

GREENBURGH ELEVEN UFSD POLICY 9110.2
WORKPLACE SEXUAL HARASSMENT

Introduction, Statement of Policy, Persons Covered

The Board of Education recognizes that providing a workplace which is free from sexual harassment and/or sexual coercion is important to the welfare of employees and others who provide services to the School District, and the efficient operation of the District. Sexual harassment is against the law and all persons have a legal right to a workplace free from sexual harassment.

Therefore, the Board prohibits and condemns all forms of sexual harassment of employees and others who provide services to the District, whether by other District employees and agents, students, or third parties such as employees or agents of Children’s Village, school volunteers, visitors, contractors or vendors.

This policy covers all District employees, applicants for employment, interns (whether paid or unpaid), volunteers at the District, contractors and persons conducting business, regardless of immigration status, with the District, as well as persons employed by companies who contract to provide services to the District. This includes subcontractors, vendors, consultants, independent contractors, “gig” workers and temporary workers.

As further described below, any person covered by this policy who believes they have been sexually harassed is urged to file a complaint internally with the Building Level Administrator, the District Title XI Coordinator, the Assistant Superintendent for Instructional Programs and Personnel, or the Superintendent of Schools. A complaint form is attached to this Policy.

In the case of external service providers and their employees, such complaints may also be referred by the District to the external organization for review.

Any person who believes they have been sexually harassed can also file a complaint with a government agency or in court under federal, state or local antidiscrimination laws. This process is further described below.

Definition of sexual harassment

For purposes of this policy, “sexual harassment” is a form of sex discrimination and is unlawful under federal, state, and (where applicable) local law. Sexual harassment can occur between any individuals, regardless of their sex or gender. Sexual harassment includes harassment on the basis of sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity and the status of being transgender. 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 when:

- 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;
- It creates a sexually hostile or repugnant work atmosphere caused by comments, gestures, printed, photographic or digital materials, etc., whether or not the affected employee's employment or working conditions are implicated;
- Such conduct is made either explicitly or implicitly a term or condition of employment; or
- Submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual's employment or it is a threat to the employment of an individual or his/her working conditions in return for sexual favors or an intimate personal relationship.

A sexually harassing 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 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.

Sexual harassment also 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. This is also called "quid pro quo" harassment.

Any person covered by this policy who feels harassed should report 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 harassment

The following describes some of the types of acts that may be unlawful sexual harassment and that are strictly prohibited:

- Physical acts of a sexual nature, such as:
 - Touching, pinching, patting, kissing, hugging, grabbing, brushing against another employee's body or poking another employee's body;
 - Rape, sexual battery, molestation or attempts to commit these assaults.
- Unwanted sexual advances or propositions, such as:
 - 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;
 - Subtle or obvious pressure for unwelcome sexual activities.
 - Sexually oriented gestures, noises, remarks or jokes, or comments about a person's sexuality or sexual experience, which create a hostile work environment.

- Sex stereotyping 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.
- Sexual or discriminatory displays or publications anywhere in the workplace, such as:
 - Displaying 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.
- Hostile actions taken against an individual because of that individual's sex, sexual orientation, gender identity and the status of being transgender, such as:
 - Interfering with, destroying or damaging a person's workstation, tools or equipment, or otherwise interfering with the individual's ability to perform the job;
 - Sabotaging an individual's work;
 - Bullying, yelling, name-calling.

Under no circumstances shall officers, supervisory personnel or other employees of the District sexually harass or sexually coerce any person in the workplace or at any time while in the employ of the District or at school-related functions, whether or not occurring on School District premises. Unlawful sexual harassment can occur while employees are traveling for business or at employer sponsored events or parties. Calls, texts, emails, and social media usage by employees can constitute unlawful workplace harassment, even if they occur away from the workplace premises, on personal devices or during non-work hours. If such harassment or coercion occurs, the affected employee is encouraged to report the incident as soon as possible to one of the following designees:

1. Building Level Administrator.
2. District Title IX Coordinator.
3. Assistant Superintendent for Instructional Programs and Personnel.
4. The Superintendent of Schools.

