their own information technology tools to meet the academic demands of Xavier High School and to personalize their educational experience."<sup>1</sup> Xavier's “Standards and Guidelines for Personal Technology Use at Xavier High School” Policy (hereinafter, “Xavier’s Technology Use Policy”) states that technology at Xavier is to be

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<sup>1</sup> Standards and Guidelines for Personal Technology Use at Xavier High School, p. 1.

used "without...sacrificing the school's standards for student discipline, proper conduct and respect." In that vein, no matter where one is located, whether inside or outside of school or in cyber-space, any use of technology, including but not limited to: wireless and/or portable electronic devices, handheld mobile devices, Xavier-related technology/software including, but not limited to email accounts, school based forums, school websites, and Xavier's network must comply with this Policy, Xavier's Technology Use Policy, and any other policy set forth in Xavier's Student and Faculty & Staff Handbooks.

## DEFINITIONS AND EXAMPLES

### BULLYING

#### *Definition*

Any form of physical, verbal, demonstrative or electronic harassment that one should reasonably expect would demean, threaten or physically or emotionally hurt its victims or others at Xavier. It can be of a sexual nature or otherwise. It can take place in person, over the phone, in cyberspace or through an on-line communication, or any other means that communicates such harassment. It can be one-on-one or group-based. Both adults and children can be bullied.

#### *Examples (include but are not limited to):*

- pushing, elbowing, poking, tripping, sitting on, kicking or hitting
- threatening another with physical harm
- using derogatory terms or taunting others because of their physical traits including, but not limited to, age, grade level, academic ability, voice, height, weight, athletic skill, social skills or any other personal characteristic including those involving race, color or national origin
- taunting others either verbally or using gestures about their actual or perceived sexual orientation, e.g., using derogatory/homophobic terms to refer to sexual orientation, making slurping noises or offensive hand gestures
- damaging, hiding, taking of property including, but not limited to, books, backpacks, lunches, and backpack zippers or engaging in a “prank” intending to embarrass another
- face-to-face or on-line, calling someone offensive or demeaning names, making jokes involving offensive stereotypes, spreading mean and hurtful rumors
- posting on Facebook, or any other on-line social networking site, mean, offensive, demeaning, embarrassing or threatening comments or images
- texting, whether individually or as a group, mean, offensive, demeaning, embarrassing or threatening comments or images
- creating fake web pages or fake profiles or assuming another's identity in any social media context to create content likely to cause embarrassment or concern
- creating offensive graffiti, e.g., the drawing of swastikas, caricatures, or other images of an offensive nature

## HAZING

### *Definition*

Any activity expected of someone joining a group (e.g., teams, performing arts groups, and clubs), grade or the school itself, or expected of someone to maintain any status in a group, grade or the school that: (1) humiliates, (2) degrades, or (3) risks emotional and/or physical harm or embarrassment to the individual or the Xavier community, regardless of the person's willingness to participate and regardless of its intended result or effect. Xavier's administration does not consider hazing activity to be harmless pranks or comical antics aimed at developing bonds of brotherhood among young men. Such behavior will not be tolerated.

### *Examples (include but are not limited to)*

#### Requiring someone to:

- drink alcohol or use drugs
- consume any vile or hazardous substances, or allow such substance to be smeared on the body
- endure any physical striking, beating, burning, branding or to engage in self-mutilation or to commit such acts upon another
- endure acts of sexual stimulation or sexual abuse/assault
- be subjected to abusive and demeaning speech
- proceed through any type of gauntlet
- suffer sleep deprivation
- restrict personal hygiene
- engage in indecent exposure
- participate in any illegal activity
- participate in physically dangerous activities such as exposing oneself to extreme weather conditions without appropriate protection
- submit to being tied up and abducted
- engage in any degrading or humiliating act, or any activity that violates any aspect of Xavier's code of conduct

## SEXUAL HARASSMENT

### *Definition*

Sexual harassment is a form of sex discrimination and is unlawful under federal, state, and (where applicable) local law. Sexual harassment includes harassment on the basis of sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity and the status of being transgender. Any unwelcome or unwanted sexual advances, requests for sexual favors, or other verbal, physical, demonstrative or electronic conduct or communication 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 or educational experience; or
2. Submission or rejection of such conduct is used as the basis for an employment, academic or other school-related activity decision affecting such individual; or
3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance, or participation in a school program or extra-curricular activity; or
4. Such conduct has the purpose or effect of creating an intimidating, hostile, or offensive working, learning, studying, or school environment.

Any type of sexual advance, request for sexual favors, or other verbal, physical, demonstrative, or electronic conduct or communication of a sexual nature made by any Xavier employee, whether full or part-time, towards a student, whether welcomed by that student or not, is sexual harassment and a violation of this Policy.

Sexual harassment may occur in a single incident or be a series of incidents. It can occur between two adults, an adult and a student, two students, a group and an individual, or people of the same or different gender.

