

Proposed change to definition of sexual orientation to adhere to MN Human Rights Act and 2023 legislative session.



SOUTH WASHINGTON COUNTY SCHOOLS
Independent School District 833
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413 HARASSMENT AND VIOLENCE

I. PURPOSE

The purpose of this policy is to maintain a learning and working environment that is free from harassment and violence on the basis of a person's actual or perceived race, ethnicity, color, creed, religion, national origin, immigration status, gender, sex, age, marital status, familial status, socioeconomic status, physical appearance, sexual orientation including gender identity and expression, academic status related to student performance, disability, or status with regard to public assistance, age, sexual orientation, disability (Protected Class) or any additional characteristic defined in the Minnesota Human Rights Act (MHRA).

II. GENERAL STATEMENT OF POLICY

- A. The policy of the school district is to maintain a learning and working environment that is free from harassment and violence on the basis of a person's actual or perceived race, ethnicity, color, creed, religion, national origin, immigration status, gender, marital status, familial status, socioeconomic status, physical appearance, sexual orientation including gender identity and expression, academic status related to student performance, disability, or status with regard to public assistance, age, or any additional characteristic (Protected Class) defined in the Minnesota Human Rights Act (MHRA). The school district prohibits any form of harassment or violence on the basis of a person's actual or perceived race, ethnicity, color, creed, religion, national origin, immigration status, gender, marital status, familial status, socioeconomic status, physical appearance, sexual orientation including gender identity and expression, academic status related to student performance, disability, or status with regard to public assistance, age, (Protected Class) or any additional characteristic defined in the Minnesota Human Rights Act (MHRA).
- B. A violation of this policy occurs when any pupil, teacher, administrator, or other school district personnel of the school district harasses a pupil, teacher, administrator, or other school district personnel or group of pupils, teachers, administrators, or other school district personnel through conduct or communication based on a person's actual or perceived race, ethnicity, color, creed, religion, national origin, immigration status, gender, marital status, familial status, socioeconomic status, physical appearance, sexual orientation including gender identity and expression, academic status related to student performance, disability, or status with regard to public assistance, age, (Protected Class) or any additional characteristic defined in the Minnesota Human Rights Act (MHRA). (For purposes

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of this policy, school district personnel include school board members, school employees, agents, volunteers, contractors, or persons subject to the supervision and control of the district.)

- C. A violation of this policy occurs when any pupil, teacher, administrator, or other school district personnel inflicts, threatens to inflict, or attempts to inflict violence upon any pupil, teacher, administrator, or other school district personnel or group of pupils, teachers, administrators, or other school district personnel based on a person's actual or perceived race, ethnicity, color, creed, religion, national origin, immigration status, gender, marital status, familial status, socioeconomic status, physical appearance, sexual orientation including gender identity and expression, academic status related to student performance, disability, or status with regard to public assistance, age, or any additional characteristic (Protected Class) defined in the Minnesota Human Rights Act (MHRA).
- D. The school district will act to investigate all complaints, either formal or informal, verbal or written, of harassment or violence based on a person's actual or perceived race, ethnicity, color, creed, religion, national origin, immigration status, gender, marital status, familial status, socioeconomic status, physical appearance, sexual orientation including gender identity and expression, academic status related to student performance, disability, or status with regard to public assistance, age, or any additional characteristic (Protected Class) defined in the Minnesota Human Rights Act (MHRA) and to discipline or take appropriate action against any pupil, teacher, administrator, or other school district personnel found to have violated this policy.

III. DEFINITIONS

- A. "Assault" is:
 - 1. an act done with intent to cause fear in another of immediate bodily harm or death;
 - 2. the intentional infliction of or attempt to inflict bodily harm upon another;
or
 - 3. the threat to do bodily harm to another with present ability to carry out the threat.
- B. "Harassment" prohibited by this policy consists of physical or verbal conduct, including, but not limited to, electronic communications, relating to an individual's or group of individuals' actual or perceived race, ethnicity, color, creed, religion, national origin, immigration status, gender, sex, age, marital status, familial status, socioeconomic status, physical appearance, status with regard to public assistance, sexual orientation, including gender identity or expression, academic status related to student performance, disability, or status with regard to public assistance, age, or any additional characteristic defined in the Minnesota Human Rights Act (MHRA) when the conduct:

