

Sexual Harassment

I. Definitions

- A. "Parent" as used in this regulation means a parent, guardian or a person having legal custody of a child. If the student is eighteen (18) years of age or older or is legally emancipated, the procedures for the parent in this regulation may be exercised by the student.
- B. "Discriminatory Harassment" means conduct based on a person's sex, race, creed, religion, color, national origin, sexual orientation, gender expression, gender identity, honorably discharged veteran or military status, presence of any sensory, mental or physical disability, or use of a trained dog guide or service animal; and the alleged conduct is sufficiently severe, persistent, or pervasive that it has the effect of unreasonably interfering with an individual's educational performance, thereby creating an intimidating, hostile or offensive environment.
- C. "Sexual Harassment" means unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact and other verbal or physical conduct or communication of a sexual nature. Such conduct constitutes sexual harassment when: (1) submission to such conduct is made either explicitly or implicitly a term or condition of educational decisions; (2) submission to or rejection of such conduct by an individual is used as the basis for educational decisions affecting such individual; or (3) such conduct has the purpose or is so severe or pervasive to have the effect of unreasonably interfering with the individual's emotional health or an individual's work or educational performance, thereby creating an intimidating, hostile or offensive environment.
- D. "Complaint" means a statement by an individual alleging that he or she has been subjected to sexual harassment which constitutes a violation of a federal, state, local statute or a Vancouver School District policy or regulation prohibiting sexual harassment.
- E. "Title IX Coordinators" means the appropriate Executive Directors of Elementary, Middle and High Schools. The Executive Director of Human Resources is the Title IX coordinator for administrators and central office staff.

II. Reporting

Any student or employee who believes a student is being sexually harassed shall inform a building administrator. If the subject of the complaint is the building administrator, the student or employee shall notify the appropriate Title IX coordinator.

III. Retaliation and False Allegations

- A. Title IX prohibits retaliation against any individual who files a complaint or who participates in a complaint investigation. When an informal or formal complaint of sexual harassment is made, the district will take steps to stop further harassment

and prevent any retaliation against the person who made the complaint, was the subject of the harassment, or against those who provided information as a witness. The district will investigate all allegations of retaliation and take actions against those found to have retaliated.

- B. It is also a violation of this regulation to knowingly report false allegations of sexual harassment. Persons found to knowingly report or corroborate false allegations will be subject to appropriate discipline.

IV. Filing the Complaint

Every school shall have district approved sexual harassment complaint forms available in the main office and electronically on the district's website. The complaint form should be completed, signed and dated by the complainant, which may be the student, a staff member, or the parent on behalf of the student. If the complainant does not wish to file a complaint, the principal shall complete the complaint form noting that the student, staff member, or parent has declined to complete the form. The complainant must furnish sufficient background material concerning the sexual harassment so as to identify the person(s) and action(s) that led to the allegation.

V. Informal Complaint Process

- A. Anyone may use the informal process to report and to seek resolution of sexual harassment complaints. Informal reports may be made to the building administrator. The building administrator will notify complainant of the process and their right to file a formal complaint.
- B. The school will take prompt and effective reasonably calculated steps to end any harassment and to correct any discriminatory effects on the complainant. If an investigation is needed to determine what occurred, the school will take steps to protect the complainant before the final outcome of the investigation.
- C. Examples of possible informal remedies include: 1) an opportunity for the complainant to explain to the alleged harasser that his or her conduct is unwelcome, offensive or inappropriate, either in writing or face to face; 2) a statement from a staff member to the alleged harasser that the alleged conduct is not appropriate and could lead to discipline if proven or repeated; 3) developing a safety plan; 4) separating students; or 5) change the aggressor's class schedule.
- D. The complainant will be informed of how to report any subsequent problems. Additionally, the building administrator will conduct periodic follow-up inquiries to verify that no new incidents or instances of retaliation occur and to promptly respond and appropriately address continuing or new problems.
- E. Informal complaints may become formal complaints at the request of the complainant or parent or because the school believes the complaint needs to be more thoroughly investigated.