### *Examples (including but not limited to):*

- intentional touching of a sexual or other private area of a person's body, e.g., grabbing, patting or slapping the buttocks or groin area
- supposed inadvertent contact with the sexual or private parts of the body, e.g., placing one's scrotum near someone's head or body while changing, or brushing up against someone's leg with one's groin area and acting as if it was unintentional
- telling sexually-oriented stories or engaging in sexually-oriented verbal kidding, teasing or joking to someone or in front of someone who finds it offensive, including joking about "rape" or any other form of sexual assault
- creating rating systems based on physical appearance
- making suggestive comments about physical characteristics or appearances

- making suggestive comments about the appearance of objects, e.g., suggesting that they look like sexual parts of the body
- making offensive gender-based remarks, e.g., saying that a male is too feminine
- commenting or asking questions about someone's sexual experience or abilities
- spreading rumors of a sexual nature
- leering
- making sexual gestures simulating sex acts or sexual contact
- exposing another person to the display of sexually suggestive objects or pictures, cartoons, or posters, e.g., showing another person pornography
- sending suggestive or obscene letters or other writings, emails, notes or invitations
- subjecting a person to repeated unwelcome sexual flirtations, advances, or propositions
- requests to engage in sexual behavior
- demands for sexual activity or other less overt coercive efforts to obtain sexual favors
- sexual favoritism in the making of any decision. Sexual favoritism occurs when any individual in a position of power, e.g., a supervisor, teacher, club president, activity head, makes a decision based upon an individual's receptiveness to sexual advances
- photographing, videotaping or making any other visual or auditory recording of sexual activity, or sexual or intimate parts of a person's body without their knowledge and consent, and in addition, if the person being photographed or recorded is a student, doing so even with their consent, as such images may constitute illegal child pornography
- sending via electronic means images of sexual activity or sexual or intimate parts of the body, i.e., "sexting"
- displaying to another any photograph, videotape, or other visual or auditory recording of sexual activity or sexual or intimate parts of a person's body without that person's explicit consent

## SEXUAL ABUSE/ASSAULT

### *Definition*

Sexual abuse/assault is physical contact with a sexual or intimate part of the body without consent. It includes various forms of sexual intercourse as well as lesser forms of sexual touching.

- Sexual or intimate body parts include, but are not limited to: breasts, buttocks, genitals, the groin area and upper thighs.
- Lack of Consent: occurs when one is physically forced or verbally intimidated into doing something sexual, or submitting to a sexual act, or when one has explicitly indicated a lack of consent or when the circumstances make it obvious that consent has not been given.
- Circumstances that make it obvious that consent has not been given include, but are not limited to: (1) being too intoxicated to say "no" or resist, (2) being asleep and therefore unable to consent, or (3) situations in which someone is deemed to be physically or mentally incapable of giving valid consent, whether due to the use of intoxicants or any other reason.
- Children under 17 years of age cannot legally consent under New York State Law to having sex or sexual contact with an adult. **Any sexual contact between a student under 17 and an adult is a crime, and if it involves such behavior between a Xavier student and a Xavier employee or a student and an employee of a contracted service provider, it will be reported to the police.**
- In addition, any sexual or romantic conduct between a Xavier employee or an employee of a contracted service provider and a present Xavier student of any age, even if 17 years of age or older, and even if consented to or welcomed by the student, is strictly prohibited by this Policy while the student is at Xavier and for one year post-date of graduation, and will result in dismissal of the adult involved. As such, this Policy prohibits "sexting" between students and Xavier employees or employees of contracted service providers and the showing of pornography to any student by any such adult. Such activity will result in the dismissal of the adult involved and the reporting of such conduct to the appropriate authorities.

### *Examples (include but are not limited to):*

- grabbing, pinching, or fondling another person's buttocks, breasts or genital area, including the scrotum, whether over or under clothing, without consent as defined herein
- rubbing one's genital area up against another person, whether over or under clothing, without consent as defined herein
- touching another person with one's genitals without consent as defined herein



- engaging in sexual behavior with someone too intoxicated to give informed consent
- physically or verbally intimidating someone to engage in a sex act, whether done so expressly or implicitly

## RESPONSE TO VIOLATIONS OF THE HARASSMENT POLICY

### Desired Response

**Victims:** Xavier strongly encourages anyone who feels that he or she is a victim of harassment to tell the harasser to cease his or her offensive behavior and thereby make it clear to the harasser that his or her behavior is offensive and unwelcome. However, victims of harassment are not required to confront their harassers if they are afraid or uncomfortable to do so, but instead they should report the harassment (see Reporting Protocol below) and the School will address and handle the reported violation.

**Witnesses:** Prevention of harassment is the responsibility of the entire Xavier High School community. As a Jesuit school, Xavier's goal is to form young men who will go forth to transform the world for God's greater glory and make the world into an even better place. This starts while at Xavier. Xavier expects its students, faculty, and staff to demonstrate a sense of responsibility and respect for all members of the Xavier community. Therefore, upon witnessing harassment, students are encouraged to intervene and tell the harasser to stop his or her offensive behavior. All adults who work at Xavier are required by this Policy to intervene. Failure to intervene on behalf of a victim upon observing the harassment often emboldens the harasser to increase his or her harassing conduct, while making the victim of harassment feel more powerless.

All members of the Xavier community should report incidents of harassment in violation of the Xavier High School Harassment Policy to School authorities regardless of who the harasser is so action can be taken. Not only is this often the most effective way to end harassment, it also preserves the spirit of a faith community based on responsibility, integrity, and service.

## **Reporting Protocol**

Xavier High School believes any violation of this Policy is a serious matter requiring immediate attention and a thorough investigation, as it is a threat to the safety and well-being of a member of the Xavier community as well as being antagonistic to our core values.

Students, parents/guardians, and any other concerned non-Xavier employees aware of a violation or suspected violation should tell any member of the Xavier faculty or staff with whom they are comfortable speaking about the violation. Xavier encourages reporting incidents of harassment as soon as possible; however, there is no time limit on when such a report may be made. The faculty or staff member who is informed about an alleged violation is obligated to and responsible for seeing that the reported violation is passed along to the appropriate Xavier administrator, as designated in this Policy, for investigation.

