

## **SUBJECT: SEXUAL DISCRIMINATION IN THE WORKPLACE**

### **Overview**

The District is committed to creating and maintaining an environment which is free from discrimination and harassment. Sexual harassment is one form of workplace discrimination. This policy addresses sexual discrimination, including sexual harassment, in the workplace. It is just one component of the District's overall commitment to maintaining a discrimination and harassment-free educational and work environment.

Sexual discrimination, including sexual harassment, is a form of employee misconduct, a violation of District policy, and unlawful. Employees of every level who engage in sexual discrimination, including supervisory personnel who engage in sexual harassment, who knowingly allow such behavior to continue, or fail to report suspected sexual harassment will be subject to remedial and/or disciplinary action by the District. Sexual harassment may also subject the District to liability for harm to targets of sexual harassment. Harassers may also be individually subject to liability.

This policy is part of the district's effort to provide for the prompt and equitable resolution of complaints of sexual discrimination, including sexual harassment, in the workplace. The District will promptly respond to reports of sexual harassment in the workplace, ensure that all investigations are conducted within a reasonably prompt time frame and under a predictable fair grievance process that provides due process protections, imposes disciplinary measures and implements remedies when warranted.

Inquiries about this policy may be directed to a District Title IX Coordinator/Investigator and/or Title VII Investigator who will also address alleged violations of the New York State Human Rights Law ("HRL"), as applicable. The determination as to which District policies and/or documents are applicable is fact specific, and the investigator or coordinator/investigator should consult with a human resources administrator to determine which District policies and/or documents are applicable to the specific facts of the complaint. A complaint that involves Title IX will be processed pursuant to the provisions of this policy consistent with the Supervisory Responsibilities provisions set forth below.

### Scope and Application

This policy applies to all instances of sexual discrimination perpetrated against a "covered person," regardless of immigration status, by anyone in the workplace, including a co-worker, supervisor, or third-party such as a non-employee, paid or unpaid intern, vendor, building security, visitor, volunteer, parent/guardian, or student. For purposes of this policy, a "covered person" includes:

- a) Employees;
- b) Applicants for employment;
- c) Paid or unpaid interns; and
- d) Non-employees, which include anyone who is (or is employed by) a contractor, subcontractor, vendor, consultant, or other person providing services pursuant to a contract in the workplace.
- e) Volunteers and visitors

Sexual discrimination, including sexual harassment, in the workplace can occur between any individuals, regardless of their sex or gender. Unlawful sexual discrimination is not limited to the physical workplace itself. Sexual discrimination can occur on school property and at school functions

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which, for purposes of this policy, means a school-sponsored or school-authorized extracurricular event or activity regardless of where the event or activity takes place, including any event or activity that may take place virtually or in another state. It can also occur while employees are traveling for District business. Calls, texts, emails, and social media usage can constitute unlawful workplace harassment, even if they occur away from school property, on personal devices, or during non-work hours. Accordingly, conduct or incidents of sexual discrimination, including sexual harassment that create or foreseeably create a disruption within the District may be subject to this policy in certain circumstances.

Other District policies and documents such as regulations, procedures, collective bargaining agreements, and the District's Code of Conduct, may address misconduct related to sexual discrimination, including sexual harassment, and may provide for additional, different, or more specific grievance procedures depending on a number of factors including, but not limited to, who is involved and where the alleged sexual discrimination occurred. These documents must be read in conjunction with this policy.

The dismissal of a complaint under one policy or document does not preclude action under another related District policy or document.

**What Constitutes Sexual Discrimination**

Sexual discrimination is unlawful under federal, state, and, where applicable, local law. Sexual discrimination includes harassment on the basis of sex, sexual orientation, self-identified or perceived sex, gender (including gender expression, gender identity, and the status of being transgender).

Under New York State Human Rights Law, sexual discrimination, including sexual harassment is unlawful when it subjects an individual to inferior terms, conditions, or privileges of employment. Harassment need not be severe or pervasive to be unlawful, and can be any harassing conduct that consists of more than petty slights or trivial inconveniences.