The Superintendent of Schools shall establish and publish procedures for the presentation, investigation and resolution of such complaints. Such procedures shall provide for a final determination to be made by the Superintendent of Schools, and for review of any such final determination by the Board of Education upon request of the complainant. Reports of sexual harassment may be made verbally or in writing. A form for submission of a written complaint is attached to this Policy, and all employees are encouraged to use this complaint form. Employees who are reporting sexual harassment on behalf of other employees or non-employees should use the complaint form and note that it is on another employee's behalf. All complaints or information about sexual harassment will be investigated, whether that information was reported in verbal 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 harassment will be prompt and thorough, commenced immediately and completed as soon as possible. All persons involved, including complainants, witnesses and alleged harassers will be

accorded due process, as outlined below, to protect their rights to a fair and impartial investigation.

All supervisors and managers who receive a complaint or information about suspected sexual harassment, observe what may be sexually harassing behavior or for any reason suspect that sexual harassment is occurring, are required to report such suspected sexual harassment to Building Level Administrator, the District Title XI Coordinator, the Assistant Superintendent for Instructional Programs and Personnel, or the Superintendent of Schools. In addition to being subject to discipline if they engaged in sexually harassing conduct themselves, supervisors and managers will be subject to discipline for failing to report suspected sexual harassment or otherwise knowingly allowing sexual harassment to continue. Supervisors and managers will also be subject to discipline for engaging in any retaliation.

Acts of sexual harassment or sexual coercion committed by any person other than an officer, supervisory personnel or other employee or non-employee of the District, such as a student, should be reported, and will be responded to, under the Code of Conduct (Policy # 5300).

Sexual harassment will not be tolerated. Any employee or individual covered by this policy who engages in sexual harassment or retaliation will be subject to remedial and/or disciplinary action (e.g., counseling, suspension, termination) pursuant to applicable laws, regulations, contracts, and collective bargaining agreements.

Retaliation Is Prohibited

There shall be no reprisal of any kind brought against an employee or other person covered by this policy for the good faith reporting of an incident pursuant to this policy. No person covered by this Policy shall be subject to adverse action because the employee reports an incident of sexual harassment, provides information, or otherwise assists in any investigation of a sexual harassment complaint. The District will not tolerate such retaliation against anyone who, in good faith, reports or provides information about suspected sexual harassment. Any employee of the District who retaliates against anyone involved in a sexual harassment investigation will be subjected to disciplinary action, up to and including termination.

All person covered by this policy who believe they have been subject to such retaliation should inform the Building Level Administrator, the District Title XI Coordinator, the Assistant Superintendent for Instructional Programs and Personnel, or the Superintendent of Schools. All person covered by this policy who believe they have been a target of such retaliation may also seek relief in other available forums, as explained below in the section on Legal Protections.

Additionally, unlawful retaliation can be any action that could discourage a worker 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). Such retaliation is unlawful under federal, state, and (where applicable) local law. The New York State Human Rights Law protects any individual who has engaged in “protected activity.” Protected activity occurs when a person has:

- made a complaint of sexual harassment, either internally or with any anti-discrimination agency;
- testified or assisted in a proceeding involving sexual harassment under the Human Rights Law or other anti-discrimination law;
- opposed sexual harassment by making a verbal or informal complaint to management, or by simply informing a supervisor or manager of harassment;
- reported that another employee has been sexually harassed; or
- 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. However, the retaliation provision is not intended to protect persons making intentionally false charges of harassment.

Legal Protections and External Remedies

Sexual harassment is not only prohibited by the District but is also prohibited by state, federal, and, where applicable, local law. Aside from the internal process within the District employees 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, you may seek the legal advice of an attorney. In addition to those outlined below, employees in certain industries may have additional legal protections.