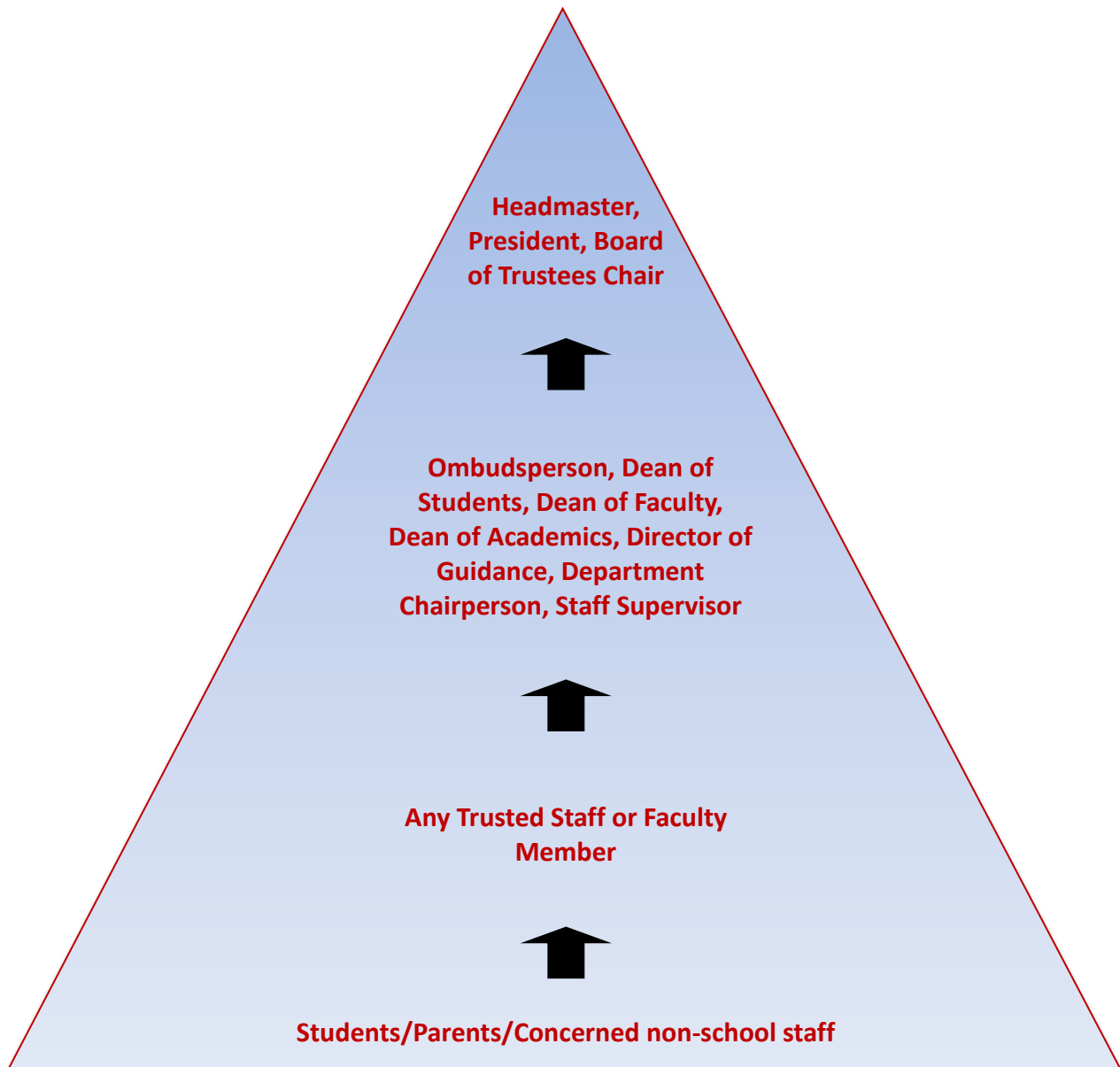
Promptly upon learning of a violation or suspected violation of the Policy, whether as a victim, witness, or recipient of information from someone else, Xavier employees must report the information to one of the following people:

1. Director of Guidance (Room 4L6; phone 212-924-7900 ext. 1627)
2. Academic Department Chairperson (several)
3. Staff Supervisor (several, such as Facilities Manager or Athletic Director)
4. Dean of Academics (Room 2L9 in HMO; phone 212-924-7900 ext. 1463)
5. Dean of Students (Room 3L4; phone 212-924-7900 ext. 1466)
6. Dean of Faculty (Room 4L9; phone 212-924-7900 ext. 1617)
7. Ombudsperson (1L Corridor; phone 212-924-7900 ext. 1660)
8. Headmaster (Room 2L7 in HMO; phone 212-924-7900 ext. 1500)
9. President (Room 2L6; phone 212-924-7900 ext. 1538)

If for any reason, the faculty or staff member is uncomfortable reporting the information to one of the above-listed people, he/she may instead report directly to the Chair of the Board of Trustees or T&M Protection Resources (see Outside Reporting alternatives

below). If anyone other than the Headmaster or President receives such a report, such individual must then promptly bring the report to the attention of the Headmaster or President, unless the allegation involves the Headmaster or President, in which case he/she must notify the Chairman of the Board of Trustees.

## REPORTING PROTOCOL



All Xavier faculty/staff that have reason to believe that a violation has or may have occurred are under an obligation to immediately report this information or suspicion to the indicated persons set forth above in this Policy. A “reason to believe” may be predicated upon being told directly or indirectly that a violation has occurred, overhearing a rumor that a violation has occurred, or observing behavior which gives rise to a suspicion that a violation has occurred. This obligation is mandatory regardless of whether the alleged

violation involves another faculty member, staff member, Jesuit, priest, Army Instructor, or student as a victim or an offender. When in doubt whether you have sufficient reason to believe a violation has or may have occurred, always err on the side of caution by reporting what you know or suspect.