VI. Formal Complaint Process

A. Level One – Complaint to District

Anyone may initiate a formal complaint of sexual harassment, even if the informal complaint process was utilized. At any level in the formal complaint process, the district will take interim measures to protect the complainant before the final outcome of the district's investigation. The following process will be followed:

1. Filing a Complaint

- a) All formal complaints must be in writing and set forth the specific acts, conditions or circumstances alleged to have occurred and constitute sexual harassment. The principal may draft the complaint based on the report of the complainant for the complainant to review and approve. The principal may also conclude that the school needs to conduct an investigation based on information in his or her possession, regardless of the complainant's interest in filing a formal complaint.
- b) The time period for filing a complaint is one year from the date of the occurrence that is the subject matter of the complaint. However, a complaint filing deadline may not be imposed if the complainant was prevented from filing due to: 1) specific misrepresentations by the school that it had resolved the problem forming the basis of the complaint; or 2) withholding of information that the district was required to provide under WAC 392-190-065 or WAC 392-190-005.
- c) Complaints shall be submitted by mail, fax, e-mail or hand-delivery to the building administrator.

2. Investigating

- a) Once the principal has notice of alleged harassment, he or she, or a designee, must contact the parent of the student alleged to have been harassed, investigate, and take appropriate action to make the harassment stop. In no event shall students be directed to resolve the matter themselves. If there is a risk the alleged harasser may interfere with the investigation, he or she may be subject to disciplinary action pending the completion of the investigation.
- b) An investigation should include interviews with the complainant, the alleged harasser and all possible witnesses. A written record should be maintained, including a description of each action which may constitute sexual harassment, any information which will help in determining the validity of the complaint, and any other information offered in the interview.

- c) The investigator should ask open-ended questions to obtain as full and fair record of the alleged misconduct as possible.
- d) When an employee is the alleged sexual harasser, the Office of Human Resources should be notified before the investigation begins. If the alleged harassment would constitute child abuse, and there is reasonable suspicion that the allegations are true, a report must be made to the police and CPS immediately.
- e) The investigation should begin with an interview of the complainant. In conducting the interview, the investigator should objectively ask about all instances of alleged sexual harassment, and the names of other individuals who may have information or witnessed the instance(s) of alleged harassment. The investigator should not pre-judge either side, should not give the appearance of pre-judging, and should use whatever techniques are necessary to help the complainant tell the story. In no event shall the complainant and alleged harasser be interviewed together. The investigator should remind the complainant that the district's policy prohibits ongoing sexual harassment and retaliation and encourage him/her to come forward if there is further sexual harassment or retaliatory conduct. In conducting the interview, the investigator should ask about all instances of sexual harassment, if there are other individuals who may have complaints, and if there were any witnesses to any of the conduct.
- f) Complainants and witnesses may have a trusted adult with them during any district-initiated investigatory activities. The district and complainant may also agree to resolve the complaint in lieu of an investigation.
- g) In most cases, the second step of the investigation should be interviewing witnesses and gathering information to interview the alleged harasser. Witnesses may have seen the events and may be able to describe the conduct as well as the complainant's reaction or response. They may also have witnessed other events or incidents corroborating or disproving the versions of the complainant or the alleged harasser. Witnesses should be advised that the conduct under investigation is sensitive and confidential (except to the extent the witness may be called to testify if the matter goes to hearing or trial), and should not be discussed outside of the investigation.
- h) In interviewing the alleged harasser, the investigator should review the complainant's allegations in detail and give the alleged harasser an opportunity to admit, deny, or explain the circumstances. The investigator should also ask the alleged harasser for names of witnesses to contact that may substantiate his/her position. The alleged harasser should be reminded of the district's policy against sexual harassment and that retaliatory conduct is prohibited. The alleged harasser should

also be told he or she is not to make any contact with the complainant pending the conclusion of the investigation.