(a) State Human Rights Law / DHR

The Human Rights Law (HRL), codified as N.Y. Executive Law, art. 15, § 290 et seq., applies to all employers in New York State with regard to sexual harassment, and protects employees, paid or unpaid interns and non-employees, regardless of immigration status. A complaint alleging violation of the Human Rights Law may be filed either with the Division of Human Rights (DHR) or in New York State Supreme Court.

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

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

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

DHR will investigate your complaint and determine whether there is probable cause to believe that sexual harassment has occurred. Probable cause cases are forwarded to a public hearing before an administrative law judge. If sexual harassment is found after a hearing, DHR

has the power to award relief, which varies but may include requiring your employer to take action to stop the harassment, or redress the damage caused, including paying of monetary damages, attorney's fees and civil fines.

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

Contact DHR at (888) 392-3644 or visit 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.

(b) Civil Rights Act of 1964 / EEOC

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 U.S.C. § 2000e *et seq.*). An individual can file a complaint with the EEOC anytime within 300 days from the harassment. There is no cost to file a complaint with the EEOC. 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 employee 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 or via email at info@eeoc.gov.

If an individual filed an administrative complaint with DHR, DHR will file the complaint with the EEOC to preserve the right to proceed in federal court.

(c) Educational Amendments of 1972, Title IX / OCR

The United States Department of Education's Office of Civil Rights ("OCR") enforces Title IX of the Educational Amendments of 1972 (codified as 20 U.S.C. §1681, *et seq.*). An individual can file a complaint with OCR anytime within 180 days from the harassment.

OCR does not handle cases that are being addressed by another agency or within a school's formal grievance procedure if OCR anticipates that the school or agency filed with will provide a resolution process comparable to OCR's. Once the other complaint process is completed, the individual has 60 days to file a complaint with OCR. OCR's first step will be to

determine whether to defer to the result reached in the other process. The regulations under Title IX do not require an individual to file with OCR prior to filing a claim under these laws in federal court.

OCR evaluates, investigates, and resolves complaints alleging sex discrimination. The PDF complaint form can be found at:

<https://www2.ed.gov/about/offices/list/ocr/complaintform.pdf>. The electronic complaint form can be found at: <https://ocrcas.ed.gov/>.

OCR's New York office contact information is: New York Office, Office for Civil Rights, U.S. Department of Education, 32 Old Slip, 26th Floor, New York, NY 10005-2500. You may call 646-428-3900 or visit <https://www2.ed.gov/about/offices/list/ocr/index.html>.

(d)Local Laws

Some cities and other localities enforce local laws protecting individuals from sexual harassment and discrimination. An individual should contact the county, city or town in which they live to find out if such a law exists. For example, employees who work in New York City may file complaints of sexual harassment with the New York City Commission on Human Rights. Contact their main office at Law Enforcement Bureau of the NYC Commission on Human Rights, 40 Rector Street, 10th Floor, New York, New York; call 311 or (212) 306-7450; or visit www.nyc.gov/html/cchr/html/home/home.shtml.

(e)Contact the Local Police Department

If the harassment involves unwanted physical touching, coerced physical confinement or coerced sex acts, the conduct may constitute a crime. Contact the local police department.

Discipline

It is the policy of this District to appropriately discipline supervisory employees and other personnel, including dismissal from employment, when there is a finding that they have committed one or more acts of sexual harassment and/or sexual coercion. Disciplinary proceedings shall be conducted in accordance with statutory and contractual requirements, where applicable.

Training

The District shall provide in-service training for the supervisory staff and other employees regarding sexual harassment in the workplace on an annual basis. Such training will be interactive, will explain what sexual harassment is consistent with guidance issued by the New York State Department of Labor in consultation with the Division of Human Rights, will include examples of conduct that would constitute unlawful sexual harassment, and provide information about (1) federal and state statutory provisions concerning sexual harassment and remedies for victims, (2) rights of redress of employees and where they may adjudicate complaints, (3) addressing conduct by supervisors and supervisors' additional responsibilities.

A copy of this policy shall be distributed to all supervisory personnel and all other employees.