In addition to being subject to discipline if they engaged in harassing conduct themselves, supervisors, managers, and administrators will be subject to discipline for failing to report suspected harassment or otherwise knowingly allowing harassment to continue.

The reporter's identity and the information he or she reports will only be shared with those necessary to appropriately address the situation. Retaliation of any kind against a person or persons who have made such a report will not be tolerated and will subject anyone who engages in it to disciplinary action which may include expulsion or termination. (See, "Retaliation Prohibited" below.)

#### **Special Reporting Requirements for Reports of Sexual Abuse/Assault:**

In cases of sexual abuse/assault, due to the heightened seriousness of such allegations, the report must be made immediately upon coming into the possession of the information that such an act has or may have occurred and it is to be made directly to one of the following:

1. Dean of Students
2. Ombudsperson
3. Headmaster
4. President

If for any reason, none of these individuals are available, or someone is uncomfortable reporting the violation to one of the above-denominated individuals, the report should be made to the Chair of the Board of Trustees (see Outside Reporting alternatives below).

## External Reporting System

**Outside Reporting:** In addition, any student or parent/guardian who is not comfortable reporting a violation of the Harassment Policy to a Xavier faculty or staff member may contact either of the following outside individuals to make such a report:

- Chair of the Xavier Board of Trustees at [Boardchair@xavierhs.org](mailto:Boardchair@xavierhs.org)
- Laura Kirschstein of T&M Protection Resources at 212-916-8852 or via email at [lkirschstein@tmprotection.com](mailto:lkirschstein@tmprotection.com). Ms. Kirschstein is the Vice President of T&M's Sexual Misconduct Consulting & Investigations division.
- **Anonymous Reporting:** Finally, should any student or Xavier parent/guardian wish to report a violation of the Harassment Policy anonymously, he or she may do so by calling the School or by calling or emailing Laura Kirschstein of T&M Protection Resources at the phone number or email listed above. Regardless of how a violation is reported, it will be addressed and investigated to the extent possible given the limitations inherent in investigating anonymous reports. Such anonymous reporter may decide to reveal his or her identity at any later time which will greatly increase Xavier's ability to deal effectively with the reported violation.

**Support Options:** Xavier High School has an experienced and caring counseling staff that is always available to the Xavier community to help deal with issues related to harassment. In addition, while Xavier does not have a school psychologist on staff, through a collaboration with Teachers College at Columbia University, it does have access to psychology graduate student interns who are directly supervised by licensed school psychologists on the faculty of Teacher's College and by the guidance counselors at Xavier. If requested by a student or his parent/guardian, Xavier can refer a student to one of these interns as another means of outside support.

### **Amnesty Provision**

Xavier has a very strict policy about the use of alcohol and other drugs by its students. It is absolutely forbidden at any time, on any part of the school property, in the vicinity of the school, in connection with any school activity, or to or from a school activity. Under normal circumstances, if a student possesses or uses drugs or alcohol, their parents/guardians are notified, counseling is mandated, and the student may face disciplinary sanctions up to and including expulsion. However, because the health and safety of Xavier's students is the School's paramount concern, to minimize any hesitation a student may have to report a violation of the School's Harassment Policy, while not overlooking a violation of our Student Handbook, the School will place great weight on the positive impact of reporting an incident in deciding if any action is appropriate for the reporter's breach of Xavier's anti-drug and anti-alcohol policy.

### **Retaliation Prohibited**

Retaliation against anyone who in good faith reports a violation or suspected violation of this Harassment Policy, or who participates in the investigation of a complaint, is strictly prohibited. Any person who engages in such retaliation will be subject to disciplinary action including expulsion if a student or termination if a faculty or staff member. Prohibited "retaliation" includes, but is not limited to: threats, intimidation, harassment, any other adverse action threatened, expressly or impliedly, or taken against anyone who reports a violation or suspected violation of this Harassment Policy or who participates in an investigation of a complaint. Anyone who either observes or becomes aware of such retaliatory behavior is strongly encouraged to report it to school authorities. All faculty/staff are under a business duty to do so.

### **Knowingly False Reports Prohibited**

Xavier considers any allegation of harassment to be a serious matter. Therefore, if it is determined at the conclusion of an investigation that a reported violation was made in bad faith and that false information was knowingly provided regarding the complaint, Xavier will take disciplinary action against such individual.



## **Investigation of Reported Incidents**

The Headmaster, in consultation with whomever else he or she deems appropriate, will make decisions regarding how Xavier will proceed going forward, unless the Headmaster is the subject of the report and then the President shall take on this role. These decisions will include, but not be limited to, how and when a student's family will be notified (if a student is involved in the reported violation), who else at the School should become privy to the information, whether the police should be involved, how the situation should be handled at the School moving forward, including who should do the investigation, and how the family should be communicated with in the future regarding the reported violation.

After a report is made, the Headmaster, in consultation with whomever he or she deems appropriate, unless the Headmaster is the subject of the allegation and then the President will take on this role will direct that an investigation be conducted by appropriate individuals whom he or she will select based upon the nature of the complaint and the individuals involved. This investigation may be conducted by Xavier personnel or an outside investigator depending on the circumstances. Xavier recognizes that reporting a violation of Xavier's Harassment Policy often involves discussing matters of a sensitive nature. Therefore, Xavier will bear this in mind and use the utmost discretion when conducting the investigation to minimize the chances that information about the matter will become known by unnecessary individuals.