3. Determining if Sexual Harassment has occurred
 - a) Once the investigation has been completed, the principal or designee should review the facts and determine whether or not sexual harassment has occurred. Notes of the decision-making process, which factors were considered, and what significance they had in the ultimate determination should be retained, but not be placed in any student file. These notes become part of the documentation of the incident and will be helpful later if the process is challenged.
 - b) Factors which may be considered include, but are not limited to:
 - (1) The nature of the conduct;
 - (2) How often the conduct occurred;
 - (3) How long the conduct continued;
 - (4) The age, maturity and sex of the student;
 - (5) Whether the complainant found the conduct unwelcome;
 - (6) The impact of the conduct on the student's education or educational environment;
 - (7) Whether the alleged harasser was in a position of power over the student subjected to the harassment;
 - (8) The number of alleged harassers;
 - (9) The age of the alleged harasser;
 - (10) Where the harassment occurred;
 - (11) Other incidents of sexual harassment at the school involving the same or other students; and
 - (12) Extent or number of persons with whom harassing information was shared.
 - c) When the investigation is completed, the Principal will compile a written report of the complaint and the results of the investigation.
4. Sanctions for Sexual Harassment

The purpose of any sanction is to make the harassment stop and prevent further occurrences.

- a) First Offense--All incidents will be documented and the parents of the complainant and harasser will be notified. Depending on the seriousness of the offense, the discipline could range from a conference with the harasser to make him/her aware of the problem, to assigned reading and counseling regarding sexual harassment, to Extended School Hours. In situations where the sexual harassment is severe, short-term suspension, long-term suspension, or expulsion may be imposed.
- b) Second Offenses--All incidents will be documented and the parents of the complainant and harasser will be notified. Depending upon the seriousness of the offense, discipline could range from short-term suspension to long-term suspension, or expulsion.
- c) Subsequent Offenses--All incidents will be documented and the parents of the complainant and harasser will be notified. The harasser is subject to long-term suspension or expulsion.
- d) When threats constituting sexual harassment also constitute criminal activity, law enforcement will be notified. Vancouver Public Schools reserves the right to impose disciplinary sanctions for sexual assault independent of any criminal penalties that may be imposed.
- e) For students in special education, refer to Regulation 5159.5, Disciplinary Procedures for Students with Disabilities, for disciplinary guidelines.

5. Superintendent or Designee's Written Response

- a) Upon completion of the investigation, the Principal must provide the Superintendent or designee with a written report of the complaint and the results of the investigation.
- b) Within thirty (30) calendar days of receiving the complaint, the Superintendent or designee will respond in writing to the complainant and the alleged harasser, unless an extension of time is agreed to by the complainant or because exceptional circumstances related to the complaint require an extension of the time limit. In the event an extension is needed because of exceptional circumstances, the district will notify the complainant in writing of the reason for the extension and the anticipated response date.
- c) At the time the district responds to the complainant, the district will send a copy of the response to the Office of the Superintendent of Public Instruction (OSPI).

- d) The written response of the Superintendent or designee will include: 1) a summary of the investigation results; 2) a statement as to whether a preponderance of the evidence establishes that the complainant was sexually harassed; 3) if sexual harassment is found to have occurred, the corrective measures the district deems necessary, including assurance that the district will take steps to prevent recurrence and remedy its effects on the complainant and others, if appropriate; 4) notice of the complainant's right to appeal to the School Board and the necessary filing information; and (5) any corrective measures the district will take, remedies for the complainant.
- e) The Superintendent's or designee's written response will be provided in a language the complainant can understand and may require language assistance for complainants with limited English proficiency in accordance with Title VI of the Civil Rights Act of 1964.
- f) If the complaint alleges discriminatory harassment the Title IX coordinator will provide the accused party or parties with notice of the outcome of the investigation and notice of their right to appeal any discipline or corrective action imposed by the district.
- g) Any corrective measures deemed necessary will be instituted as quickly as possible, but in no event more than thirty (30) days after the Superintendent's mailing of a written response, unless the accused is appealing the imposition of discipline and the district is barred by due process considerations or a lawful order from imposing the discipline until the appeal process is concluded.
- h) The district will inform the complainant and parent how to report any subsequent problems. Additionally, the district will conduct follow-up inquiries to see if there have been any new incidents or instances of retaliation, and promptly respond and appropriately address continuing or new problems. Follow-up inquiries will follow a timeline agreed to by the district and the complainant.

