

It is the policy of Flint Community Schools to maintain a working environment that is free from sexual harassment. No staff member of this District shall be subjected to any form of sexual harassment or intimidation⁵.

It shall be a violation of this policy for any Board member, employee, or student to harass any member of the District staff through conduct or communications of a sexual nature as defined in this policy.

Each administrator shall be responsible for promoting understanding and acceptance of, and assuring compliance with, state and federal laws, and District policy and procedures governing sexual harassment within his/her building or office.

Definition

Sexual harassment means unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal or physical conduct of a sexual nature when:

- a. Submission to such conduct is made either explicitly or implicitly a term or condition of a person's employment; or
- b. Submission to or rejection of such conduct by a Board member or employee is used as the basis for decisions affecting the employee; or
- c. Such conduct has the purpose or effect of unreasonably interfering with an employee's performance or creating a hostile work environment.

Sexual harassment, may include, but is not limited to, the following:

- Verbal harassment or abuse;
- Pressure for sexual activity;
- Repeated remarks with sexual or demeaning implications;
- Unwelcome touching;
- Suggesting or demanding sexual involvement, accompanied by implied or explicit threats concerning employee's safety or job.

⁵ All school districts are required under Michigan law to adopt and implement a written sexual harassment policy that prohibits, at a minimum, sexual harassment by school district employees, board members, and pupils directed toward other employees or pupils. MCL 380.1300a

■ In addition, any form of retaliation against the complainant or witness is in itself a form of sexual harassment.

Notification⁶

Notice of this policy will be circulated annually to all school buildings and departments within the District, and incorporated in teacher, student and parent/guardian handbooks. All new hires of the District will be required to review and sign off on this policy and its related complaint procedure.

Training sessions on this policy and the prevention of sexual harassment shall be held for all Board members, administrators, teachers and employees of the District. In addition, students will have available as part of their curriculum and instructional program, sessions on this policy and the prevention of student-to-student sexual harassment.

Approved: July 11, 2001

Reviewed:

LEGAL REF: MCL 37.2101 *et seq.*; MCL 380.11a; Title IX of the Education Amendments of 1972.

⁶ An employer is subject to vicarious liability to a victimized employee for an actionable hostile environment created by a supervisor with immediate (or successfully higher) authority over the employee. When no tangible employment action is taken, a defending employer may raise an affirmative defense to liability or damages, subject to proof by a preponderance of the evidence.

The defense comprises two necessary elements: (a) that the employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior and (b) that the plaintiff employee unreasonably failed to take advantage of preventive or corrective opportunities provided by the employer or to avoid harm otherwise. *Burlington Industries, Inc. v Ellerth*, 118 S Ct 2257 (1998); *Faragher v City of Boca Raton*, 118 S Ct 2275 (1998).

Any employee who alleges sexual harassment by a Board member, staff member or student in this District, may use the procedure detailed in the appropriate current negotiated agreement or faculty handbook or may complain directly to his/her immediate supervisor, building principal, school counselor, District Title IX coordinator or designated administrator. Filing a grievance or otherwise reporting sexual harassment will not reflect upon the individual's status, nor will it affect future employment or work assignments.

The right to confidentiality, for both the accuser and the accused, will be respected consistent with the District's legal obligations and with the necessity to investigate allegations of misconduct and to take corrective action when this conduct has occurred.

Grievance Procedure

Any employee in the District who believes that he/she has been subjected to discriminatory and/or sexual harassment shall report the incident(s) to the Superintendent, immediate supervisor, Title IX coordinator, or designated administrator.

Should a building or central office administrator be the subject of the immediate complaint or have an apparent conflict of interest in relation to it, he or she will not participate in any way in the investigation of or the decision regarding the complaint.

Upon the filing of a complaint, the designated administrator shall conduct a prompt and complete investigation. The officer shall attempt to resolve the problem through the following steps:

1. Interview the complainant and document the interview.
 - a. Request that the complaint be put in writing, if possible.
 - b. Obtain the names of witnesses who can be contacted to substantiate the charges being made and secure permission of the complainant to interview them.

2. Interview the accused and document the interview.
 - a. Re-emphasize the District's policy regarding insult, intimidation and harassment without making judgments at this stage.
 - b. Keep the identity of the complainant confidential, if possible.
3. Interview all witnesses identified by the parties and document the interview.
4. Review the personnel files or student records/files of the complainant and the accused for any history of problems.
5. Make a determination on the merits of the complaint.

■ **If the investigation shows that the complaint is without merit, the following action will be taken:**

1. The investigation will be closed.
2. The designated administrator's findings and reasons for them will be discussed with the complainant.
3. Consideration will be given to disseminating the results of the investigation to employees or students who have knowledge of it.
4. All references to the complaint will be removed from the accused party's personnel file.
5. The District's policy regarding discriminatory and/or harassment and the mechanism for complaint resolution will be reiterated to all employees or students involved in the investigation.
6. All documentation regarding the complaint and the investigation will be maintained in a separate confidential file in the event that litigation is commenced or a charge is filed with the Equal Employment Opportunity Commission or the Michigan Department of Civil Rights.

■ **If the investigation shows that the complaint has merit, the following action will be taken:**

1. The investigation will be closed.

2. The designated administrator will confer with the Board and Superintendent to determine what action is necessary to resolve the complaint and prevent recurrence.
 - a. The complainant should be made whole: in the case of an employee, for any lost earnings, employment opportunities, personnel records should be corrected.
 - b. The potential for continuing problems should be alleviated by reassignment where possible.
3. The parties will be advised of the results of the investigation and the actions to be taken.
4. Appropriate discipline will be imposed, as required by the strength of the evidence, the severity of the incident, and the position and prior record of the offender.
5. All actions will be documented and a record placed in the offender's permanent personnel file or student discipline records.
6. The District's policy regarding discriminatory and/or sexual harassment and the mechanism for complaint resolution will be reiterated to all Board members, employees, or students involved in the investigation.
7. All documentation regarding the complaint and the investigation will be maintained in a separate confidential file in the event that litigation is commenced or a charge is filed with the Equal Employment Opportunity Commission or the Michigan Department of Civil Rights.

All complaints, interviews and investigations will be treated with the strictest confidentiality and utmost discretion. Only those Board members, employees, or students whose participation in the investigation of a complaint was essential to its resolution will be informed of it.

The Board reserves the right to contact outside investigators for sensitive and/or extensive complaints of harassment.

Sanctions⁷

- a. A substantiated charge against a staff member in the District shall subject that staff member to disciplinary action, up to and including discharge.
- b. A substantiated charge against a student in the District shall subject that student to disciplinary action, which may include suspension or expulsion, consistent with the *Code for Student Code*.
 1. A substantiated charge against a Board member in the District shall subject that Board member to any legal and disciplinary action allowed under current law.

⁷ MCL 380.1300a requires districts to specify penalties for violating the district's sexual harassment policy.