As part of any investigation conducted pursuant to this Policy, both the reporter and alleged offender will be interviewed separately about the reported facts. Both will be advised of the prohibition against retaliation for making such a report and/or cooperating with an investigation. Furthermore, others who may have relevant knowledge may also be questioned and they too will be reminded of Xavier's anti-retaliation policy and the need for discretion. Given the fact that these investigations help to preserve the safety of our community, Xavier expects all members of the community to cooperate in an investigation, if requested to do so. All employees are under a duty to cooperate. Xavier will try to be as discreet as possible during the investigation and confidentiality will be maintained to the extent possible given the facts and circumstances of the complaint and the need to do a fair and thorough investigation.

At the conclusion of the investigation, and after the decision regarding what if any disciplinary or remedial action is to be taken is made, the alleged victim and alleged offender will be informed about the disposition of the matter. If either party is dissatisfied with the outcome, remedy may be sought by contacting the Headmaster or the President.

Communication of any information regarding the matter to other members of the Xavier High School community, whether that be faculty, staff, the student body, or parents/guardians will be decided on a case-by-case basis with all due consideration being given to issues of privacy, confidentiality, and the emotional and physical well-being of all those involved.

Disciplinary decisions will be based on the facts and circumstances of each case and will take into account the offender's prior conduct at Xavier and the wishes of the victim, although the latter will not be controlling as Xavier must act in the interest of protecting the entire Xavier community as well as the victim. Possible disciplinary outcomes include, but are not limited to: a verbal warning, JUG, parental notification, loss of privileges, counseling, sensitivity training, probation, suspension, expulsion, dismissal, and/or notification to local or state authorities.

In addition to disciplinary action with regard to the accused, Xavier will consider what if any remedial actions should be taken with regard to the School as a whole to prevent similar offenses from occurring in the future.

Records will be kept of all such investigations and such records will include, but not be limited to, information about the allegation as gathered from the reporter, the person accused, and others interviewed. In addition, the decision reached regarding appropriate disciplinary action and any other relevant follow-up action engaged in by the School will be documented. These records will be maintained by the Administration. Documentation of harassment investigations is necessary to provide an accurate record regarding the reported violation and how it was handled, one that does not have to rely on the recollections of people whose memories may become inaccurate over the passage of time.

Nothing in this Policy is intended to limit the options of any person who feels that he or she has been subject to unlawful harassment or discrimination. Such a person may at any

time in addition to participating in Xavier’s complaint procedure pursue his or her rights with an outside agency, governmental entity or legal counsel.

The specific legal protections and external remedies for sexual harassment claims are outlined in detail in Appendix A at the end of this document, as required by New York State Labor Law. Appendix B includes a formal sexual harassment complaint form. New York State Labor Law recommends that those who are submitting a sexual harassment complaint fill out the form or ask the individual receiving the complaint to fill it out.

### **Mandatory Reporting to the State Hotline**

Under Section 413 of the New York State Social Services Law, all school officials, including, but not limited to, administrators, faculty, guidance counselors and health care professionals employed by Xavier, have an affirmative duty to report when they have “reasonable cause to suspect” that a child has been abused or maltreated by a parent or legal guardian or someone else legally responsible for their care and such information has come to the staff member’s attention in the course of his or her official or professional capacity. Such information may come to a staff member’s attention in a number of ways: from a child, from a parent, legal guardian, or another adult, or from something the staff member has personally observed. “Abuse and maltreatment” includes physical abuse, sexual abuse, emotional abuse and neglect.

“Mandated reporters,” as defined above, must call the New York State Central Registry (“SCR”) at 1-800-635-1522 upon having such “reasonable cause.” This is a personal duty of the person who has such reasonable cause and is not satisfied by telling a supervisor at the School. Consulting with a supervisor at the School before making such a call, however, is allowable, and indeed advisable, but the consent or approval of such supervisor is never a requirement for making a call to the SCR.

This reporting duty applies to knowledge obtained during the course of any out-of-school activity, as well as when on school premises, and indeed to any knowledge of abuse or maltreatment of a child “coming before them in their official or professional capacity” at any time or place. Thus, even if a Xavier faculty/staff member learns of reportable abuse

or maltreatment while on a retreat where students are encouraged to and often do make disclosures of close personal information, a report must be made to the SCR.

Xavier staff is reminded that the Xavier administration is always available to discuss such situations, offer advice and support, and be present should a call to the SCR need to be made. In addition, Xavier's Guidance Department staff is available to assist as well. Oral reports to the SCR Hotline must be followed up within 48 hours with a written report using form LDS-2221-A which can be obtained from the New York State Office of Children's Services (OCFS) website at [www.ocfs.state.ny.us](http://www.ocfs.state.ny.us).

**REMINDER: *Required reporting to Xavier Administration:*** In addition to the requirements of New York State law, as set out above, pursuant to Xavier policy, Xavier faculty/staff members have a duty to immediately report their suspicions of child abuse or maltreatment committed by anyone, not just a parent, guardian or other person legally responsible for the child's care, to the appropriate Xavier staff member set forth in the Reporting section of this Policy (See above). This internal report must be made regardless of whether a call has already been made to the State hotline listed above.

**Penalties for failure to report:** Failure to report a suspected case of child abuse or maltreatment by a parent, legal guardian or someone else legally responsible for their care, as defined in the New York State Family Court Act above, is a class A misdemeanor punishable by up to a year in jail and/or a fine of \$1000. In addition, it is a violation of Xavier policy and is therefore an offense for which an employee may be terminated.

**Immunity from liability for Mandated Reporters:** Under New York State Social Services Law, any school employee who in good faith makes a report to the State hotline has immunity from liability, civil or criminal, which might otherwise result by reason of such action.

