

**Oak Park and River Forest High School
201 N. Scoville
Oak Park, IL 60302
708-383-0700**

TO: Board of Education
DATE: June 13, 2017
FROM: Nathaniel L. Rouse, Principal
Re: Recommended Changes to Board of Education Policy 7:20- Harassment of Students Prohibited

BACKGROUND

The Sexual Misconduct and Harassment Policy Committee has met during the second semester of the school year to make sure that our policies and procedures were consistent, up to date, and clear. To that end, the following changes are recommended to Policy 7:20- Harassment of Students Prohibited to more accurately reflect the feedback from students, community members, and the committee related to Sexual Harassment policies and procedures.

INFORMATION

The most notable changes are the inclusion of sexual misconduct, and definitions related to consent. We have also including language related to unwelcomed advances, and a definition of *consent*. We have included additional examples of sexual harassment, pulled information from Policy 2:260 – Uniform Grievance to speak to how we would investigate instances of sexual harassment. Although the entire policy may not be placed in the student handbook this year due to the approval process, we have outlined the procedures for reporting which have been included in this report for your review.

RECOMMENDATION

Recommend that Policy 7:20, Harassment of Students Prohibited, be approved for first reading at the Special Board Meeting on June 13, 2017.

Students

Harassment of Students Prohibited

Bullying, Intimidation, and Harassment Prohibited

No person, including a District employee or agent, or student, shall harass, intimidate, or bully a student on the basis of actual or perceived: race; color; national origin; military status; unfavorable discharge status from military service; sex; sexual orientation; gender identity; gender-related identity or expression; ancestry; age; religion; physical or mental disability; order of protection status; status of being homeless; actual or potential marital or parental status, including pregnancy; association with a person or group with one or more of the aforementioned actual or perceived characteristics; or any other distinguishing characteristic. The District will not tolerate harassing, intimidating conduct, or bullying whether verbal, physical, sexual, or visual, that affects the tangible benefits of education, that unreasonably interferes with a student’s educational performance, or that creates an intimidating, hostile, or offensive educational environment. Examples of prohibited conduct include name-calling, using derogatory slurs, stalking, sexual violence, causing psychological harm, threatening or causing physical harm, threatened or actual destruction of property, or wearing or possessing items depicting or implying hatred or prejudice of one of the characteristics stated above.

Sexual Harassment and Sexual Misconduct Prohibited

Sexual harassment of students is prohibited. Any person, including a district employee or agent, or student, engages in sexual harassment whenever he or she makes sexual advances, requests sexual favors, and/or engages in other verbal or physical conduct, including sexual violence, of a sexual or sex-based nature, imposed on the basis of sex, that:

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1. Is sufficiently serious, pervasive, and or persistent and dDenies or limits the provision of educational aid, benefits, services, or treatment; or that makes such conduct a condition of a student’s academic status;

~~2. or~~

~~3.~~2. Has the purpose or effect of:

- a. Substantially interfering with a student’s educational environment;
- b. Creating an intimidating, hostile, or offensive educational environment;
- c. Depriving a student of educational aid, benefits, services, or treatment; or
- d. Making submission to or rejection of such conduct the basis for academic decisions affecting a student.

The terms “intimidating,” “hostile,” and “offensive” include conduct that has the effect of humiliation, embarrassment, or discomfort. Individuals shall not make unwelcome sexual advances or request sexual favors or engage in any unwelcome conduct of a sexual nature whether explicitly or implicitly and when such conduct has the purpose or effect of substantially interfering with an individual’s performance or creating an intimidating, hostile, or offensive environment. Sexual harassment prohibited by this policy includes verbal or physical conduct. The terms intimidating, hostile, or offensive include, but are not limited to, conduct that has the effect of humiliation, embarrassment, or discomfort.

A hostile educational environment is created when conduct by an individual is so severe, pervasive or persistent that it denies or limits an individual’s ability to participate in or receive the benefits,

services or opportunities of the District's educational programs. In determining whether a hostile environment has been created, the conduct in question will be considered from both a subjective and an objective perspective of a reasonable person in the alleged victim's position, considering all the circumstances.

Consent is a clear and unambiguous agreement, through mutually understandable words or actions, to engage in a particular activity. Regarding Sexual Harassment, consent is when someone agrees, gives permission or says "yes" to sexual activity with another person(s). Consent is always freely given and may not be valid if a person is being subjected to actions or behaviors that elicit emotional, psychological, physical or reputational pressure or threats. Consent can be withdrawn at any time. Consent of one sexual activity or past sexual activity does not imply consent to other sexual activities. Consent to engage in sexual activity with one person does not constitute consent to engage in sexual activity with another person.