Prohibited or Restricted Clauses in Contracts

Pursuant to New York law, mandatory clauses to arbitrate sexual harassment claims in District contracts are prohibited, except when inconsistent with federal law.

Pursuant to New York law, nondisclosure agreements for sexual harassment complainants are prohibited, except when the complainant consents to it. The District may use such a nondisclosure agreement only when confidentiality is the complainant's preference, the complainant has 21 days to consider whether or not they want the confidentiality provision, and the complainant has seven days to revoke his or her acceptance of such a confidentiality provision.

Liability for Employees

If a school district employee is personally liable for intentional wrongdoing related to a sexual harassment claim, then he or she must pay the District back his or her proportional share within 90 days after the District's payment.

Legal References:

Educational Amendments of 1972, Title IX, 20 U.S.C. §1681, *et seq.*

Title VII of the Civil Rights Act (1964), 42 U.S.C. §2000-e; 34 C.F.R. §100, *et seq.*

Labor Law §201-g

Executive Law §296-d

C.P.L.R. §7515

C.P.L.R. §5003-b

General Obligations Law §5-336

Public Officers Law §18-A

Faragher v. City of Boca Raton, 524 U.S. 780 (1998)

Burlington Industries v. Ellerth, 524 U.S. 742 (1998)

Onacle v. Sundowner Offshore Services, Inc., 523 U.S. 75 (1998)

Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57 (1986)

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Greenburgh Eleven Union Free School District
Sexual Harassment Complaint Form

New York State Labor Law requires all employers to adopt a sexual harassment prevention policy that includes a complaint form to report alleged incidents of sexual harassment.

If you believe that you have been subjected to sexual harassment, you are encouraged to complete this form and submit it to the Building Level Administrator, the District Title XI Coordinator, the Assistant Superintendent for Instructional Programs and Personnel, or the Superintendent of Schools. You will not be retaliated against for filing a complaint.

If you are more comfortable reporting verbally or in another manner, the Building Level Administrator, the District Title XI Coordinator, the Assistant Superintendent for Instructional Programs and Personnel, or the Superintendent of Schools should complete this form, provide you with a copy and follow its sexual harassment prevention policy by investigating the claims as outlined at the end of this form.

For additional resources, visit: ny.gov/programs/combating-sexual-harassment-workplace

COMPLAINANT INFORMATION

Name: _____

Work Address: _____ Work Phone: _____

Job Title: _____ Email: _____

Select Preferred Communication Method: Email Phone In person

SUPERVISORY INFORMATION

Immediate Supervisor's Name: _____

Title: _____

Work Phone: _____ Work Address: _____

COMPLAINT INFORMATION

1. Your complaint of Sexual Harassment is made about the conduct of:

Name: _____ Title: _____

Work Address: _____ Work Phone: _____

Relationship to you: Supervisor Subordinate Co-Worker Other

2. Please describe what happened and how it is affecting you and your work. Please use additional sheets of paper if necessary and attach any relevant documents or evidence.

3. Date(s) sexual harassment occurred:

Is the sexual harassment continuing? Yes No

4. Please list the name and contact information of any witnesses or individuals who may have information related to your complaint:

The last question is optional, but may help the investigation.

5. Have you previously complained or provided information (verbal or written) about related incidents? If yes, when and to whom did you complain or provide information?

If you have retained legal counsel and would like us to work with them, please provide their contact information.

Signature: _____ *Date:* _____

Instructions for District

If you receive a complaint about alleged sexual harassment, follow your sexual harassment prevention policy.

An investigation involves:

- Speaking with the target
- Speaking with the alleged harasser
- Interviewing witnesses
- Collecting and reviewing any related documents

While the process may vary from case to case, all allegations should be investigated promptly and resolved as quickly as possible. The investigation should be kept confidential to the extent possible.

Document the findings of the investigation and basis for your decision along with any corrective actions taken and notify the employee and the individual(s) against whom the complaint was made. This may be done via email.

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