

POLICY ON PREVENTION OF HARASSMENT OF STUDENTS

I. Purpose.

- A. The Marlboro School District (“the District”) is committed to providing a safe and supportive school environment in which all students are treated with respect. This policy involves incident(s) and/or conduct that occurs on school property, on a school bus or at a school-sponsored activity, or misconduct not on school property, on a school bus or at a school-sponsored activity where direct harm to the welfare of the school can be demonstrated.
- B. The purpose of this policy is to prevent harassment as defined in 16 V.S.A. § 11(a)(26) and amended by Act 91 of 2004, and to ensure that the District’s responses to allegations of harassment comply with 16 V.S.A. §565 as amended by Act 91 of 2004, Title VI and IX of the Civil Rights Act. It is the further purpose of this policy, when it is found that harassment has occurred, to ensure that prompt and appropriate remedial action, reasonably calculated to stop harassment, is taken by school district employees.
- C. It is the intent of the District to apply and enforce this policy in a manner that is consistent with and protects students’ rights to free expression under the First Amendment of the U.S. Constitution. The District respects and promotes the rights of students and others to speak freely and to express their ideas, including ideas that may offend the sensibilities of others. However, the District does not condone and shall take action in response to behavior that interferes with the learning of students and is not otherwise protected expression.

II. Definitions

A. Harassment

- (1) “Harassment” means an incident or incidents of verbal, written, visual or physical conduct based on or motivated by a student’s or a student’s family member’s actual or perceived race, creed, color, national origin, marital status, sex, sexual orientation, disability, or gender identity that has the purpose or effect of objectively and substantially undermining and detracting from or interfering with a student’s educational performance or access to school resources or creating an objectively intimidating, hostile, or offensive environment.
- (2) Harassment includes conduct which violates subsection (1) of this definition and constitutes one or more of the following:
 - (a) Sexual harassment, which means conduct that includes unwelcome sexual advances, requests for sexual favors and other verbal, written, visual, or physical conduct of a sexual nature when one or both of the following occur:

- (i) Submission to that conduct is made either explicitly or implicitly a term or condition of a student's education.
 - (ii) Submission to or rejection of such conduct by a student is used as a component of the basis for decisions affecting that student.
- (b) Racial harassment, which means conduct directed at the characteristics of a student's or a student's family member's actual or perceived race or color, and includes the use of epithets, stereotypes, racial slurs, comments, insults, derogatory remarks, gestures, threats, graffiti, display, or circulation of written or visual material, and taunts on manner of speech and negative references to racial customs.
- (c) Harassment of members of other protected categories, which means conduct directed at the characteristics of a student's or a student's family member's actual or perceived creed, national origin, marital status, sex, sexual orientation, or disability and includes the use of epithets, stereotypes, slurs, comments, insults, derogatory remarks, gestures, threats, graffiti, display, or circulation of written or visual material, taunts on manner of speech, and negative references to customs related to any of these protected categories.
- B. "**Complaint**" means an oral or written report by a student or any person to an employee alleging that a student has been subjected to conduct that may rise to the level of harassment.
- C. "**Complainant**" means a student who has filed an oral or written complaint to an employee or is the alleged victim in a report made by another alleging conduct and/or incident(s) that may rise to the level of harassment.
- D. "**Employee**" includes any person employed directly by or retained through a contract with the District, an agent of the school, a school board member, a student teacher, an intern or a school volunteer. For purposes of this policy, "agent of the school" includes supervisory union staff.
- E. "**Designated Employee**" means an employee who has been designated by the District to receive complaints of harassment pursuant to 16 V.S.A. § 565(c)(1).
- F. "**Principal**" means the building level administrator, or his/her designee, at an independent or public school designated by a school governing board to be a school principal, headmaster, or technical center director.

III. Reporting of Student Harassment Complaints

- A. A student who believes that s/he has been harassed, or who witnesses conduct that s/he believes might constitute harassment, should report the conduct to a designated employee, or to any other school employee.
- B. When a student reports such conduct to a school employee, other than a designated employee, that school employee shall refer the report to a designated employee.

- C. An employee who witnesses conduct that s/he believes might constitute student harassment under this policy shall take prompt and appropriate action to stop the conduct and immediately report the conduct to a designated employee.
- D. Any other person who witnesses conduct that s/he believes might constitute student harassment under this policy should report the conduct to a designated employee.
- E. Consistent with this policy and 16 V.S.A. §565, the Superintendent or Principal shall develop procedures regarding the reporting of student harassment complaints and the District's handling of such reports.
- F. Annually, the District shall select two or more designated employees to receive complaints and shall publicize their availability.

