

**AMEND BOARD REPORT 97-0827-PO5
AMEND BOARD REPORT 94-0622-PO1 AMENDMENT TO THE
POLICY AGAINST SEXUAL HARASSMENT AND PROCEDURES
FOR EMPLOYEE AND STUDENT COMPLAINTS**

THE CHIEF EXECUTIVE OFFICER RECOMMENDS:

That the Chicago Board of Education adopt the amendments to the Policy Against Sexual Harassment and Procedures For Employee and Student Complaints.

SUBJECT: ~~POLICY AGAINST SEXUAL HARASSMENT AND PROCEDURES FOR EMPLOYEE AND STUDENT COMPLAINTS~~

ISSUE: It shall be the policy of the Board to maintain a work and learning environment that encourages respect for the dignity of each individual. Sexual harassment by any employee, student, or third party, whether in schools, at school-related extracurricular functions, Central Office or elsewhere, will not be tolerated by the ~~Chicago School Reform Board of Trustees~~ Chicago Board of Education or the Chief Executive Officer. This policy applies to all Board employees, students, and school personnel and includes employees, students, contractors, consultants, and volunteers. Likewise, retaliation against anyone who in good faith reports or investigates sexual harassment is expressly forbidden. Violators of this Policy will be subject to discipline, up to and including dismissal or expulsion, contract termination or debarment as set forth hereinafter.

PRESENT POLICY:
97-0827-PO5 94-0622-PO1

HISTORY OF BOARD ACTION:
The Board passed the first Sexual Harassment Policy in 1994, Board Report 94-0622-PO6. The policy was amended on August 27, 1997, Board Report 97-0827-PO5.

RECOMMENDATION:
Amend Sexual Harassment Policy to:

I. STATEMENT OF POLICY

- A. The Board of Education of the City of Chicago, ("Board") is committed to providing a work and learning environment in which all individuals are treated with respect and dignity. Each employee and student has the right to work and learn in an environment that is free of discrimination, including sexual harassment. No person should be required to endure sexual harassment by supervisors, peers, which includes student-on-student sexual harassment, faculty members, educational support staff, independent contractors or vendors or work or learn in a hostile environment as a condition of employment or pursuit of academic excellence. Furthermore, this policy applies to all phases of employment, and academic status, including, but not limited to recruitment, testing, hiring, upgrading, promotions or demotions, transfers, layoffs, terminations, suspensions, expulsions, rates of pay, benefits and selection for training. The Board also is committed to preventing sexual harassment of persons receiving Board services.

- B. The Board recognizes that the elimination of sexual harassment in the workplace and attendance centers will create a better work and learning environment for Board employees and Chicago Public School students, increase employee productivity and student performance, and improve working and academic relationships for all Board employees and Chicago Public School students. It is the policy of the Board to prohibit sexual harassment in the workplace, in all attendance centers, and in connection with all extra-curricular, athletic, and other programs sponsored by the school whether occurring at the school or at another location. Sexual Harassment is a violation of the law and will not be tolerated. Employees and students who engage in sexual harassment will be subject to discipline, up to and including discharge or expulsion.
- C. This policy is intended to create guidelines and procedures for the investigation of sexual harassment complaints and for disciplining those employees and students who are determined to have engaged in sexual harassment. Nothing in this policy is intended to nor shall be construed to create a private right of action against the Board or any of its employees. No part of this policy shall be construed to create contractual or other rights or expectations. Furthermore, nothing herein is intended to affect the right of any person to make a charge of discrimination at any state or federal agency with jurisdiction over such claims.

II. CONDUCT PROHIBITED

- A. As used in this policy, sexual harassment means any un-welcomed sexual advance or request for sexual favors or conduct of a sexual nature when submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, participation in an education program or activity or receipt of Board services; or when submission to or rejection of such conduct by an individual is used as the basis of any employment, educational or service decision affecting the individual; or when such conduct has the purpose or effect of substantially interfering with the work performance of an employee, a student's ability to participate in or benefit from an education program or activity or creating an intimidating, hostile or offensive work or learning environment. Furthermore, gender-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex, but not involving conduct of a sexual nature, may constitute a form of sex discrimination.

There is a broad range of conduct by supervisors, co-workers, faculty, educational support staff, students and third parties which can, in certain circumstances, be considered sexual harassment. This includes, but is not limited to sexually suggestive or offensive remarks; sexually suggestive pictures; sexually suggestive gesturing; verbal harassment or abuse of a sexual nature; harassing, abusive or sexually suggestive or offensive messages sent by e-mail or other computer-based means of transmission; subtle or direct propositions for sexual favors, and touching, patting, or pinching. Sexual harassment may be directed against a particular person or persons, or a group. Sexual harassment also can result from words or conduct by Board employees or students toward members of the public served by the Board.