Sexual harassment includes unwelcome conduct which is either of a sexual nature, or which is directed at an individual because of that individual's sex, sexual orientation, self-identified or perceived sex or gender when:

- a) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment, even if the reporting individual is not the intended target of the sexual harassment;
- b) Such conduct is made either explicitly or implicitly a term or condition of employment; or
- c) Submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual's employment.
- d) **Definitions specific to Title IX Sexual Discrimination:**

*Quid Pro Quo Sexual Harassment* – when an aid, benefit or service provided by the district is conditioned upon unwelcome sexual conduct; and/or

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*Hostile Environment Sexual Harassment* – conduct that is so severe, pervasive and objectively offensive that it effectively denies equal access to district programs or activities; and/or

*Acts of sexual assault, dating violence, domestic violence, stalking* – all of these acts are sexual harassment *per se*.

A sexually hostile work environment includes, but is not limited to, words, signs, jokes, pranks, intimidation or physical violence which are of a sexual nature, or which are directed at an individual because of that individual's sex, sexual orientation, self-identified or perceived sex, or gender. Sexual harassment also consists of any unwanted verbal or physical advances, sexually explicit derogatory statements or sexually discriminatory remarks made by someone which are offensive or objectionable to the recipient, which cause the recipient discomfort or humiliation, which interfere with the recipient's job performance.

*Quid Pro Quo* sexual harassment occurs when a person in authority tries to trade job benefits for sexual favors. This can include hiring, promotion, continued employment or any other terms, conditions, or privileges of employment.

Any covered person who feels harassed should report the conduct so that any violation of this policy can be corrected promptly. Any harassing conduct, even a single incident, can be addressed under this policy.

Examples of Sexual Discrimination

The following describes some actions that may constitute unlawful sexual harassment and that are strictly prohibited:

- a) Physical acts of a sexual nature, such as:
  1. Touching, pinching, patting, kissing, hugging, grabbing, brushing against another person's body or poking another person's body; and
  2. Rape, sexual battery, molestation or attempts to commit these assaults.
- b) Unwanted sexual advances or propositions, such as:
  1. Requests for sexual favors accompanied by implied or overt threats concerning the target's job performance, evaluation, a promotion or other job benefits or detriments; and
  2. Subtle or obvious pressure for unwelcome sexual activities.
- c) Sexually oriented gestures, noises, remarks or jokes, or comments about a person's sexuality or sexual experience, which create a hostile work environment.
- d) Sex stereotyping, which occurs when conduct or personality traits are considered inappropriate simply because they may not conform to other people's ideas or perceptions about how individuals of a particular sex should act or look.

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- e) Sexual or discriminatory displays or publications anywhere in the workplace, such as pictures, posters, calendars, graffiti, objects, promotional material, reading materials, or other materials that are sexually demeaning or pornographic. This includes such sexual displays on workplace computers or cell phones and sharing such displays while in the workplace.
- f) Hostile actions taken against an individual because of that individual's sex, sexual orientation, self-identified or perceived sex, gender (including gender identity, gender expression, and the status of being transgender) such as:
  - 1. Interfering with, destroying or damaging a person's workstation, tools or equipment, or otherwise interfering with the individual's ability to perform the job;
  - 2. Sabotaging an individual's work; and
  - 3. Bullying, yelling, or name-calling.

**Prohibition of Retaliatory Behavior (Whistle-Blower Protection)**

Unlawful retaliation can be any action that could discourage a covered person from coming forward to make or support a sexual harassment claim. Adverse action need not be job-related or occur in the workplace to constitute unlawful retaliation (e.g., threats of physical violence outside of work hours).

The District prohibits any retaliatory behavior directed against complainants, victims, witnesses, and/or any other individuals who participate in the investigation of a complaint of sexual discrimination, including sexual harassment. Such retaliation is unlawful under federal, state, and, where applicable, local law. The HRL protects any individual who has engaged in "protected activity" which occurs when a person has:

- a) Made a complaint of sexual harassment, either internally or with any anti-discrimination agency;
- b) Testified or assisted in a proceeding involving sexual harassment under the Human Rights Law or other anti-discrimination law;
- c) Opposed sexual harassment by making an oral or informal complaint of harassment to a supervisor, building principal, other administrator, or the CRCO;
- d) Reported that another employee has been sexually harassed; or
- e) Encouraged a fellow employee to report harassment.

Even if the alleged harassment does not turn out to rise to the level of a violation of law, the individual is protected from retaliation if the person had a good faith belief that the practices were unlawful. The retaliation provision is not, however, intended to protect persons making intentionally false charges of harassment.