IV. Procedures Following a Report

- A. Consistent with this policy and 16 V.S.A. §565, the Superintendent or Principal shall develop procedures for complaint response following a report, initiation of an investigation, investigation, independent review, and alternative dispute resolution provisions.
- B. Independent Review: A complainant who desires independent review under 16 V.S.A. § 565(f) because s/he is either dissatisfied with the final determination of the school officials as to whether harassment occurred, or believes that, although a final determination was made that harassment occurred, the school's response was inadequate to correct the problem, shall make such request in writing to the Superintendent. Upon such request, the Superintendent shall initiate an independent review, and shall comply with the District's procedures and any applicable rules on this subject promulgated by the Commissioner of the Vermont Department of Education ("Commissioner"). The District may request an independent review at any stage of the process.

V. Discipline and/or Corrective Action.

If after investigation, harassment has been found, the District shall take prompt and appropriate disciplinary or remedial action reasonably calculated to stop the harassment. Consistent with this policy, the District's Student Conduct and Discipline policy and 16 V.S.A. §565, the Superintendent or Principal shall develop procedures regarding discipline and corrective action including final action on a complaint, retaliation, false complaints, and appeal provisions.

There will be no adverse action taken against a person for reporting a complaint of harassment when the complainant has a good faith belief that harassment occurred or is occurring or for participating in or cooperating with an investigation. Any person who knowingly makes a false accusation regarding harassment will be subject to disciplinary action.

VI. Confidentiality; Notification of Results; and Record Keeping.

- A. The privacy of (1) the complainant, (2) the accused individual, and (3) the witnesses shall be maintained consistent with the District's obligations to investigate, to take appropriate action, and to comply with laws governing the disclosure of student records or other applicable discovery or disclosure obligations.

- B. Subject to state and/or federal laws protecting the confidentiality of personally identifiable student information, the complainant and the accused individual shall be informed in writing of the results of the investigation. If either the complainant or the alleged individual is under the age of 18, subject to the above limitation, his or her parent(s) or guardian(s) shall be provided with a copy of this policy and related procedures, notified when an informal resolution to a harassment complaint is attempted, notified when a complaint is filed, and notified in writing of the investigation results. An authorized school official may seek waiver of confidentiality rights in order to inform the complainant of remedial measures undertaken.
- C. The Superintendent or Principal shall assure that a record of any complaint, its investigation and disposition, as well as any disciplinary or remedial action taken following the completion of the investigation, is maintained by the District in a confidential file accessible only to authorized persons. The report of the investigation shall be kept for at least six years after the report is completed.

VII. Mandatory Reporting to State Agencies

- A. If a harassment complaint is made that conduct by a licensed educator might be grounds under the State Board of Education Rules for suspension or revocation of a license or endorsement, the Principal shall report to the Superintendent and the Superintendent shall report the alleged conduct to the Commissioner.
- B. When a person responsible for reporting suspected child abuse under 33 V.S.A. § 4911, et seq., determines that a complaint made pursuant to this policy must be reported to the Commissioner of the Department for Children and Families, he or she shall make the report as required by law and related District policy. If the victim is a vulnerable adult, as that term is defined in 33 V.S.A. § 6902(14), the report shall be made to Adult Protective Services in accordance with 33 V.S.A. § 6903 and 6904.
- C. Nothing in this policy shall preclude anyone from reporting any incidents and/or conduct that may be considered a criminal act to law enforcement officials.

VIII. Dissemination of Information, Training, Comprehensive Plan for Responding to Student Misbehavior and Data Gathering.

- A. **Dissemination of Information.** Annually, prior to the commencement of curricular and cocurricular activities, the District shall provide notice of this policy and its procedures to students, custodial parents or guardians of students, and employees. Notice to students shall be in age-appropriate language and include examples of harassment. At a minimum, this notice shall appear in any publication of the District that sets forth the comprehensive rules, procedures and standards of conduct for the District.
- B. **Training.** The Superintendent or Principal shall develop age-appropriate methods of discussing the meaning and substance of this policy with students and staff to help prevent harassment. Training may be implemented within the context of professional development and the school curriculum to develop broad awareness and understanding among all members of the school community. Staff training shall enable staff to recognize, prevent and respond to harassment.
- C. **Comprehensive Plan for Responding to Student Misbehavior.** The District's comprehensive plan pursuant to 16 V.S.A. § 1161a(a)(6) shall include provisions that promote the positive development of youth and actions to prevent misconduct from escalating to the level of harassment.
- D. **Data Gathering.** The District shall provide the Vermont Department of Education with data requested by the Commissioner.