- B. Voluntary social relationships between Board employees are not prohibited by this policy. However, the existence of a romantic relationship between administrators or supervisors, and vendors or subordinates, has the inherent danger of coercion, or at least has the appearance of impropriety. Therefore, any administrator or supervisor who has such a relationship with another Board employee over whom he or she has any supervisory authority or with a vendor or contractor over whom he or she has authority to approve or suggest approval of a contract, must report this fact to his or her supervisor, or may be subject to discipline. The supervisor or administrator who receives such information must discreetly seek confirmation from the subordinate, vendor or contractor, that the relationship is both welcomed and consensual. Failing to receive confirmation, that supervisor or administrator must treat that relationship as one of sexual harassment.

Voluntary social relationships between students, that are consistent with the Uniform Discipline Code, are not prohibited by this policy. This policy, however, expressly prohibits sexual conduct between school employees or third parties and Chicago Public School students.

- C. Any ~~supervisor or administrator~~ individual in any of the positions identified in paragraph III, section 2 (a) or (b) or section 3 (a) or (b) who is aware of or should be aware of sexually harassing conduct by another employee or a student, whether or not anyone complains about such harassment, but fails to report that conduct as required in this policy, may be subject to discipline.
- D. Retaliation against any person for having made a good faith complaint or report of sexual harassment, or participating or aiding in an investigation of sexual harassment, is strictly prohibited. Any person who believes that he or she has been subjected to retaliation should bring the retaliatory conduct to the attention of the Board's Sexual Harassment Officer or designee. Retaliation will be considered a serious act of misconduct subject to appropriate discipline up to and including discharge or expulsion.
- E. Any employee or student whose allegations are found to be both false and brought with malicious intent will be subject to disciplinary action under the Employee Discipline Code or the Uniform Discipline Code

**III. ALLEGATIONS OF SEXUAL HARASSMENT
BROUGHT BY BOARD EMPLOYEES OR STUDENTS**

A. PROCEDURES

- 1. The following Board employees or students acting alone or joining together may make an oral or written complaint of sexual harassment:
 - a. Any employee or student who believes he or she is the subject of sexual harassment;
 - b. Any employee or student who has knowledge of a sexually harassing or offensive work or learning environment, or other sexual harassment; and
 - c. Any employee or student who believes he or she has been retaliated against for making a good faith complaint or report of sexual harassment, or participating or aiding in an investigation of sexual harassment.
- 2. ~~Complaints of sexual harassment shall be made within 90 days of the sexual harassment complained of and may be made to any of the following persons:~~
 - a. ~~A supervisor, administrator, teacher, or counselor in the Complainant's school or department;~~
 - b. ~~The Board's Affirmative Action officer;~~
 - c. ~~The Director of Human Resources or designee in the Department of Human Resources;~~
 - d. ~~Region Education Officer; or~~
 - e. ~~The Sexual Harassment Officer or designee.~~

2. For students, complaints of sexual harassment shall be made within 90 days of the sexual harassment complained of and may be made to any of the following persons:
 - a. A teacher, counselor, Assistant Principal, or Principal in the Complainant's school;
 - b. Area Instructional Officer or designee; or
 - c. Office of Schools and Regions.
3. For employees, complaints of sexual harassment shall be made within 90 days of the sexual harassment complained of and may be made to any of the following persons:
 - a. The principal in Complainant's school;
 - b. The head of the department in which Complainant works; or
 - c. The Sexual Harassment Officer or designee.

The individuals to whom students and employees may make complaints of sexual harassment shall receive written notice twice a year of their obligations to timely report any complaints to the Sexual Harassment Officer or designee following the procedures set forth in section 4 below.

- 3 4. Any person described in section 2 (a); or (b), ~~(c) or (d)~~ or in section 3 (a) or (b) above receiving a complaint must refer it in writing, using the Sexual Harassment Information Form, to the Sexual Harassment Officer or designee no later than the end of the third business day following receipt of the complaint. The form must be forwarded in an envelope marked ~~confidential~~ "Confidential" to the Sexual Harassment Officer or designee. Failure to timely refer such complaints can be the basis for disciplinary action.
- 4- 5. Within ten (10) days after receipt of the referral, or as soon as practicable, the Sexual Harassment Officer or designee will meet with the complaining party and explain the options available for proceeding, as described in Options 1-5 below.
- 5 6. To the extent possible, the reporting and investigation of all sexual harassment complaints will be kept confidential. However, in certain appropriate circumstances the Board is obligated by law to investigate allegations of sexual harassment. In those instances, the Board may disclose information only to those who have a need to know or as may be required by law. Additionally, the Sexual Harassment Officer or designee will inform the Complainant that the Sexual Harassment Officer may act on allegations of sexual harassment pursuant to Option 5 below, even if there is no signed complaint or a Complainant chooses not to pursue the matter.
- 6 7. The Sexual Harassment Officer will be responsible for maintaining a record keeping system on all allegations, mediations, investigations and findings. To the extent possible all such information will be kept confidential.