## **New York Education Law Article 23-B: Mandatory Reporting of Suspected Child Abuse in an Educational Setting by Employees or Volunteers**

### **Mandatory Reporting to State or Local Law Enforcement**

New York Education Law Article 23-B requires school administrators, other employees and bus drivers who receive an allegation of abuse of a student *in an educational setting by a school employee or volunteer*, to report the abuse to a school administrator. Administrators must notify the student's parent, prepare a written report, notify law enforcement authorities and notify the Commissioner. Appendix C provides an overview of the law, reporting requirements and instructions, and key definitions.

REVISED 2-7-20

## APPENDIX A

Sexual harassment is not only prohibited by Xavier but is also prohibited by state, federal, and, where applicable, local law.

Aside from the internal process at Xavier, employees may also choose to pursue legal remedies with the following governmental entities. While a private attorney is not required to file a complaint with a governmental agency, you may seek the legal advice of an attorney.

In addition to those outlined below, employees in certain industries may have additional legal protections.

### **State Human Rights Law (HRL)**

The Human Rights Law (HRL), codified as N.Y. Executive Law, art. 15, § 290 et seq., applies to all employers in New York State with regard to sexual harassment, and protects employees, paid or unpaid interns and non-employees, regardless of immigration status. A complaint alleging violation of the Human Rights Law may be filed either with the Division of Human Rights (DHR) or in New York State Supreme Court.

Complaints with DHR may be filed any time **within one year (three years beginning Aug. 12, 2020)** of the harassment. If an individual did not file at DHR, they can sue directly in state court under the HRL, **within three years** of the alleged sexual harassment. An individual may not file with DHR if they have already filed a HRL complaint in state court.

Complaining internally to Xavier does not extend your time to file with DHR or in court. The one year or three years is counted from date of the most recent incident of harassment.

You do not need an attorney to file a complaint with DHR, and there is no cost to file with DHR.

DHR will investigate your complaint and determine whether there is probable cause to believe that sexual harassment has occurred. Probable cause cases are forwarded to a public hearing before an administrative law judge. If sexual harassment is found after a hearing, DHR has the power to award relief, which varies but may include requiring your employer to take action to stop the harassment, or redress the damage caused, including paying of monetary damages, attorney's fees and civil fines.

DHR's main office contact information is: NYS Division of Human Rights, One Fordham Plaza, Fourth Floor, Bronx, New York 10458. You may call (718) 741-8400 or visit: [www.dhr.ny.gov](http://www.dhr.ny.gov).

Contact DHR at (888) 392-3644 or visit [dhr.ny.gov/complaint](http://dhr.ny.gov/complaint) for more information about filing a complaint. The website has a complaint form that can be downloaded, filled out, notarized and mailed to DHR. The website also contains contact information for DHR's regional offices across New York State.

### **Civil Rights Act of 1964**

The United States Equal Employment Opportunity Commission (EEOC) enforces federal anti-discrimination laws, including Title VII of the 1964 federal Civil Rights Act (codified as 42 U.S.C. § 2000e et seq.). An individual can file a complaint with the EEOC anytime within 300 days from the harassment. There is no cost to file a complaint with the EEOC. The EEOC will investigate the complaint, and determine whether there is reasonable cause to believe that discrimination has occurred, at which point the EEOC will issue a Right to Sue letter permitting the individual to file a complaint in federal court.

The EEOC does not hold hearings or award relief, but may take other action including pursuing cases in federal court on behalf of complaining parties. Federal courts may award remedies if discrimination is found to have occurred. In general, private employers must have at least 15 employees to come within the jurisdiction of the EEOC.

An employee alleging discrimination at work can file a "Charge of Discrimination." The EEOC has district, area, and field offices where complaints can be filed. Contact the EEOC by calling 1-800-669-4000 (TTY: 1-800-669-6820), visiting their website at [www.eeoc.gov](http://www.eeoc.gov) or via email at [info@eeoc.gov](mailto:info@eeoc.gov).

If an individual filed an administrative complaint with DHR, DHR will file the complaint with the EEOC to preserve the right to proceed in federal court.

### **Local Protections**

Many localities enforce laws protecting individuals from sexual harassment and discrimination. An individual should contact the county, city or town in which they live to find out if such a law exists. For example, employees who work in New York City may file complaints of sexual harassment with the New York City Commission on Human Rights. Contact their main office at Law Enforcement Bureau of the NYC Commission on Human Rights, 22 Reade Street, 1st Floor, New York, New York; call 311 or (212) 306-7450; or visit [www.nyc.gov/html/cchr/html/home/home.shtml](http://www.nyc.gov/html/cchr/html/home/home.shtml).

### **Contact the Local Police Department**

If the harassment involves unwanted physical touching, coerced physical confinement or coerced sex acts, the conduct may constitute a crime. Contact the local police department.

## APPENDIX B

### Sexual Harassment Complaint Form

New York State Labor Law requires all employers to adopt a sexual harassment prevention policy that includes a complaint form to report alleged incidents of sexual harassment.

If you believe that you have been subjected to sexual harassment, you are encouraged to complete this form and submit it to one of the Xavier administrators listed on page eleven of the Xavier Harassment Policy. You will not be retaliated against for filing a complaint.

If you are more comfortable reporting verbally or in another manner, the Xavier administrator that you speak with regarding your complaint should complete this form, provide you with a copy and carry out the reporting protocol outlined in this policy.

