

509 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 race, color, creed, religion, national origin, sex, age, marital status, protected classes, status with regard to public assistance, sexual orientation, or disability.

II. GENERAL STATEMENT

- A. The agency prohibits any form of harassment or violence on the basis of race, color, creed, religion, national origin, sex, age, marital status, protected classes, status with regard to public assistance, sexual orientation, or disability.
- B. A violation of this policy occurs when any pupil, teacher, administrator, or other personnel of the agency harasses a pupil, teacher, administrator, or other personnel or group of pupils, teachers, administrators, or other personnel through conduct or communication based on protected classes as defined by this policy. (For purposes of this policy, personnel include board members, employees, agents, volunteers, contractors, or persons subject to the supervision and control of the agency.)
- C. A violation of this policy occurs when any pupil, teacher, administrator, or other personnel of the agency inflicts, threatens to inflict, or attempts to inflict violence upon any pupil, teacher, administrator, or other personnel or group of pupils, teachers, administrators, or other personnel based on protected classes as defined by this policy.
- D. The agency will act to investigate all complaints, either formal or informal, verbal or written, of harassment or violence based on a person's race, color, creed, religion, national origin, sex, age, marital status, protected classes, status with regard to public assistance, sexual orientation, or disability, and to discipline or take appropriate action against any pupil, teacher, administrator, or other personnel who is 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 protected classes as defined by this policy when the conduct:
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. “Age” means the person is over the age of 25 years.
 2. “Disability” means any condition or characteristic that renders a person a disabled person. A disabled person is any person 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.
 3. “Protected classes” 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 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.

4. “Marital status” means whether a person is single, married, remarried, divorced, separated, or a surviving spouse and, in employment cases, includes protection against harassment on the basis of the identity, situation, actions, or beliefs of a spouse or former spouse.
5. “National origin” means the place of birth of an individual or of any of the individual’s lineal ancestors.
6. “Sex” includes, but is not limited to, pregnancy, childbirth, and disabilities related to pregnancy or childbirth.
7. “Sexual orientation” means having or being perceived as having an 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.
8. “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. Sexual Harassment; Definition

1. Sexual harassment consists of 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 or unreasonably interfering with an individual’s employment 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 agency 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 gender.

F. Sexual Violence; Definition

1. Sexual violence is a physical act of aggression or force or the threat thereof which involves the touching of another's intimate parts, or forcing a person to touch any person's intimate parts. Intimate parts, as defined in Minn. Stat. § 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, whether that person is of the same sex or the opposite sex;
 - 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
 - d. threatening to force or coerce sexual acts, including the touching of intimate parts or intercourse, on another.

G. 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,

race, color, creed, religion, national origin, sex, age, marital status, protected classes, status with regard to public assistance, sexual orientation, or disability.

IV. REPORTING PROCEDURES

- A. Any person who believes he or she has been the victim of harassment or violence based on protected classes as defined by this policy; by a pupil, teacher, administrator, or other personnel of the agency, or any person with knowledge or belief of conduct which may constitute harassment or violence prohibited by this policy toward a pupil, teacher, administrator, or other personnel or group of pupils, teachers, administrators, or other personnel should report the alleged acts immediately to an appropriate agency official designated by this policy. The agency encourages the reporting party or complainant to use the report form available from the administrator of each building or available from the agency office, but oral reports shall be considered complaints as well. Nothing in this policy shall prevent any person from reporting harassment or violence directly to an agency human rights officer or to the Executive Director.
- B. In each agency building the building administrator, the administrator's designee, or the building supervisor (hereinafter building report taker) is the person responsible for receiving oral or written reports of harassment or violence prohibited by this policy at the building level. Any adult agency personnel who receives a report of harassment or violence prohibited by this policy shall inform the building report taker immediately. If the complaint involves the building report taker, the complaint shall be made or filed directly with the Executive Director or the agency human rights officer by the reporting party or complainant. Agency personnel who fail to inform the building report taker of a report of harassment or violence in a timely manner may be subject to disciplinary action.
- C. Upon receipt of a report, the building report taker must notify the agency human rights officer immediately, without screening or investigating the report. The building report taker may request, but may not insist upon, a written complaint. A written statement of the facts alleged will be forwarded as soon as practicable by the building report taker to the human rights officer. If the report was given verbally, the building report taker shall personally reduce it to written form within 24 hours and forward it to the human rights officer. Failure to forward any harassment or violence report or complaint as provided herein may result in disciplinary action against the building report taker.
- D. The agency shall conspicuously post the name of the human rights officer(s), including mailing addresses and telephone numbers.
- E. Submission of a good faith complaint or report of harassment or violence prohibited by this policy will not affect the complainant or reporter's future employment, grades, or work assignments.