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### **Reporting Allegations of Sexual Discrimination**

Preventing sexual discrimination, including sexual harassment, is everyone's responsibility. The District cannot prevent or remedy sexual discrimination unless it knows about it. Any covered person who has been subjected to behavior that may constitute sexual discrimination, including sexual harassment, is encouraged to report such behavior to a supervisor, building principal, other administrator, or to a Title VII investigator or Title IX coordinator/investigator. Anyone who witnesses or becomes aware of potential instances of sexual discrimination, including sexual harassment, should report such behavior.

Reports of sexual discrimination, including sexual harassment, may be made orally or in writing. A form for submission of a written complaint is posted on the District website, and all covered persons are encouraged to use this complaint form. Persons who are reporting sexual discrimination on behalf of another person should use the complaint form and note that it is being submitted on another person's behalf.

District employees must comply with reporting requirements in any other applicable District policy or document.

Any person who believes they have been a target of sexual discrimination, including sexual harassment, may also seek assistance in other available forums, as explained in this policy.

### **Supervisory Responsibilities**

All supervisors, building principals, and other administrators who receive a complaint or information about suspected sexual discrimination, observe what may be sexually harassing behavior or for any reason suspect that sexual discrimination, including sexual harassment, is occurring, are required to report such suspected sexual discrimination to any sexual discrimination investigator or coordinator. If the investigator or coordinator is the subject of the complaint or has a conflict of interest or other disqualifying reason, the report will be directed to another coordinator or investigator. If the District has not designated another investigator or coordinator, the Superintendent or the Human Resources Administrator will ensure that another person with the appropriate training and qualifications is appointed to act as the investigator or coordinator. In the event the complaint of sexual discrimination, including sexual harassment, involves a Human Resources Administrator or the Superintendent, the complaint will be filed with or referred to the Board President who will refer the complaint to a trained investigator not employed by the district for investigation.

In addition to being subject to discipline if they engaged in sexually discriminatory conduct themselves, supervisors, building principals, and other administrators will be subject to discipline for failing to report suspected sexual discrimination, including incidents of sexual harassment, or otherwise knowingly allowing such sexual discrimination to continue.

Supervisors, building principals, and other administrators will also be subject to discipline for engaging in any retaliation.

### **Investigating Complaints of Sexual Discrimination**

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All complaints or information about sexual discrimination will be investigated, whether that information was reported in oral or written form. Investigations will be conducted in a timely manner, and will be confidential to the extent possible.

An investigation of any complaint, information or knowledge of suspected sexual discrimination, including sexual harassment, will be prompt and thorough, completed as soon as possible. The investigation will be kept confidential to the extent possible. Disclosure may, however, be necessary to complete a thorough investigation of the charges and/or notify law enforcement officials. All persons involved, including complainants, witnesses, and alleged harassers will be accorded due process, as outlined below, and in accordance with any applicable collective bargaining agreements to protect their rights to a fair and impartial investigation.

The District will not tolerate retaliation against anyone who files complaints, supports another's complaint, or participates in an investigation regarding a violation of this policy.

While the process may vary from case to case, investigations should be done in accordance with the following steps:

- a) Upon receipt of a complaint, the Title VII investigator or Title IX coordinator/investigator will conduct an immediate review of the allegations, and take any interim actions, as described in this policy.
- b) All complaints of sexual discrimination, including sexual harassment, will be investigated regardless of the form in which those complaints are made. For oral complaints, the individual will be encouraged to complete and submit the complaint form, which is available on the District website. If they refuse, a complaint form based on the oral report will be prepared by the investigator or coordinator/investigator. The complainant will be provided a copy of the completed complaint form.
- c) If documents, emails, or phone records are relevant to the investigation, efforts must be made to obtain and preserve them.
- d) All relevant documents, emails, phone records, including all electronic communications, must be reviewed.
- e) Interview all parties involved, including any relevant witnesses. If a student is involved, the District will follow all applicable District policies and procedures regarding questioning students.
- f) Create a written report which contains the following:
  1. A list of all documents reviewed, along with a detailed summary of relevant documents;
  2. A list of names of those interviewed, along with a detailed summary of their statements;
  3. A timeline of events subject to the investigation;
  4. A summary of prior relevant incidents, reported or unreported; and

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5. The basis for the decision and final determination of the complaint including the findings regarding the allegations of discrimination, together with recommended corrective action(s), if any.
- g) The report will be forwarded to the Superintendent and Human Resources Administrator prior to the issuance of the findings to the complainant and alleged offending party, unless such individual is the subject of the complaint. The report will be kept on file in a secure and confidential location in the Human Resources Department.
- h) Promptly notify the complainant and the individual(s) about whom the complaint was made of the findings of the investigation.
- e) Inform the individual who reported of the right to file a complaint or charge externally as outlined in this policy.

