

Students

Harassment of Students Prohibited ¹

Bullying, Intimidation, and Harassment Prohibited

No person, including a District employee or agent, or student, shall harass, intimidate, or bully a student on the basis of actual or perceived: race; color; national origin; military status; unfavorable discharge status from military service; sex; sexual orientation; gender identity; gender-related identity or expression; ancestry; age; religion; physical or mental disability; order of protection status; status of being homeless; actual or potential marital or parental status, including pregnancy; association with a person or group with one or more of the aforementioned actual or perceived characteristics; or any other distinguishing characteristic. The District will not tolerate harassing, intimidating conduct, or bullying whether verbal, physical, sexual, or visual, that affects the tangible benefits of education, that unreasonably interferes with a student's educational performance, or that creates an intimidating, hostile, or offensive educational environment. Examples of prohibited conduct include name-calling, using derogatory slurs, stalking, sexual violence, causing psychological harm, threatening or causing physical harm, threatened or actual destruction of property, or wearing or possessing items depicting or implying hatred or prejudice of one of the characteristics stated above. ²

The footnotes are not intended to be part of the adopted policy; they should be removed before the policy is adopted.

¹ State or federal law requires this subject matter be covered by policy, controls this policy's content, and 105 ILCS 5/10-20.69 (final citation pending), added by P.A. 101-531, requires that every two years, each district within an Illinois county served by an accredited Children's Advocacy Center review all its existing sexual abuse investigation policies and procedures to ensure consistency with 105 ILCS 5/22-85 (final citation pending), added by P.A. 101-531. Each district must also have a policy on bullying. 105 ILCS 5/27-23.7, amended by P.A. 100-137; see 7:180, *Prevention of and Response to Bullying, Intimidation, and Harassment*.

This policy's list of protected classifications is identical to the list in 7:180, *Prevention of and Response to Bullying, Intimidation, and Harassment*. The protected classifications are found in 105 ILCS 5/27-23.7(a); 775 ILCS 5/1-103, amended by P.A. 101-221, eff. 1-1-20; and 23 Ill.Admin.Code §1.240.

The list of protected classifications in sample policy 7:10, *Equal Educational Opportunities*, is different – it does not contain the classifications that are exclusively identified in the bullying statute. 105 ILCS 5/27-23.7.

The Ill. Human Rights Act (IHRA) and an ISBE rule prohibit schools from discriminating against students on the basis of *sexual orientation* and *gender identity*. 775 ILCS 5/5-101(11); 23 Ill.Admin.Code §1.240. *Sexual orientation* is defined as the "actual or perceived heterosexuality, homosexuality, bisexuality, or gender related identity, whether or not traditionally associated with the person's designated sex at birth." 775 ILCS 5/1-103(O-1). *Gender identity* is included in the definition of sexual orientation in the Act. The Act permits schools to maintain single-sex facilities that are distinctly private in nature, e.g., restrooms and locker rooms. 775 ILCS 5/5-103. 775 ILCS 5/1-102(A), added *order of protection status* to its list of protected categories. The IHRA's jurisdiction is specifically limited to: (1) failing to enroll an individual, (2) denying access to facilities, goods, or services, or (3) failing to take corrective action to stop severe or pervasive harassment of an individual. 775 ILCS 5/5-102.2.

² This list of examples of prohibited conduct is optional. While hate speech is not specifically mentioned in this paragraph, any hate speech used to harass or intimidate is banned. Hate speech without accompanying misconduct may be prohibited in response to actual incidences when hate speech interfered with the educational environment. *West v. Derby Unified Sch. Dist.*, 206 F.3d 1358 (10th Cir. 2000).

Sexual Harassment Prohibited

Sexual harassment of students is prohibited.³ Any person, including a district employee or agent, or student, engages in sexual harassment whenever he or she makes sexual advances, requests sexual favors, and/or engages in other verbal or physical conduct, including sexual violence, of a sexual or sex-based nature, imposed on the basis of sex, that:

1. Denies or limits the provision of educational aid, benefits, services, or treatment; or that makes such conduct a condition of a student's academic status; or
2. Has the purpose or effect of:
 - a. Substantially interfering with a student's educational environment;
 - b. Creating an intimidating, hostile, or offensive educational environment;
 - c. Depriving a student of educational aid, benefits, services, or treatment; or
 - d. Making submission to or rejection of such conduct the basis for academic decisions affecting a student.

The terms *intimidating*, *hostile*, and *offensive* include conduct that has the effect of humiliation, embarrassment, or discomfort. Examples of sexual harassment include touching, crude jokes or pictures, discussions of sexual experiences, teasing related to sexual characteristics, and spreading rumors related to a person's alleged sexual activities. The term *sexual violence* includes a number of different acts. Examples of sexual violence include, but are not limited to, rape, sexual assault, sexual battery, sexual abuse, and sexual coercion.