Examples of sexual harassment include touching, crude jokes or pictures, discussions of sexual experiences, teasing related to sexual characteristics, and spreading rumors related to a person's alleged sexual activities. Sexual harassment does not include the: (a) expression of gender or sexual orientation or preference, or (b) consensual, non-disruptive display of affection during non-instructional time. The term *sexual violence* includes a number of different acts. Examples of sexual violence include, but are not limited to, rape, sexual assault, sexual battery, sexual abuse, and sexual coercion. ~~engaging in any sexual activity, including without limitation, offensive touching, sexual harassment, and indecent exposure (including mooning). This does not include the non-disruptive: (a) expression of gender or sexual orientation or preference, or (b) display of affection during non-instructional time.~~

Jurisdiction

This policy applies to students, faculty, staff, appointees, or third-parties, regardless of sexual orientation or gender-identity, whenever the misconduct occurs:

A. On District property; or

B. Off District property if:

1. The conduct was in connection with a District or District-recognized program or activity; or
2. The conduct may have the effect of creating a hostile environment for a member of the District community.

Investigation

~~The Superintendent, Principal, or designee will investigate the complaint or appoint a qualified person to undertake the investigation on his or her behalf. The designated investigator shall ensure both parties have an equal opportunity to present evidence during an investigation. If the Complainant is a student under 18 years of age, the investigator will notify his or her parent(s)/guardian(s) that they may attend any investigatory meetings in which their child is involved. The complaint and identity of the Complainant will not be disclosed except: (1) as required by law, this policy, or (2) as necessary to fully investigate the complaint, or (3) as authorized by the Complainant.~~

~~The identity of any student witnesses will not be disclosed except: (1) as required by law or any collective bargaining agreement, or (2) as necessary to fully investigate the complaint, or (3) as~~

authorized by the parent/guardian of the student witness, or by the student if the student is 18 years of age or older.

The investigator will inform, at regular intervals, the person(s) filing a complaint under this procedure about the status of the investigation. Within 30 school business days of the date the complaint was filed, the investigator shall file a written report of his or her findings with the Superintendent. The investigator may request an extension of time. If a complaint of unlawful harassment contains allegations involving the Superintendent, the written report shall be filed with the Board, which will make a decision in accordance with the following section of this policy. The Superintendent will keep the Board informed of all complaints.

Reporting Procedures

Making a Complaint; Enforcement

All members of the school community, including sStudents, parents/guardians, school employees, and community members are encouraged to report claims or incidences of bullying, harassment, sexual harassment, or any other prohibited conduct to the Nondiscrimination Coordinator, Principal, Assistant Principal, Dean of Students, a Student Intervention Director, counselors, social workers, or a Complaint Manager. A student may choose to report to a person of the student's same sex. Complaints will be kept confidential to the extent possible given the need to investigate subject to the additional exceptions noted below. Students who make good faith complaints will not be disciplined.

An allegation that a student was a victim of any prohibited conduct perpetrated by another student shall be referred to the Principal, Assistant Principal, Dean of Students or a Student Interventions Director, for appropriate action.

The Superintendent shall insert into this policy the names, addresses, and telephone numbers of the District's current Nondiscrimination Coordinator and Complaint Managers. At least one of these individuals will be female, and at least one will be male.

Nondiscrimination Coordinator:

David RuhlandBrenda Horton

Name

201 N. Scoville

Address

Oak Park, IL 60302

708.434.3214

Complaint Managers:

Kris Johnson

Philip M. Prale TBD

Name

201 N. Scoville

Address

Oak Park, IL 60305

708.434.3714

Telephone

Name

201 N. Scoville

Address

Oak Park, IL 60302

708.434.3215

Telephone

Investigation

The District will follow its Uniform Grievance Procedure investigation process as outlined in 2:260 and as further detail below in investigating Title IX complaints. The Superintendent, Principal, or designee will investigate the complaint or appoint a qualified person to undertake the investigation on his or her behalf. The designated investigator shall ensure both parties have an equal opportunity to present evidence and witnesses during an investigation. If the Complainant is a student under 18 years of age, the designated investigator will notify his or her parent(s)/guardian(s) that they may attend any investigatory meetings in which their child is involved. The complaint and identity of the Complainant will not be disclosed except: (1) as required by law, this policy, or (2) as necessary to fully investigate the complaint, or (3) as authorized by the Complainant.

The identity of any student witnesses will not be disclosed except: (1) as required by law or any collective bargaining agreement, or (2) as necessary to fully investigate the complaint, or (3) as authorized by the parent/guardian of the student witness, or by the student if the student is 18 years of age or older.