IX. Complaints to the Human Rights Commission and the U.S. Office of Civil Rights.

In addition to, or as an alternative to filing a harassment complaint pursuant to this policy, a person may file a harassment complaint with the Vermont Human Rights Commission or the Office for Civil Rights of the U.S. Department of Education at the addresses noted in the procedures accompanying this policy.

Legal References: Act 91 of 2004 (2004 Vt. Laws Act 91)
16 V.S.A. §§11(a) (26), 565 (harassment), 1161a
21 V.S.A. § 495(5) (retaliation)
33 V.S.A. §§ 4911 et seq. (child abuse)
9 V.S.A. §§ 4500 et seq. (public accommodations; retaliation)
20 U.S.C. §§1681 et seq. (Title IX, Civil Rights Act)
34 C.F.R. Part 106
42 U.S.C. §2000d (Title VI of the Civil Rights Act of 1964)
20 U.S.C. §1232g; 34 C.F.R. Part 99 (FERPA)
Davis v. Monroe County Board of Education 526 U.S. 629 (1999)
Franklin v. Gwinnett 503 U.S. 60 (1992)
Saxe v. State College School District 240 F. 3d 200 (3rd Cir. 2001)

Cross References:

1. See _____ School District Policy # ____ for Harassment of Employees.
2. See _____ School District Policy # ____ for Reporting Suspected Child Abuse or Neglect.
3. See _____ School District Policy # ____ for Student Conduct and Discipline.
4. See _____ School District Policy # ____ for Confidentiality of Student Records.
5. See _____ School District’s Comprehensive Plan for Responding to Student Misbehavior, including Anti-Bullying Provisions.

MODEL PROCEDURES FOR PREVENTION OF HARASSMENT OF STUDENTS AND HANDLING COMPLAINTS

The following administrative procedures apply to the District's policy # ____: Prevention of Harassment of Students.

I. Definitions

The terms "harassment," "employee," "complaint," "complainant," "Principal," and "designated employee" shall have the same meaning when used in these procedures as they are defined in the District's Prevention of Harassment of Students policy.

II. Designated Employees

The following employees have been designated by the District to receive harassment complaints pursuant to the Prevention of Student Harassment policy and 16 V.S.A. §565(c)(1):

_____ (Name) _____ (Title)
_____ (Contact Information)

_____ (Name) _____ (Title)
_____ (Contact Information)

III. Reporting Student Harassment Complaints

- A. A student who believes that s/he has been harassed, or who witnesses conduct that s/he believes might constitute harassment, may report the conduct to a designated employee, or to any other school employee.
- B. When a student reports such conduct to a school employee, other than a designated employee, that school employee shall refer the report to a designated employee.
- C. A complaint or report may be made either orally or in writing. If a complaint report is oral, a designated employee shall promptly reduce the report to writing, including the time, place, and nature of the conduct, and the identity of the participants and the complainant.
- D. An employee who witnesses conduct that s/he believes might constitute student harassment under the Prevention of Harassment of Students policy shall take prompt and appropriate action to stop the conduct and immediately report the conduct to a designated employee.
- E. Any other person who witnesses conduct that s/he believes might constitute harassment under the Prevention of Harassment of Students policy should report the conduct to a designated employee.
- F. If one of the designated employees is the person alleged to be engaged in the conduct witnessed or complained of, the report shall be filed with the other designated employee.