- F. Use of formal reporting forms is not mandatory.
- G. Reports of harassment or violence prohibited by this policy are classified as private educational and/or personnel data and/or confidential investigative data and will not be disclosed except as permitted by law. The agency will respect the privacy of the complainant(s), the individual(s) against whom the complaint is filed, and the witnesses as much as possible, consistent with the agency's legal obligations to investigate, to take appropriate action, and to comply with any discovery or disclosure obligations.

V. INVESTIGATION

- A. By authority of the agency, the human rights officer, upon receipt of a report or complaint alleging harassment or violence prohibited by this policy, shall immediately undertake or authorize an investigation. The investigation may be conducted by agency officials or by a third party designated by the agency.
- 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 agency 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 agency may take immediate steps, at its discretion, to protect the complainant, pupils, teachers, administrators, or other personnel pending completion of an investigation of alleged harassment or violence prohibited by this policy.
- E. The investigation will be completed as soon as practicable. The agency human rights officer shall make a written report to the Executive Director upon completion of the investigation. If the complaint involves the Executive Director, the report may be filed directly with the 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.

VI. AGENCY ACTION

- A. Upon completion of the investigation, the agency will take appropriate action. Such action may include, but is not limited to, warning, suspension, exclusion, expulsion, transfer, remediation, termination, or discharge. Agency action taken for violation of this policy will be consistent with requirements of applicable collective bargaining agreements, Minnesota and federal law, and agency policies.
- B. The result of the agency's investigation of each complaint filed under these procedures will be reported in writing to the complainant by the agency in accordance with state and federal law regarding data or records privacy.

VII. REPRISAL

The agency will discipline or take appropriate action against any pupil, teacher, administrator, or other personnel who retaliates against any person who makes a good faith report of alleged harassment or violence prohibited by this policy or any person who testifies, assists, or participates in an investigation, 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.

VIII. 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, initiating civil action, or seeking redress under state criminal statutes and/or federal law.

IX. 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 Minn. Stat. § 626.556 may be applicable.
- B. Nothing in this policy will prohibit the agency from taking immediate action to protect victims of alleged harassment, violence, or abuse.

X. DISSEMINATION OF POLICY AND TRAINING

- A. This policy shall be conspicuously posted throughout each agency building in areas accessible to pupils and staff members
- B. This policy shall be given to each agency employee and independent contractor at the time of entering into the person's employment contract.

- C. This policy shall appear in the student handbook.
- D. The agency will develop a method of discussing this policy with students and employees.
- E. The agency 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, and resourcefulness.
- 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. § 121A.03, Subd. 2 (Sexual, Religious, and Racial Harassment and Violence Policy)

Minn. Stat. Ch. 363A (Minnesota Human Rights Act)

Minn. Stat. § 609.341 (Definitions)

Minn. Stat. § 626.556 *et seq.* (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 (Rehabilitation Act of 1973, § 504)

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)

Puller v. Indep. Sch. Dist. No. 701, 528 N.W.2d 273 (Minn. Ct. App. 1998)