If an investigation reveals that sexual discrimination, including sexual harassment, has occurred, the District will take immediate corrective action as warranted in accordance with applicable law and regulation, as well as any applicable District policy, regulation, procedure, collective bargaining agreement, third-party contract, or other document such as the District's Code of Conduct.

**Annual Training**

The District will provide a sexual discrimination prevention training program to all employees on an annual basis. The training will be interactive and will include:

- e) An explanation of sexual discrimination, including sexual harassment, consistent with guidance issued by the Department of Labor in consultation with the Division of Human Rights;
- b) Examples of conduct that would constitute unlawful sexual discrimination, including sexual harassment;
- c) Information concerning the federal and state statutory provisions concerning sexual discrimination, including sexual harassment, and remedies available to victims of sexual discrimination;
- d) Information concerning employees' rights of redress and all available forums for adjudicating complaints; and
- e) Information addressing conduct by supervisors and any additional responsibilities for such supervisors.

**Notification**

The District will provide this policy to all employees in writing. The District will post this policy prominently throughout the District to the extent practicable.

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At the time of hiring and at every annual sexual discrimination prevention training program, the District will provide each employee a notice containing this policy and the information presented at such training program.

This notice will be provided in English and in the language identified by the employee as their primary language, provided that the New York State Commissioner of Labor has published a template of the model materials in that language.

The notice will be delivered in writing, either in print or digitally. The notice will either link to or include the policy and training materials as an attachment or printed copy.

**Legal Protections and External Remedies**

Sexual discrimination, including sexual harassment, is not only prohibited by the District but is also prohibited by state, federal, and, where applicable, local law.

Aside from the District's internal process, individuals 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, an individual may seek the legal advice of an attorney.

In addition to those outlined below, individuals may have additional legal protections.

New York State Human Rights Law (HRL)

The HRL, codified in the Executive Law, Art. 15, Section 290 et seq., applies to all employers in New York State with regard to sexual discrimination, including sexual harassment, and protects covered persons regardless of immigration status. A complaint alleging violation of the HRL may be filed either with the Division of Human Rights (DHR) or in New York State Supreme Court.

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

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

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

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

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

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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 USC Section 2000e et seq.). An individual can file a complaint with the EEOC anytime within 300 days from the harassment and there is no cost to file an EEOC complaint. 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 individual 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 the DHR, the DHR will file the complaint with the EEOC to preserve the right to proceed in federal court.

### Title IX

Title IX of the Education Amendments Act of 1972 ("Title IX") prohibits discrimination on the basis of sex in any federally funded education program or activity. The U.S. Department of Education's Office for Civil Rights (OCR) enforces Title IX.

For more information about how to file a complaint, contact OCR at 800-421-3481 (TDD 800-877-8339) or visit: <https://www2.ed.gov/about/offices/list/ocr/docs/howto.html>. The website contains information about filing the complaint online, by mail, or by email.

### Local Protections

Many localities enforce laws protecting individuals from sexual discrimination, including sexual harassment. An individual should contact the county, city, or town in which they live to find out if such a law exists.

### Local Police Department

If the sexual discrimination, including sexual harassment, involves unwanted physical touching, coerced physical confinement, or coerced sex acts, the conduct may constitute a crime and the local police department should be contacted.

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References: Title VII of the Civil Rights Act of 1964, 42 USC § 2000e et seq.  
Title IX of the Education Amendments Act of 1972, 20 USC § 1681 et seq.  
29 CFR § 1604.11(a)  
34 CFR Subtitle B, Chapter I  
Civil Service Law § 75-b  
New York State Human Rights Law, Executive Law § 290 et seq.  
Labor Law § 201-g

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