

10.6 SEXUAL HARASSMENT AND DISCRIMINATION

The Board recognizes that an employee's and student's right to freedom from discrimination includes the opportunity to work and learn in an environment untainted by sexual harassment. Sexually offensive speech and conduct are wholly inappropriate to the operation of the School District and will not be tolerated. Further, both the United States Supreme Court and Ohio Supreme Court, as well as Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, and Title IX of the Education Amendments of 1972, recognize sexual harassment as a form of sex discrimination and it is, therefore, illegal.

As required by state and federal law, the District does not discriminate on the basis of sex in its programs and activities. This policy or a version which provides students and staff adequate notice of the prohibition against sexual harassment, the conduct that constitutes sexual harassment, and the complaint procedure for reporting sexual harassment shall be included in the student and staff handbooks. The District shall also train staff on how to report and properly respond to harassment complaints/grievances.

A. Employees

It shall be a violation of this policy for any member of the District staff or a third party (i.e., visiting speaker or a visiting athletic team) to harass an employee through conduct or communications of a sexual nature as defined below. This includes harassment by a supervisor or another co-employee.

1. Definition

- a. Sexual harassment of employees is unwelcome conduct of a sexual nature. Such conduct can include unwelcome sexual advances, requests for sexual favors, and verbal, nonverbal or physical contacts of a sexual nature, when submission to such conduct is made a condition of employment or a basis of an employment decision. Sexual harassment also may be found to have occurred when the above-mentioned conduct has the purpose or effect of unreasonably interfering with work performance or creating an intimidating, hostile, or offensive working environment.
- b. Sexual harassment, as defined above, may include but is not limited to the following:
 - 1) Basing an evaluation, recommendation, transfer, etc. on an employee's refusal or submission to sexual advances.
 - 2) Jokes, stories, cartoons, or pictures that convey a

sexual message, and/or place the opposite sex in demeaning roles, thereby creating a hostile working environment for the sex which is the subject of the jokes, stories, cartoons, or pictures.

- 3) Unwelcome touching.
 - 4) All types of verbal harassment and abuse of a sexual nature.
 - 5) Pressure for sexual activity.
 - 6) Any other remarks or actions to a person, with sexually demeaning implications.
- c. Unwelcome: Conduct is unwelcome if the employee did not request or invite it and regarded the conduct as undesirable or offensive. Acquiescence in the conduct or failure to complain does not always mean the conduct was welcome.

2. Staff Complaint/ Grievance Procedure

- a. Retaliation against those who file a complaint or participate in the investigation of the complaint is prohibited. Retaliation claims also are subject to this complaint/grievance procedure.
- b. The intent of the following reporting procedure is to provide a quick and fair resolution of complaints of discrimination based on sex.
- c. The staff member desiring to file a sexual harassment complaint must present the complaint, in writing to the Assistant Superintendent. The Assistant Superintendent or his/her designee shall investigate the matter unless otherwise designated by the Board.
- d. If the Assistant Superintendent is the employee alleged to have engaged in sexual harassment, the complaint shall be sent directly to the President of the Board of Education. The Board will either conduct the investigation set out below, or appoint an investigator in its place.
- e. The right to confidentiality, both of the complainant and of the accused, will be respected consistent with the District's legal obligation, and with the necessity to investigate allegations of

misconduct and take corrective action when this conduct has occurred.

3. Discipline

If sexual harassment is found to have occurred, the person who engaged in such harassment may be disciplined. The discipline must be reasonably calculated to end the harassment. Said discipline may include, but not be limited to, one or a combination of the following:

- a. Written reprimand of the employee to be included in said employee's personnel file which orders the employee to cease and desist further sexual harassment.
- b. Transfer of said employee away from the individual who filed the complaint and away from any other individual who was found to have been harassed. Said transfer shall include a written warning to cease and desist further sexual harassment.
- c. Termination of the employee's employment.

B. Students

It shall be a violation of this Policy for any member of the District staff to harass a student through conduct or communications of a sexual nature as defined below or to have romantic or sexual relations with a student. Retaliation in any form against those persons alleging that sexual harassment has occurred or participating in the investigation of the complaint is also prohibited. It shall also be a violation of this policy for students or third parties (i.e., visiting speaker, or visiting athletic team) to harass other students through conduct or communications of a sexual nature as defined below.

Any teacher, counselor or administrator who receives a report, verbally or in writing, from any student regarding sexual harassment of that student must forward that report to the building principal, Assistant Superintendent or Title IX coordinator (if the Assistant Superintendent is not the coordinator) within one school day or within a reasonable period of time if there is a good cause for the delay. Any building principal receiving a report of sexual harassment shall promptly notify the Assistant Superintendent **or Title IX coordinator**.