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1. has the purpose or effect of creating an intimidating, hostile, or offensive working or academic environment;
 2. has the purpose or effect of substantially or unreasonably interfering with an individual's work or academic performance; or
 3. otherwise adversely affects an individual's employment or academic opportunities.
- C. "Immediately" means as soon as possible but in no event longer than 24 hours.
- D. Protected Classifications; Definitions
1. "Disability" means respect to an individual who:
 - a. has a physical, sensory, or mental impairment which materially limits one or more major life activities;
 - b. has a record of such an impairment; or
 - c. is regarded as having such an impairment.
 2. "Familial status" means the condition of one or more minors being domiciled with:
 - a. their parent or parents or the minor's legal guardian; or
 - b. the designee of the parent or parents or guardian with the written permission of the parent or parents or guardian. The protections afforded against harassment or discrimination on the basis of family status apply to any person who is pregnant or is in the process of securing legal custody of an individual who has not attained the age of majority.
 3. "Marital status" means whether a person is single, married, remarried, divorced, separated, or a surviving spouse and, in employment cases, includes protection against harassment or discrimination on the basis of the identity, situation, actions, or beliefs of a spouse or former spouse.
 4. "National origin" means the place of birth of an individual or of any of the individual's lineal ancestors.
 5. "Sex" includes, but is not limited to, pregnancy, childbirth, and disabilities related to pregnancy or childbirth.
 6. ~~"Sexual orientation" means having or being perceived as having an~~

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~~emotional, physical, or sexual attachment to another person without regard to the sex of that person or having or being perceived as having an orientation for such attachment, or having or being perceived as having a self image or identity not traditionally associated with one's biological maleness or femaleness. "Sexual orientation" does not include a physical or sexual attachment to children by an adult.~~

"Sexual orientation" means to whom someone is, or is perceived of as being emotionally, physically, or sexually attracted to based on sex or gender identity. A person may be attracted to men, women, both, neither, or to people who are genderqueer, androgynous, or have other gender identities.

7. "Gender identity" means an individual's innate sense of one's own gender; a deeply held sense of psychological knowledge of one's own gender, regardless of the gender assigned at birth.
 8. "Gender expression" means the external appearance, characteristics or behaviors typically associated with a specific gender.
 9. "Status with regard to public assistance" means the condition of being a recipient of federal, state, or local assistance, including medical assistance, or of being a tenant receiving federal, state, or local subsidies, including rental assistance or rent supplements.
- E. "Remedial response" means a measure to stop and correct acts of harassment or violence, prevent acts of harassment or violence from recurring, and protect, support, and intervene on behalf of a student who is the target or victim of acts of harassment or violence.
- F. Sexual Harassment; Definition
1. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, sexually motivated physical conduct, or other verbal or physical conduct or communication of a sexual nature when:
 - a. submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining employment or an education; or
 - b. submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's employment or education; or
 - c. that conduct or communication has the purpose or effect of substantially interfering with an individual's employment

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or education, or creating an intimidating, hostile, or offensive employment or educational environment.

2. Sexual harassment may include, but is not limited to:
 - a. unwelcome verbal harassment or abuse;
 - b. unwelcome pressure for sexual activity;
 - c. unwelcome, sexually motivated, or inappropriate patting, pinching, or physical contact, other than necessary restraint of pupil(s) by teachers, administrators, or other school district personnel to avoid physical harm to persons or property;
 - d. unwelcome sexual behavior or words, including demands for sexual favors, accompanied by implied or overt threats concerning an individual's employment or educational status;
 - e. unwelcome sexual behavior or words, including demands for sexual favors, accompanied by implied or overt promises of preferential treatment with regard to an individual's employment or educational status; or
 - f. unwelcome behavior or words directed at an individual because of sexual orientation, including, gender identity or expression.

G. Sexual Violence; Definition

1. Sexual violence is a physical act of aggression or force or the threat thereof that involves the touching of another's intimate parts, or forcing a person to touch any person's intimate parts. Intimate parts, as defined in Minnesota Statutes, section 609.341, includes the primary genital area, groin, inner thigh, buttocks, or breast, as well as the clothing covering these areas.
2. Sexual violence may include, but is not limited to:
 - a. touching, patting, grabbing, or pinching another person's intimate parts,
 - b. coercing, forcing, or attempting to coerce or force the touching of anyone's intimate parts;
 - c. coercing, forcing, or attempting to coerce or force sexual intercourse or a sexual act on another; or

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- d. threatening to force or coerce sexual acts, including the touching of intimate parts or intercourse, on another.