#### COMPLAINANT INFORMATION

Name:

Job Title (if applicable):

Email:

#### **SUPERVISORY INFORMATION (for employee related-complaints only; students submitting complaints do not need to complete this section)**

Immediate Supervisor's Name:

Title:

Work Phone:

Work Address:

#### COMPLAINT INFORMATION

1. Your complaint of Sexual Harassment is made about:

Name:

Title (if applicable):

Relationship to you:  Supervisor  Subordinate  Co-Worker  Fellow Student



Faculty/Staff Member  Other

2. Please describe what happened and how it is affecting your work or school experience. Please use additional sheets of paper if necessary and attach any relevant documents or evidence.

3. Date(s) sexual harassment occurred:

Is the sexual harassment continuing?  Yes  No

4. Please list the name and contact information of any witnesses or individuals who may have information related to your complaint:

*The last question is optional, but may help the investigation.*

5. Have you previously complained or provided information (verbal or written) about related incidents? If yes, when and to whom did you complain or provide information?

If you have retained legal counsel and would like us to work with them, please provide their contact information.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## APPENDIX C

### **Mandatory Reporting of Suspected Child Abuse in Educational Setting by a School Employee and Volunteers**

#### **Mandatory Reporting to State or Local Law Enforcement**

New York Education Law Article 23-B requires school administrators, other employees and bus drivers who receive an allegation of abuse of a student *in an educational setting by a school employee or volunteer*, to report the abuse to a school administrator. Administrators must notify the student's parent, prepare a written report, notify law enforcement authorities and notify the Commissioner.

#### **Reporting Requirements**

##### *Who Must Report?*

Those required to report allegations of child abuse are the school's teachers, nurses, guidance counselors, psychologists, social workers, administrators (including principals/heads of school), board members, licensed and registered physical therapists, licensed and registered occupational therapists, licensed and registered speech pathologists, teacher aides, resource officers, bus drivers or other school personnel that are required to hold a teaching or administrative license or certificate. Reporters also include employees of companies contracting with the school, including school bus drivers.

##### *What Must Be Reported?*

Required reporters who receive oral or written allegations of child abuse in an educational setting by a school employee or volunteer must make a report. Note that the school where the alleged abuser works, or volunteers is not important. All that is needed to trigger the reporting requirement is that an employee or volunteer of any school is alleged to have abused a student in an educational setting.

**“Child Abuse”** includes acts that create a substantial risk of physical injury to a student; acts that inflict physical injury to a student; acts that qualify as child sexual abuse prohibited by the New York Penal Laws, including sexual touching, sexual assault and sexual intercourse with a student under the age of 17; and sending or showing, or attempting to send or show, a student “indecent materials” as defined by the New York Penal Law, including materials that depict human genitals and sexual conduct.

**“Educational Setting”** includes school grounds, school buses or other vehicles that transport students to or from school, all extracurricular activity sites, all co-curricular sites, including field trip sites, as well as any other location where a school employee or volunteer had direct contact with a student. Note that this definition includes any other location where direct contact is made between an employee or volunteer and a student. Therefore, any location where a school employee or volunteer is alleged to have abused a student will qualify as an educational setting.

**“Employee”** means any person who receives compensation from the school, or any person who has duties that involve direct student contact and either (a) receives compensation from any contractor that transports the school’s students (e.g., bus drivers) or (b) is employed by a contractor and placed within the school as part of a public assistance employment program. “Volunteer” is any person, other than an employee, who has direct contact with students and provides services to the school, or provides services to any contractor that transports the school’s students.

### *How Is a Report Made?*

After receiving an allegation of child abuse, required reporters (except school bus drivers) must:

- Promptly complete a written report in a form provided by the Commissioner’s office. [See the “Child Abuse in an Educational Setting” report form at the end of this document.] This report must include the full name of the allegedly abused child, the name of the child’s parent, the identity of the person making the allegation and

their relationship to the alleged victim, the name of the alleged abuser, and a list of the specific allegations of abuse; and

- Personally deliver a copy of the written report to the **school administrator** (principal or the equivalent, e.g., head of school, director, etc.) of the school where the child abuse occurred. If the alleged abuser is the school administrator, then the report of abuse must be delivered to another school administrator designated by the school.

School bus drivers and other employees of a person or entity which contracts with a school to provide transportation, who receive an oral or written allegation that a child has been subjected to child abuse by an employee or volunteer in an educational setting, shall promptly report or cause a report to be made to his or her supervisor employed by such contracting person or entity. The supervisor must then promptly complete a written report in a form provided by the Commissioner's office (including the details set forth above). The supervisor must personally deliver the report to the school administrator of the school where the child abuse occurred.

If the alleged abuser is an employee or volunteer of a school **other than Xavier**, the written report of the allegations must be promptly forwarded, in addition to the school administrator of the school where the child abuse occurred, to the school administrator of the alleged abuser's school.

#### *What Must the School Administrator Do When They Receive a Report?*

After the school administrator receives the written report of child abuse and there is reasonable suspicion to believe that an act of child abuse, as defined by the law, has occurred, additional steps must be taken depending upon the individual who has made the allegation. The school administrator must do the following:

1. **If the victim child has made the allegation:** (a) promptly notify the parent of the victim of the allegation of abuse and provide the parent of the victim with a written

- statement prepared pursuant to the Commissioner's regulations setting forth parental rights, responsibilities and procedures; (b) promptly provide a copy of the report to his or her supervisor, if applicable; and (c) promptly forward such report to appropriate law enforcement authorities.
2. **If a parent of a victim child has made the allegation:** (a) promptly provide the parent with a written statement prepared pursuant to the Commissioner's regulations setting forth parental rights, responsibilities and procedures; (b) promptly provide a copy of the report to his or her supervisor, if applicable; and (c) promptly forward such report to appropriate law enforcement authorities.
  3. **When someone other than the victim child or the parent of the child has made the allegation:** (a) promptly notify the parent of the victim of the allegation of abuse and provide the parent with a written statement prepared pursuant to the Commissioner's regulations setting forth parental rights, responsibilities and procedures under this law; (b) ascertain from the person making such report the source and basis for such allegation; (c) promptly provide a copy of the report to his or her supervisor, if applicable; and (d) promptly forward such report to appropriate law enforcement authorities.