The designated investigator will inform, at regular intervals, the person(s) filing a complaint under this procedure about the status of the investigation. Within 30 school business days of the date the complaint was filed, the designated investigator shall file a written report of his or her findings with the Superintendent. The designated investigator may request an extension of time. If a complaint of unlawful harassment contains allegations involving the Superintendent, the written report shall be filed with the Board, which will make a decision in accordance with the following section of this policy. The Superintendent will keep the Board informed of all complaints.

Interim Measures

During the course of an investigation, the District will remain ever mindful of the victim's well-being and will take ongoing steps to protect the victim from retaliation or harm and work with the victim to create a safety plan. Students shall not be retaliated against by other students, teachers, administrators, or other school staff for filing a sexual harassment complaint, reporting sexual harassment, or participating in a sexual harassment investigation. The District will also:

- Assist the victim in accessing available community and school supports, such as victim advocacy services, academic support, counseling services, disability, health, or mental health services, and legal advocacy agencies. Examples of such resources are as follows:
- Provide other security and support, which could include the District implementing a no-contact order, changing class schedules (including for the alleged perpetrator(s) pending the outcome of an investigation) or adjustments for assignments or tests; and
- Inform the victim of the right to report a crime to law enforcement simultaneously with filing a complaint pursuant to this policy – and provide the victim with assistance if the victim wishes to do so.

The District may not require a victim to participate in any Title IX investigation or in a disciplinary proceeding against a student.

Because the District is under a continuing obligation to address the issue of sexual discrimination, harassment and misconduct, reports of such incidents (including non-identifying reports) will also prompt the District to consider broader remedial action – such as increased monitoring, supervision, or security at locations where the reported incident occurred; increasing education and prevention efforts, including to targeted population groups; conducting climate assessments/victimization surveys; and/or revisiting its policies and practices.

Decision and Appeal

Within 5 school business days after receiving the designated investigator's report, the Superintendent shall mail his or her written decision to the Complainant and the accused by first class U.S. mail as well as to the designated investigator. All decisions shall be based upon the preponderance of evidence standard.

Within 10 school business days after receiving the Superintendent's decision, the Complainant or the accused may appeal the decision to the Board by making a written request to the Complaint Manager. The Complaint Manager shall promptly forward all materials relative to the complaint and appeal to the Board. Within 30 school business days, the Board shall affirm, reverse, or amend the Superintendent's decision or direct the Superintendent to gather additional information. Within 5 school business days of the Board's decision, the Superintendent shall inform the Complainant and the accused of the Board's action.

This procedure shall not be construed to create an independent right to a hearing before the Superintendent or Board. The failure to strictly follow the timelines in this investigation/grievance procedure shall not prejudice any party.

Notice of Policy

The Superintendent shall use reasonable measures to inform staff members and students of this policy, such as, by including it in the appropriate handbooks.

Responding to Sexual Harassment

In response to the investigation, the District will take any and all appropriate actions to remedy violations of this policy. Any District employee who is determined, after an investigation, to have engaged in conduct prohibited by this policy will be subject to disciplinary action up to and including discharge. Any District student who is determined, after an investigation, to have engaged in conduct prohibited by this policy will be subject to disciplinary action, including but not limited to, suspension and expulsion consistent with the discipline policy. Such actions taken against an employee or student who, after an investigation, is determined to have engaged in conduct prohibited by this policy, shall be instituted in order to prevent the recurrence of any sexual harassment or sexual violence and to remedy the effects of such action on the Complainant or others. Any person making a knowingly false accusation regarding prohibited conduct will likewise be subject to disciplinary action up to and including discharge, with regard to employees, or up to and including suspension and expulsion, with regard to students.

LEGAL REF.: 20 U.S.C. §1681 et seq., Title IX of the Educational Amendments.
34 C.F.R. Part 106.
105 ILCS 5/10-20.12, 10-22.5, 5/27-1, and 5/27-23.7.
775 ILCS 5/1-101 et seq., Illinois Human Rights Act.
23 Ill.Admin.Code §1.240 and Part 200.
Davis v. Monroe County Board of Education, 119 S.Ct. 1661 (1999).
Franklin v. Gwinnett Co. Public Schools, 112 S.Ct. 1028 (1992).
Gebser v. Lago Vista Independent School District, 118 S.Ct. 1989 (1998).
West v. Derby Unified School District No. 260, 206 F.3d 1358 (10th Cir., 2000).

CROSS REF.: 2:260 (Uniform Grievance Procedure), 5:20 (Workplace Harassment Prohibited),
7:10 (Equal Educational Opportunities), 7:180 (Prevention of and Response to
Bullying, Intimidation, and Harassment), 7:185 (Teen and Student Dating
Violence Prohibited), 7:190 (Student Behavior-Discipline), 7:240 (Conduct Code
for Participants in Extracurricular Activities)

ADOPTED: November-~~July~~ 20, 2017⁴