H. Violence; Definition

Violence prohibited by this policy is a physical act of aggression or assault upon another or group of individuals because of, or in a manner reasonably related to a person's actual or perceived race, ethnicity, color, creed, religion, national origin, immigration status, gender, marital status, familial status, socioeconomic status, physical appearance, sexual orientation including gender identity and expression, academic status related to student performance, disability, or status with regard to public assistance, age, or any additional characteristic (Protected Class) defined in the Minnesota Human Rights Act (MHRA).

IV. INVESTIGATION

- A. By authority of the school district, the human rights officer, within three (3) days of the receipt of a report or complaint alleging harassment or violence prohibited by this policy shall undertake or authorize an investigation. The investigation may be conducted by school district officials or by a third party designated by the school district.
- B. The investigation may consist of personal interviews with the complainant, the individual(s) against whom the complaint is filed, and others who may have knowledge of the alleged incident(s) or circumstances giving rise to the complaint. The investigation may also consist of any other methods and documents deemed pertinent by the investigator.
- C. In determining whether alleged conduct constitutes a violation of this policy, the school district should consider the surrounding circumstances, the nature of the behavior, past incidents or past or continuing patterns of behavior, the relationships between the parties involved and the context in which the alleged incidents occurred. Whether a particular action or incident constitutes a violation of this policy requires a determination based on all the facts and surrounding circumstances.
- D. In addition, the school district may take immediate steps, at its discretion, to protect the target or victim, the complainant, and students, teachers, administrators or other school district personnel pending completion of an investigation of alleged harassment or violence prohibited by this policy.
- E. The alleged perpetrator of the act(s) of harassment or violence shall be allowed the opportunity to present a defense during the investigation or prior to the imposition of discipline or other remedial responses.

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- F. The investigation will be completed as soon as practicable. The school district human rights officer shall make a written report to the Superintendent/designee upon completion of the investigation. If the complaint involves the Superintendent/designee, the report may be filed directly with the School Board. The report shall include a determination of whether the allegations have been substantiated as factual and whether they appear to be violations of this policy.

V. SCHOOL DISTRICT ACTION

- A. Upon completion of an investigation that determines a violation of this policy has occurred, the school district will take appropriate action. Such action may include, but is not limited to, warning, suspension, exclusion, expulsion, transfer, remediation, termination or discharge. Disciplinary consequences will be sufficiently severe to try to deter violations and to appropriately discipline prohibited behavior. School district action taken for violation of this policy will be consistent with requirements of applicable collective bargaining agreements, Minnesota and federal law and applicable school district policies and regulations.
- B. The school district is not authorized to disclose to a victim private educational or personnel data regarding an alleged perpetrator who is a student or employee of the school district. School officials will notify the targets or victims and alleged perpetrators of harassment or violence, the parent(s) or guardian(s) of targets or victims of harassment or violence and the parent(s) or guardian(s) of alleged perpetrators of harassment or violence who have been involved in a reported and confirmed harassment or violence incident of the remedial or disciplinary action taken, to the extent permitted by law.
- C. In order to prevent or respond to acts of harassment or violence committed by or directed against a child with a disability, the school district shall, where determined appropriate by the child's individualized education program (IEP) or Section 504 team, allow the child's IEP or Section 504 plan to be drafted to address the skills and proficiencies the child needs as a result of the child's disability to allow the child to respond to or not to engage in acts of harassment or violence.

VI. RETALIATION OR REPRISAL

The school district will discipline or take appropriate action against any student, teacher, administrator or other school district personnel who commits an act of reprisal or who retaliates against any person who asserts, alleges, or makes a good faith report of alleged harassment or violence prohibited by this policy, who testifies, assists or participates in an investigation or retaliation or alleged harassment or violence, or who testifies, assists or participates in a proceeding or hearing relating to such harassment or violence. Retaliation includes, but is not limited to, any form of intimidation, reprisal, harassment or intentional disparate treatment. Disciplinary consequences will be sufficiently severe to deter violations and to appropriately discipline the individual(s) who engaged in the harassment or violence. Remedial responses to the harassment or violence shall be tailored to the particular incident and nature of the conduct.