When the school administrator forwards the written report of child abuse to the law enforcement authorities, he or she must also refer the report to the Commissioner where the alleged abuser holds a certification or license issued by the department.

If a written report of child abuse does not, after investigation, result in a criminal conviction of the alleged abuser, then the report must be expunged from any record kept by the school within five years from the date the report was made.

#### *What Happens After Law Enforcement Notification?*

Where a criminal investigation of an allegation of child abuse by an employee or volunteer is undertaken in response to a report forwarded by a school administrator to law enforcement authorities, and where law enforcement authorities have provided such report to the district attorney, it shall be the responsibility of the district attorney, as soon as practicable, to notify the school administrator of the school where the acts of child abuse

allegedly occurred and of the school where the child is attending, if different, of an indictment or the filing of an accusatory instrument against the employee or volunteer. The district attorney shall also notify the school administrator of the disposition of the criminal case or the suspension or termination of the criminal investigation of such employee or volunteer.

### **Unreported Resignation Against Public Policy**

The new law prohibits school administrators from making any agreement to withhold from law enforcement authorities, the superintendent or the Commissioner, where appropriate, the fact that an allegation of child abuse in an educational setting on the part of any employee or volunteer as required by this law, in return for the resignation or voluntary suspension from his or her position, against whom the allegation is made.

### **Immunity and Penalties**

Any required reporter, including any employee, volunteer or supervisor who is employed by a person or entity that contracts with a school to provide transportation, who reasonably and in good faith makes a report of child abuse in accordance with this law, will have immunity from any civil liability which might otherwise result because of his or her actions, such as immunity from a defamation lawsuit. A school administrator who reasonably and in good faith makes a report of child abuse or reasonably and in good faith transmits such a report to a person or agency in accordance with this law will have immunity from any civil liability which might otherwise result because of his or her actions, such as immunity from a defamation lawsuit. Any school administrator who reasonably and in good faith reports to law enforcement officials the information regarding allegations of child abuse or a resignation as required by this law shall have immunity from any liability, civil or criminal, which might otherwise result by reason of such action.

Willful failure of an employee to prepare and submit a written report of an allegation of child abuse as required by this law shall be a Class A misdemeanor. The willful failure of a school administrator to submit a written report of child abuse to an appropriate law enforcement authority, as required by this law, shall be a Class A misdemeanor.

Additionally, any failure to submit a written report of child abuse to an appropriate law enforcement authority as required by this law shall be punishable by a civil penalty not to exceed \$5,000 upon an administrative determination by the Commissioner.

All reports of abuse and other materials submitted with the report, such as photographs, are confidential and may only be disclosed to law enforcement authorities involved in an investigation of the abuse or as expressly authorized by law or a court-ordered subpoena. Willful disclosure of such records to an unauthorized person or entity is a Class A misdemeanor.

A violation of the unreported resignation prohibition shall constitute a Class E felony and will also be punishable by a civil penalty not to exceed \$20,000.

**CHILD ABUSE IN AN EDUCATIONAL SETTING  
CONFIDENTIAL REPORT OF ALLEGATION**

SUBJECT CHILD	PARENT OF SUBJECT CHILD
Name _____ Last                      First                      MI	Name _____
Address _____ _____	Address (if different) _____ _____
School _____	
Grade _____ Sex (M, F, Unknown) _____	
Age or Birthday (Mo/Day/Yr) _____	

<b>SOURCE OF ALLEGATION (Check as Appropriate)</b>	
<input type="checkbox"/> Child <input type="checkbox"/> Parent <input type="checkbox"/> Other - Name _____	Relationship to Child (if any) _____

<b>ALLEGED PERPETRATOR (EMPLOYEE OR VOLUNTEER)</b>	
Name _____	School District/Charter School _____
School Building _____	School Position _____

<b>SPECIFIC ALLEGATION</b>
<p>Use this space to provide information to describe or explain the circumstances surrounding the allegation. (attach additional sheets if necessary)</p>

<b>REPORTER INFORMATION</b>	
Name _____	School District /Charter School _____
School Address _____	School Telephone _____
Relationship to Child (if any) _____	
<input type="checkbox"/> Teacher <input type="checkbox"/> School Guidance Counselor <input type="checkbox"/> School Nurse <input type="checkbox"/> School Psychologist <input type="checkbox"/> Administrator <input type="checkbox"/> School Board Member <input type="checkbox"/> School Social Worker <input type="checkbox"/> School personnel required to hold teaching or administrator license or certification	
Date Submitted to Administrator ____/____/____/	Signature _____



FOR ADMINISTRATOR USE ONLY	FOR SUPERINTENDENT/CHARTER SCHOOL CHIEF ADMINISTRATOR OF SCHOOL USE ONLY
Reasonable Suspicion _____Yes _____No	Reasonable Suspicion _____Yes _____No
Date Submitted to Superintendent /Charter School Chief Administrator _____/_____/_____ Name/Signature _____ Date Submitted to Law Enforcement _____ / ____ / ____ Name/Signature _____	Date Submitted to Law Enforcement _____/_____/_____ Name/Signature _____ Date Submitted to Commissioner _____ / ____ / ____ Name/Signature _____