B. OPTIONS

1. INFORMATION, ADVICE AND INFORMAL RESOLUTION (OPTION 1)

An individual may seek advice, information or counseling on matters related to sexual harassment and options available under this policy, without having to proceed to mediation or a formal complaint. Generally, this option may be appropriate where the complaining party is uncertain as to whether what he or she is experiencing is sexual harassment, or where the complaining party does not want third party involvement or formal action, but wants the alleged offending behavior to cease. To the extent possible, information disclosed under this option will be held in confidence, and the alleged harasser will be informed only if it is necessary in order to facilitate a resolution. The aim of this option is not to determine whether there was intent to harass but to ensure that the alleged offending behavior ceases and that the matter is resolved promptly. Individuals who wish to exercise this option shall contact the Sexual Harassment Officer. No disciplinary action is taken under this option.

2. REFERRAL OF COMPLAINT TO MEDIATION (OPTION 2)

a. Definition

Mediation is an attempt to resolve informally the issues presented by the Complainant without proceeding to a formal investigation. Generally, this option may be appropriate for less serious cases. In this process, a third party mediator, who is not a Board employee, will meet with the complaining employee or student (or parent of the student, depending upon the age of the student), and the person against whom harassment is claimed. The mediation is provided free of charge to the Complainant and Respondent. Legal counsel will not be present during mediation proceedings.

b. Assessment

It is essential that parties who are considering mediation have a good understanding of the process as well as what the process can achieve. Mediation will be available only if all parties voluntarily consent to it, and the Sexual Harassment Officer determines that mediation is appropriate. If mediation is agreed to, the Sexual Harassment Officer will not conduct any further investigation. The parties' election to mediate does not preclude the Board from taking appropriate disciplinary action.

c. Mediation Process

Before beginning mediation, all parties must sign a statement agreeing to keep the mediation proceedings confidential, subject to law, however, nothing in this policy shall prohibit a Complainant from testifying at any disciplinary proceeding. To the extent possible, mediation sessions will be held during employee work hours or student instructional hours.

d. Termination of Mediation

Any of the parties and/or the mediator shall have the right to terminate the mediation. A mediator may terminate the mediation under appropriate circumstances including, but not limited to, cases of non-cooperation, attempts to threaten or coerce any party, when progress is not being achieved, or when the mediator believes that conduct occurred which was more serious than previously alleged. When mediation is terminated, the matter will be returned to the Sexual Harassment Officer for further action on the complaint which may include a full investigation.

e. Mediation Resolution and Follow-up

- (i) If the parties reach an agreement resolving the complaint, the mediator will prepare a written agreement to be signed by both parties. Following a mediation agreement, the Sexual Harassment Officer will make reasonable attempts to contact the Complainant after six (6) weeks to determine whether the agreement has been implemented or breached.
- (ii) The Complainant may bring a breach of the mediation agreement to the attention of the Sexual Harassment Officer at any time. In the event the Sexual Harassment Officer learns of a breach, the Sexual Harassment Officer may attempt reasonable intervention to secure compliance with the mediation agreement. In the event of a breach of the agreement, the Complainant may file a formal complaint under Option C.
- (iii) If no mediation agreement is reached, the Complainant may file a formal complaint under Option C.

3. INVESTIGATION OF A FORMAL COMPLAINT (OPTION 3)

- a. If an employee or student chooses not to proceed to mediation, if the Sexual Harassment Officer determines that mediation is inappropriate or if mediation is unsuccessful because the parties reached no agreement or the agreement was breached, the employee or student may proceed through the formal complaint process. The complaint process will be initiated by a signed complaint from the employee or student (or the parent, if the student is under 18 years of age). The Sexual Harassment Officer will inform the Complainant that if the complaint is sustained, and the Board seeks to discipline the Respondent, the Complainant may be called to testify at subsequent disciplinary proceedings.
- b. After receipt of a signed complaint, the Sexual Harassment Officer or designee will commence an investigation. At the conclusion of the investigation, the Sexual Harassment Officer will prepare and issue a summary report containing a synopsis of the evidence, findings and a recommendation. Both the Complainant and the Respondent will receive notification of the outcome of the investigation.