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VII. RIGHT TO ALTERNATIVE COMPLAINT PROCEDURES

These procedures do not deny the right of any individual to pursue other avenues of recourse which may include filing charges with the Minnesota Department of Human Rights, or another state or federal agency, initiating civil action or seeking redress under state criminal statutes and/or federal law.

VIII. HARASSMENT OR VIOLENCE AS ABUSE

- A. Under certain circumstances, alleged harassment or violence may also be possible abuse under Minnesota law. If so, the duties of mandatory reporting under Minnesota Statutes Chapter, 260E may be applicable.
- B. Nothing in this policy will prohibit the school district from taking immediate action to protect victims of alleged harassment, violence or abuse.

IX. DISSEMINATION OF POLICY AND TRAINING

- A. This policy shall be conspicuously posted throughout each school building in areas accessible to pupils, staff members and the public.
- B. This policy shall be given to each school district employee and independent contractor who regularly interacts with students at the time of initial employment with the school district.
- C. This policy shall appear in the student handbook.
- D. The school district will develop a method of discussing this policy with students and employees.
- E. The school district may implement violence prevention and character development education programs to prevent and reduce policy violations. Such programs may offer instruction on character education including, but not limited to, character qualities such as attentiveness, truthfulness, respect for authority, diligence, gratefulness, self-discipline, patience, forgiveness, respect for others, peacemaking, resourcefulness, and/or sexual abuse prevention.
- F. This policy shall be reviewed at least annually for compliance with state and federal law.

Legal References: Minn. Stat. § 120B.232 (Character Development Education)
Minn. Stat. § 120B.234 (Child Sexual Abuse Prevention Education)
Minn. Stat. § 121A.031 (School Student Bullying Policy)
Minn. Stat. Ch. 363A (Minnesota Human Rights Act)
Minn. Stat. § 609.341 (Definitions)

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Minn. Stat. Ch. 260E(Reporting of Maltreatment of Minors)
20 U.S.C. §§ 1681-1688 (Title IX of the Education Amendments of 1972)
29 U.S.C. § 621 *et seq.* (Age Discrimination in Employment Act)
29 U.S.C. § 794 (Section 504 of the Rehabilitation Act of 1973)
42 U.S.C. § 1983 (Civil Action for Deprivation of Rights)
42 U.S.C. § 2000d *et seq.* (Title VI of the Civil Rights Act of 1964)
42 U.S.C. § 2000e *et seq.* (Title VII of the Civil Rights Act)
42 U.S.C. § 12101 *et seq.* (Americans with Disabilities Act)

Cross References: MSBA/MASA Model Policy 102 (Equal Educational Opportunity)
MSBA/MASA Model Policy 401 (Equal Employment Opportunity)
MSBA/MASA Model Policy 402 (Disability Nondiscrimination Policy)
MSBA/MASA Model Policy 403 (Discipline, Suspension, and Dismissal of School District Employees)
MSBA/MASA Model Policy 406 (Public and Private Personnel Data)
MSBA/MASA Model Policy 414 (Mandated Reporting of Child Neglect or Physical or Sexual Abuse)
MSBA/MASA Model Policy 415 (Mandated Reporting of Maltreatment of Vulnerable Adults)
MSBA/MASA Model Policy 506 (Student Discipline)
MSBA/MASA Model Policy 514 (Bullying Prohibition Policy)
MSBA/MASA Model Policy 515 (Protection and Privacy of Pupil Records)
MSBA/MASA Model Policy 521 (Student Disability Nondiscrimination)
MSBA/MASA Model Policy 522 (Title IX Sex Nondiscrimination, Grievance Procedures and Process)
MSBA/MASA Model Policy 524 (Internet Acceptable Use and Safety Policy)
MSBA/MASA Model Policy 525 (Violence Prevention)
MSBA/MASA Model Policy 526 (Hazing Prohibition)
MSBA/MASA Model Policy 528 (Student Parental, Family, and Marital Status Nondiscrimination)

POLICY ADOPTED: May 21, 2009

POLICY REVIEWED: August 2013, August 2015, September 15, 2016, September 24, 2020, August 26, 2021, February 16, 2023

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