IV. Procedures Following a Report

- A. At any stage of the procedures following a complaint, the complainant and the accused individual may request alternative dispute resolution methods, including mediation, of the District.
- B. When a designated employee receives a complaint, the designated employee shall complete a harassment complaint form based on the written or verbal allegations of the complainant.
- C. The completed complaint form shall detail the alleged facts and circumstances of the incident or pattern of behavior. Harassment complaint records shall be maintained consistent with the requirements of the Family Educational Rights and Privacy Act, 34 C.F.R. Part 99.
- D. Depending on (1) the nature of the accusations, (2) the age of the complainant and the accused individual, (3) the agreement of the complainant and (4) other relevant factors, the designated employee or another individual identified by the designated employee may attempt to resolve a complaint through a conversation with the complainant and the accused individual. If such informal resolution is either not appropriate or is unsuccessful, the designated employee shall initiate or cause to be initiated an investigation of the allegations in accord with the timelines established herein.
- E. Upon receipt of notice of a complaint, the designated employee shall provide a copy of the Prevention of Harassment Policy and these procedures to the complainant and the accused individual. If one of the above named is under 18 years of age, his/her parent(s) or guardian(s) shall be notified of the complaint and shall be provided with a copy of the policy and procedures.
- F. Unless special circumstances are present and documented, the Principal shall, no later than one school day after the receipt of a complaint, initiate or cause to be initiated, an investigation of the allegations. The Principal shall assign a person to conduct the investigation; nothing herein shall be construed to preclude the Principal from assigning him/herself or a designated employee as the investigator.
- G. No later than five school days from the filing of the complaint with the designated employee, unless special circumstances are present and documented, the investigator shall submit a written initial determination to the [Superintendent][Principal]. The report shall include a statement of the findings of the investigator as to whether the allegations have been substantiated, and as to whether the alleged conduct constitutes a violation of the Prevention of Harassment of Students policy. When the initial determination is that an accused student has engaged in harassment, the [Superintendent] [Principal] shall use his or her discretion to decide the appropriate disciplinary and/or corrective action. If expulsion is recommended, the [Superintendent][Principal] will seek approval of the board of the District. He/she shall also notify the parties of the results of the determination and as allowed by law, disciplinary and/or corrective action to result. An authorized school official may seek waiver of confidentiality rights in order to inform the complainant of remedial measures undertaken.
- H. Consideration of whether a particular action or incident constitutes a violation of the harassment policy requires review of all the facts and surrounding circumstances. Although conduct may be found to be in violation of other standards of student or employee conduct or decorum, it shall not be deemed harassment when the subject of a complaint is an incident(s) that is not shown to have the effect of objectively and substantially undermining and detracting from or interfering with a student's educational performance or access to school resources or to have created an objectively intimidating, hostile, or offensive environment. Free expression rights of the First Amendment of the U.S. Constitution will be protected.

- I. All levels of internal review of the investigator's initial determination, and the issuance of a final decision, shall, unless special circumstances are present and documented by the District, be completed within 30 calendar days after the review is requested.
- J. When the initial determination is that an employee has engaged in harassment against a student, the Superintendent and/or Principal shall use his or her discretion to initiate disciplinary and/or corrective action in accord with the District's policies and procedures, employment contracts and state and federal law.

V. Independent review.

- A. A complainant who desires independent review because s/he is either dissatisfied with the final decision of the District as to whether harassment occurred, or believes that although a final decision was made that harassment occurred, the District's response was inadequate to correct the problem, shall make such request in writing to the Superintendent.
- B. Upon such request, the Superintendent shall initiate an independent review by a neutral person selected from a list developed jointly by the Commissioner of Education and the Human Rights Commission and maintained by the Commissioner.
- C. The District shall cooperate with the independent reviewer so that s/he may proceed expeditiously. The review shall consist of, but is not limited to, an interview of the complainant and the relevant school officials and review of written materials involving the complaint maintained by the school or others. The independent reviewer shall be considered an agent of the school for purposes of being authorized to review confidential student records.
- D. Consistent with Act 91, An Act Relating to Harassment in Schools, upon the conclusion of the review, the reviewer shall advise the complainant and the designated employee as to the sufficiency of the school's investigation, its determination, the steps taken by the school to correct any harassment found to have occurred, and offer recommendations for any future steps the District should take. The reviewer shall advise the student of other remedies that may be available if the student remains dissatisfied and, if appropriate, may recommend mediation or other alternative dispute resolution.
- E. The District may request an independent review at any stage of the process.
- F. The District shall bear the cost of independent review.

VI. Discipline and/or Corrective Action

- A. **Final Action on Complaint.** The District shall take prompt and appropriate disciplinary and/or corrective action reasonably calculated to stop the harassment. Disciplinary or corrective action may include, but shall not be limited to, warning, reprimand, education, training, counseling, suspension and/or expulsion of a student, and warning, reprimand, education, training, counseling, transfer, suspension and/or termination of an employee.
- B. **Other Disciplinary Response.** If the conduct does not rise to the level of harassment, but otherwise violates the District's disciplinary policies or Comprehensive Plan for Responding to Student Misbehavior including anti-bullying provisions, disciplinary or corrective action under those policies or plan shall be taken.