- c. The Sexual Harassment Officer's summary report and recommended disciplinary action will be submitted to the Chief Executive Officer. Additionally, in substantiated cases (where sexual harassment has been found), the summary report and recommended disciplinary action will be forwarded to Labor Relations and the Law Department. The Chief Executive Officer will determine whether disciplinary action will be taken. Disciplinary action will be consistent with the Employee Discipline Code and the Uniform Discipline Code. In substantiated cases, the complete investigative file will be made available to the Chief Executive Officer and to the Law Department. In unsubstantiated cases, where appropriate, the Sexual Harassment Officer may give notice to the Respondent that subsequent similar conduct could result in a finding of sexual harassment.
- d. In cases where the Sexual Harassment Officer made findings that sexual harassment occurred and recommended disciplinary action, the Sexual Harassment Officer will contact the Complainant after six (6) weeks following disciplinary action to determine whether the alleged harassment has recurred. If there has been a recurrence, the Sexual Harassment Officer will determine the most appropriate course of action to address that recurrence and will make that recommendation known to the Chief Executive Officer and the Law Department. The Chief Executive Officer will make a decision within 20 business days concerning the Sexual Harassment Officer's recommendation. Nothing herein precludes an employee or student from making a new complaint under this policy.

4. SCHOOL-BASED INVESTIGATIONS (OPTION 4)

- a. In certain cases, the Sexual Harassment Officer may refer a complaint to the principal to take appropriate action pursuant to the Employee Discipline Code or the Uniform Discipline Code. However, no school-based discipline will be initiated with respect to a sexual harassment complaint unless specifically authorized by the Sexual Harassment Officer. Generally, this option may be appropriate for less serious cases.
- b. If the Sexual Harassment Officer determines that a school-based investigation is inappropriate, the Complainant may proceed through the formal complaint process as described in Option 3.

5. ACTION WITHOUT IDENTIFIED COMPLAINANT (OPTION 5)

When the Sexual Harassment Officer learns, from whatever source, of sexual harassment, the Sexual Harassment Officer is authorized even in the absence of a signed complaint to take any action deemed appropriate. These actions may include but are not limited to, training, anonymous questionnaires, assessment of work or learning environments, site visits or a full investigation.

IV. ALLEGATIONS OF SEXUAL HARASSMENT BROUGHT BY MEMBERS OF THE PUBLIC PROCEDURES

PROCEDURES

- 1. Any member of the public who believes that he or she has been subjected to sexual harassment by a Board employee acting in the scope of his or her employment, and in relation to the provision of Board services or contracts may make a complaint with the Office of the Inspector General of the Board.

2. The Office of the Inspector General of the Board will investigate such complaints pursuant to the usual procedures of that office.
3. The procedures described in Section III above do not apply to complaints under this section.

V. NOTICE

All Board employees, students, vendors and contractors will be informed of this policy. A poster notifying employees and students that the Board prohibits sexual harassment, and informing employees and students how to contact the Sexual Harassment Officer will be posted in a prominent location at all attendance centers, region offices, and Central Office.

All new employees will receive information about this policy when hired. All other employees and students will be provided information at least once a year regarding this policy and the Board's commitment to a harassment-free working and learning environment.

VI. EDUCATION TRAINING AND PREVENTION

The Sexual Harassment Officer or designee will conduct training or arrange for training to be provided on this policy and related legal developments to principals, administrators, and Board employees who have specific responsibilities for investigating complaints of sexual harassment.

Principals in each school will be responsible for informing staff and students on a yearly basis of the terms of this policy, including the procedures established for investigation and resolution of complaints, the rights and responsibilities of students and employees, and the impact of sexual harassment on the victim.

The Board will make available to other interested persons information regarding this policy. The Board will also make available to all interested persons the name, office address, and telephone number of the Sexual Harassment Officer who is designated to coordinate the Board's efforts to comply with and carry out its responsibilities under this policy.

RATIONALE:

The amendments to the Policy on Sexual Harassment demonstrate the Board's continued commitment to provide a work and learning environment that is free of sexual harassment.

FINANCIAL REVIEW:

None


LEGAL REVIEW/REFERENCES:

This Policy was reviewed by the Law Department to insure compliance with Title IX of the Education Amendments of 1972, Title VII of the Civil Rights Act of 1964, and corresponding Federal Guidelines and state laws.

Reviewed for Consideration:


Barbara Eason-Watkins
Chief Educational Officer

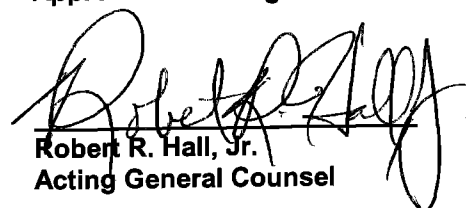
Respectfully Submitted:


Arne Duncan
Chief Executive Officer

Noted:


Kenneth C. Gotsch
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Approved as to Legal Form:


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