Making a Complaint

Students are encouraged to report claims or incidences of bullying, harassment, sexual harassment, or any other prohibited conduct to the Nondiscrimination Coordinator, Building Principal, Assistant Building Principal, Dean of Students, a Complaint Manager, or any staff member with whom the student is comfortable speaking.⁴ A student may choose to report to a person of the student's same sex.

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³ Title IX of the Education Amendments of 1972 (Title IX) prohibits discrimination on the basis of sex in any educational program or activity receiving federal financial assistance. 20 U.S.C. §1681. For purposes of Title IX, sexual harassment of students includes acts of sexual violence. Consult the board attorney to ensure the non-discrimination coordinator and complaint managers are trained to appropriately respond to allegations of discrimination based upon sexual violence under Title IX's sexual harassment umbrella. Guidance documents highlight appropriate responses to sexual violence under Title IX. See f/n 7 in policy 2:260, *Uniform Grievance Procedure* for a listing and links to these documents.

The sample policy's definition of *sexual harassment* does not distinguish between *welcome* and *unwelcome* behaviors - each is prohibited if it has a result described in sub-paragraph 1 or 2. See *Mary M. v. North Lawrence Community Sch. Corp.*, 131 F.3d 1220 (7th Cir. 1997) (An eighth grade student did not need to show that a school employee's sexual advances were *unwelcome* in order to prove sexual harassment.).

School districts are liable for damage awards for an employee's sexual harassment of a student in limited situations. Liability occurs only when a district official who, at a minimum, has authority to institute corrective action, has actual notice of and is deliberately indifferent to the employee's misconduct. *Gebser v. Lago Vista Independent Sch. Dist.*, 524 U.S. 274 (1998). Schools are liable in student-to-student sexual harassment cases when school agents are deliberately indifferent to sexual harassment, of which they have actual knowledge that is so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the school. *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629 (1999). The Ill. Dept. of Human Rights now has jurisdiction over allegations that a school failed to take corrective action to stop severe or pervasive harassment of an individual based upon a protected category. 775 ILCS 5/5-102.2.

⁴ Using "or any staff member with whom the student is comfortable speaking" is consistent with 7:180, *Prevention of and Response to Bullying, Intimidation, and Harassment*. By including "any staff member" in this list, this policy contains an item on which collective bargaining may be required. Any policy that impacts upon wages, hours, and terms and conditions of employment is subject to collective bargaining upon request by the employee representative, even if the policy involves an inherent managerial right.

An allegation that a student was a victim of any prohibited conduct perpetrated by school personnel, including a school vendor or volunteer, shall be processed and reviewed according to policy 5:90, *Abused and Neglected Child Reporting*, in addition to any response required by this policy.

The Superintendent shall insert into this policy the names, addresses, and telephone numbers of the District's current Nondiscrimination Coordinator and Complaint Managers.⁵ At least one of these individuals will be female, and at least one will be male.

Nondiscrimination Coordinator: 6

Name

Address

Email

Telephone

Complaint Managers:

_____ Name	_____ Name
_____ Address	_____ Address
_____ Email	_____ Email
_____ Telephone	_____ Telephone

The Superintendent shall use reasonable measures to inform staff members and students of this policy by including:

1. For students, age-appropriate information about the contents of this policy in the District's student handbook(s), on the District's website, and, if applicable, in any other areas where policies, rules, and standards of conduct are otherwise posted in each school. ⁷

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⁵ Title IX regulations require districts to identify the person, address, and telephone number of the individual responsible for coordinating the district's compliance efforts. The U.S. Dept. of Education's Office for Civil Rights prefers that school districts make Title IX information and coordinators visible to the community, and it has provided materials designed to remind schools of their obligation to designate a Title IX coordinator. These materials include: (a) a *Dear Colleague Letter on Title IX Coordinators*; (b) a *Letter to Title IX Coordinators* that provides them with more information about their role; and (c) a *Title IX Resource Guide* that includes an overview of Title IX's requirements with respect to several key issues. See www2.ed.gov/policy/rights/guid/ocr/title-ix-coordinators.html.

While the names and contact information are required by law to be listed, they are not part of the adopted policy and do not require board action. This allows for additions and amendments to the names and contact information when necessary. It is important for updated names and contact information to be inserted into this policy and regularly monitored.

Each district must communicate its bullying policy to students and their parents/guardians. 105 ILCS 5/27-23.7, amended by P.A. 100-137; see 7:180, *Prevention of and Response to Bullying, Intimidation, and Harassment*.

⁶ Sample policy 2:260, *Uniform Grievance Procedure*, states that a district's Nondiscrimination Coordinator also serves as its Title IX Coordinator. Best practice is that throughout the district's board policy manual, the same individual be named as Nondiscrimination Coordinator. In contrast, Complaint Managers identified in individual policies may vary depending upon local district needs.