- C. **Retaliation.** Acts of retaliation for reporting harassment or for cooperating in an investigation of harassment is unlawful pursuant to subdivision 4503(a)(5) of Title 9. There shall be no adverse action taken against a person for reporting a complaint of harassment when the complainant has a good faith belief that harassment has occurred or is occurring or for participating in or cooperating with an investigation. In the context of retaliation, “adverse action” means any form of intimidation or reprisal such as verbal/physical threats or abuse, diminishment of grades, suspension, expulsion, change in educational conditions, loss of privileges or benefits or other unwarranted disciplinary action in the case of students and includes any form of intimidation, reprisal or harassment such as suspension, termination, change in working conditions, loss of privileges or benefits or other disciplinary action in the case of employees. Any individual who retaliates against any employee or student who reports, testifies, assists or participates in an investigation or hearing relating to a harassment complaint shall be subject to appropriate action and/or discipline by the District.
- D. **False Complaint.** Any person who knowingly makes a false accusation regarding harassment shall be subject to disciplinary action up to and including suspension and expulsion with regard to students or up to and including discharge with regard to employees.
- E. **Appeal:** A person determined to be in violation of the Prevention of Harassment of Students policy may appeal the determination and/or any remedial action taken as a consequence of the determination.
1. **Student.** If the person filing the appeal is a student, the appeal shall proceed in accordance with the District’s policy and procedures governing discipline of students.
 2. **Staff.** Employees subject to disciplinary action shall appeal in accord with applicable statutes, collective bargaining agreements, and the District’s policy and procedures.

VII. Confidentiality; Notification of Results; and Record Keeping.

- A. The privacy of the complainant, the accused individual, and the witnesses shall be maintained consistent with (1) the District’s obligations to investigate, (2) to take appropriate action, and (3) to comply with laws governing the disclosure of student records or other applicable discovery or disclosure obligations.
- B. Subject to state and/or federal laws protecting the confidentiality of personally identifiable student information, the complainant and the accused individual shall be informed in writing of the results of the investigation. If either the complainant or the alleged individual is under the age of 18, subject to the above limitation, his or her parent(s) or guardian(s) shall be provided with a copy of this policy and related procedures, notified when an informal resolution to a harassment complaint is attempted, when a complaint is filed, and in writing of the results of the investigation. An authorized school official may seek waiver of confidentiality rights in order to inform the complainant of remedial measures undertaken.
- C. The Superintendent or Principal shall assure that a record of any complaint, its investigation and disposition, as well as any disciplinary or remedial action taken following the completion of the investigation, is maintained by the District in a confidential file accessible only to authorized persons. The report of the investigation shall be kept for at least six years after the report is completed.

VIII. Mandatory Reporting to State Agencies

- A. If a harassment complaint is made that conduct by a licensed educator might be grounds under the State Board of Education Rules for suspension or revocation of a license or endorsement, the

Principal shall report to the Superintendent and the Superintendent shall report the alleged conduct to the Commissioner.

- B. When a person responsible for reporting suspected child abuse under 33 V.S.A. § 4911, et seq., determines that a complaint made pursuant to the Prevention of Harassment of Students policy must be reported to the Commissioner of the Department for Children and Families, he or she shall make the report as required by law and related District policy. If the victim is a vulnerable adult, as that term is defined in 33 V.S.A. §6902(14), the report shall be made to Adult Protective Services in accordance with 33 V.S.A. § 6903 and 6904.
- C. Nothing in these procedures shall preclude anyone from reporting any incidents and/or conduct that may be considered a criminal act to law enforcement officials.

IX. Complaints to the Vermont Human Rights Commission and the U.S. Office of Civil Rights.

In addition to, or as an alternative to filing a harassment complaint pursuant to this policy, a person may file a harassment complaint with the Vermont Human Rights Commission or the Office for Civil rights of the U.S. Department of Education at the following addresses:

Vermont Human Rights Commission
133 State Street
Montpelier, VT 05633-6301
(800) 416-2010 or (802) 828-2480 (voice or tty)

Director, Compliance Division Area II
Office of Civil Rights
U.S. Department of Education, Region I
John W. McCormack Post Office Courthouse, Rm. 222
Post Office Square
Boston, MA 02109
(617) 223-9667

Cross References.

- A. See _____ School District Policy # _____ for Prevention of Harassment of Students.
- B. See _____ School District Policy # _____ for Harassment of Employees.
- C. See _____ School District Policy # _____ for Reporting Suspected Child Abuse or Neglect.
- D. See _____ School District Policy # _____ for Student Conduct and Discipline.
- E. See _____ School District Policy # _____ for Confidentiality of Student Records.
- F. See _____ School District's Comprehensive Plan for Responding to Student Misbehavior, including Anti-Bullying Provisions.

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