1. Definition

- a. Sexual harassment is unwelcome conduct of a sexual nature. Such conduct can include unwelcome sexual advances,

requests for sexual favors, and other verbal, nonverbal or physical conduct of a sexual nature, including sexual violence, when made by a member of the school staff or a third party (e.g., a visiting speaker or visiting athletes) to a student or when made by any student to another student. Such actions constitute sexual harassment when:

- 1) Submission to such conduct is made, either explicitly or implicitly, a term or condition of a student's education;
 - 2) Submission to or rejection of such conduct by a student is used as the basis for academic decisions affecting that student; or
 - 3) The conduct is so severe, persistent, or pervasive that it affects a student's ability to participate in or benefit from an education program or activity or creates an intimidating, hostile or offensive academic environment;
 - 4) Sexual harassment, as defined above, may include, but is not limited to, the following:
 - a) Verbal harassment or abuse;
 - b) Pressure for sexual activity;
 - c) Repeated remarks to a person, with sexual or demeaning implications;
 - d) Sexual or demeaning remarks sent via electronic communications, such as e-mail, text-messaging or social networking websites, when such remarks occur at school or away from school but with a nexus to other harassment occurring at school;
 - e) Unwelcome touching; or
 - f) Suggesting or demanding sexual involvement accompanied by implied or explicit threats concerning one's grades, etc.
- b. Unwelcome: Conduct is unwelcome if the student did not request or invite it and regarded the conduct as undesirable

or offensive. Acquiescence in the conduct or failure to complain does not always mean the conduct was welcome.

2. Student Complaint/Grievance Procedure

- a. Any student who alleges sexual harassment by any staff member or student in the District may complain directly to the building principal, guidance counselor, teacher, Assistant Superintendent, Title IX coordinator (if the Assistant Superintendent is not the coordinator), any other school employee whom the student trusts, or any other individual designated to receive such complaints.
- b. Retaliation against those who file a complaint or participate in the investigation of the complaint is prohibited. Retaliation claims also are subject to this complaint/grievance procedure. Therefore, filing of a complaint or otherwise reporting sexual harassment will not reflect upon the student's status nor will it affect future employment, grades, or work assignments. The person to whom the complaint was made shall within one (1) school day report the complaint to the Assistant Superintendent **or Title IX coordinator**. If the Assistant Superintendent is the employee alleged to have engaged in the sexual harassment, the report shall be made to the **Title IX coordinator or the** President of the Board of Education.
- c. The right to confidentiality, both of the complainant and of the accused, will be respected consistent with the District's legal obligation, and with the necessity to investigate allegations of misconduct and take corrective action when this conduct has occurred. **However, the District cannot ensure confidentiality.**
- d. When the Assistant Superintendent or Title IX coordinator receives a complaint/grievance, the District will take immediate interim steps to eliminate the harassment, prevent its recurrence and address its effects. The District's response shall minimize the burden on the individual bringing the complaint/grievance.

3. Discipline

A complaint against a student in the School District that is substantiated by a preponderance of the evidence shall subject that student to disciplinary action, including suspension or

expulsion, consistent with the Student Discipline Code.

C. Investigation (Student and Employee)

1. The investigator should remember that the investigation requires a balancing of the accused's right to preserve his/her good name, the complainant's right to an environment free of sexual harassment, and the Board's interest in a prompt and fair investigation.
2. The investigator will inform and request the consent of the complainant before beginning an investigation. If the complainant requests confidentiality or asks that an investigation not be pursued, the District will take all reasonable steps to investigate and respond to the complaint consistent with the complainant's request.
3. The investigator shall meet with the complainant without a period not to exceed ten (10) school days from the time of making the complaint. However, the investigator is urged to meet with the complainant as soon as possible.
4. Following the meeting with the complainant, the investigator shall conduct an investigation to determine if sexual harassment has occurred. The investigation shall include a conference with the accused and the complainant, as well as any and all other methods which are considered necessary to determine whether harassment has occurred. The investigation shall include the opportunity for both parties to present witnesses and other evidence, written documentation of such investigation, including documents and witness statements.

D. Post-Investigation Procedures (Student and Employee)

1. Upon conclusion of the investigation, the investigator shall issue a written report. Although the facts and circumstances of a particular investigation may require an investigation to continue beyond forty-five (45) school days, it is recommended that the investigation and a report of the findings be completed within that time frame. The report shall include a determination of whether the accused was found to have engaged in harassment, was found not to have engaged in harassment, or whether the investigation was inconclusive. The report shall be issued to the complainant, if an employee, or to the complainant's parents, if a student, and to the accused. A copy of the report shall also be sent to the Assistant Superintendent or his/her designee.

2. A finding of no harassment or inconclusive evidence shall end the investigation.
3. If harassment is found to have occurred, the investigation shall recommend what steps are necessary to ensure that the harassment is eliminated for the victim and other individuals affected by the sexual harassment and to correct its discriminatory effects on the complainant and others, if appropriate.

E. Appeal (Student and Employee)

1. If the complainant is not satisfied with the results of the investigation, he/she may send written notice to the Board that he/she is not satisfied with the results of the investigation. The written notice should include reasons why the complainant is not satisfied with the results of the investigation. The Board, upon receipt of the notice request, will review it and conduct further investigation if deemed necessary.
2. The Board shall issue its decision within sixty (60) school days of receipt of the complainant's notice of dissatisfaction.

F. Title IX Coordinator

1. For purpose of reporting Title IX complaints/grievances, the Board's Title IX coordinator is:

Rob Preston, Assistant Superintendent
360 Cedar Street, PO Box 428
Duncan Falls, Ohio 43734-0428
740-674-5203
rob.preston@franklinlocalschools.org

Board Approved August 16, 2011