2. For staff members, this policy in the appropriate employee handbook(s), if applicable, and/or in any other areas where policies, rules, and standards of conduct are otherwise made available to staff.

Investigation Process

Supervisors, Building Principals, or administrators who receive a report or complaint of harassment must promptly forward the report or complaint to the Nondiscrimination Coordinator or a Complaint Manager. A supervisor or administrator who fails to promptly comply may be disciplined, up to and including discharge.

Reports and complaints of harassment will be confidential to the greatest extent practicable, subject to the District's duty to investigate and maintain an educational environment that is productive, respectful, and free of unlawful discrimination, including harassment.

The District shall investigate alleged harassment of students when the Nondiscrimination Coordinator or a Complaint Manager becomes aware of an allegation, regardless of whether a written report or complaint is filed.

Alleged Incidents of Sexual Abuse ⁸

An *alleged incident of sexual abuse* is an incident of sexual abuse of a child, as defined in 720 ILCS 5/11-9.1A(b), that is alleged to have been perpetrated by school personnel, including a school vendor or volunteer, that occurred: on school grounds during a school activity; or outside of school grounds or not during a school activity. ⁹

Any complaint alleging an incident of sexual abuse shall be processed and reviewed according to policy 5:90, *Abused and Neglected Child Reporting*, in addition to any response required by this policy.

Enforcement

Any District employee who is determined, after an investigation, to have engaged in conduct prohibited by this policy will be subject to disciplinary action up to and including discharge. Any District student who is determined, after an investigation, to have engaged in conduct prohibited by this policy will be subject to disciplinary action, including but not limited to, suspension and expulsion consistent with the behavior policy. Any person making a knowingly false accusation

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⁷ In addition to notifying students of the Uniform Grievance Procedure, a district must notify them of the person(s) designated to coordinate the district's compliance with Title IX. 34 C.F.R. Part 106.8(a). 105 ILCS 5/10-20.69 (final citation pending), added by P.A. 101-418, eff. 1-1-20, requires districts to maintain and implement an *age-appropriate* policy on sexual harassment that is included in the school district's student handbook, as well as on a district's website and, if applicable, other areas where such information is posted in each school. The law does not expressly state that the age-appropriate policy is for students; however, that is the most logical interpretation. In practice, most districts maintain a student handbook for each building. Because the law only requires one policy, this policy manages the age-appropriate requirement by directing age-appropriate explanations of the policy be included in the building-level student handbook(s). Student handbooks can be developed by the building principals, but should be reviewed and approved by the superintendent and school board.

The Illinois Principals Association maintains a handbook service that coordinates with **PRESS** material, *Online Model Student Handbook (MSH)*, at: www.ilprincipals.org/resources/model-student-handbook.

⁸ Delete this subhead if your school district is within a county not served by an accredited Children's Advocacy Center (CAC). 105 ILCS 5/22-85 (final citation pending), added by P.A. 101-531, governs the investigation of an *alleged incident of sexual abuse* of any child within any Illinois counties served by a CAC. For a map of accredited CACs, and to identify a CAC that may serve your district, see www.childrensadvocacycentersofillinois.org/about/map.

⁹ 105 ILCS 5/22-85(b) (final citation pending), added by P.A. 101-531. For further discussion see f/n 14 in policy 5:90, *Abused and Neglected Child Reporting*.

regarding prohibited conduct will likewise be subject to disciplinary action up to and including discharge, with regard to employees, or suspension and expulsion, with regard to students.

LEGAL REF.: 20 U.S.C. §1681 et seq., Title IX of the Educational Amendments of 1972.
34 C.F.R. Part 106.
105 ILCS 5/10-20.12, 10-22.5, 5/27-1, and 5/27-23.7.
775 ILCS 5/1-101 et seq., Illinois Human Rights Act.
23 Ill.Admin.Code §1.240 and Part 200.
Davis v. Monroe County Bd. of Educ., 526 U.S. 629 (1999).
Franklin v. Gwinnett Co. Public Schs., 503 U.S. 60 (1992).
Gebser v. Lago Vista Independent Sch. Dist., 524 U.S. 274 (1998).
West v. Derby Unified Sch. Dist. No. 260, 206 F.3d 1358 (10th Cir. 2000).

CROSS REF.: 2:260 (Uniform Grievance Procedure), 5:20 (Workplace Harassment Prohibited),
5:90 (Abused and Neglected Child Reporting), 7:10 (Equal Educational
Opportunities), 7:180 (Prevention of and Response to Bullying, Intimidation, and
Harassment), 7:185 (Teen Dating Violence Prohibited), 7:190 (Student
Behavior), 7:240 (Conduct Code for Participants in Extracurricular Activities)

ADOPTED: January 21, 2020