B. Level Two -Appeal to Board of Directors

1. Notice of Appeal and Hearing

- a) If a complainant disagrees with the Superintendent's or designee's written decision, the complainant may appeal the decision to the district's Board of Directors, by filing a written notice of appeal with the Superintendent within ten (10) calendar days following the date upon which the complainant received the response.
- b) The Board will schedule a hearing to begin by the twentieth (20th) calendar day following the receipt of the written notice of appeal, unless otherwise agreed to by the complainant and the Board or for good cause.

- c) Both parties will present the witnesses and testimony that the Board determines is relevant and material.

2. Written Decision

- a) Unless otherwise agreed to by the complainant, the Board will render a written decision within thirty (30) calendar days following the receipt of the notice of appeal and provide the complainant with a copy of the decision.
- b) The decision will be provided in a language that the complainant can understand which may require language assistance for complainants with limited English proficiency in accordance with Title VI of the Civil Rights Act.
- c) The Board's decision will include notice of the complainant's right to appeal to the Superintendent of Public Instruction, Equity and Civil Rights Office, P.O. Box 47200, 600 Washington Street S.E., Olympia, Washington 98504-7200.
- d) The district will send a copy of the Board appeal decision to the Office of the Superintendent of Public Instruction.

C. Level Three - Complaint to the Superintendent of Public Instruction

1. Filing of Complaint

- a) If a complainant disagrees with the decision of the Board of Directors, or if the district fails to comply with this procedure, the complainant may file a complaint with the Superintendent of Public Instruction.
- b) A complaint must be received by the Superintendent of Public Instruction on or before the twentieth (20) calendar day following the date upon which the complainant received written notice of the Board of Directors' decision, unless the Superintendent of Public Instruction grants an extension for good cause. Complaints may be submitted by mail, fax, electronic mail, or hand delivery.
- c) A complaint must be in writing and include: 1) A description of the specific acts, conditions or circumstances alleged to violate applicable anti-sexual harassment laws; 2) The name and contact information, including address, of the complainant; 3) The name and address of the district subject to the complaint; 4) A copy of the district's complaint and appeal decision, if any; and 5) A proposed resolution of the complaint or relief requested. If the allegations regard a specific student, the complaint must also include the name and address of the student, or in the case of a homeless child or youth, contact information.

2. Investigation, Determination and Corrective Action

- a) Upon receipt of a complaint, the Office of the Superintendent of Public Instruction may initiate an investigation, which may include conducting an independent on-site review. OSPI may also investigate additional issues related to the complaint that were not included in the initial complaint or appeal to the Superintendent or Board.
- b) Following the investigation, OSPI will make an independent determination as to whether the district has failed to comply with RCW 28A.642.010 or WAC Chapter 392-190, and will issue a written decision to the complainant and the district that addresses each allegation in the complaint and any other non-compliance issues it has identified.
- c) The written decision will include corrective actions deemed necessary to resolve the non-compliance and to include documentation the district must provide to demonstrate that corrective action has been completed.
- d) All corrective actions will be completed within the timelines established by OSPI in the written decision unless OSPI grants an extension. If timely compliance is not achieved, OSPI may take action including but not limited to referring the district to appropriate state or federal agencies empowered to order compliance.
- e) A complaint may be resolved at any time when, before the completion of the investigation, the district voluntarily agrees to resolve the complaint. OSPI may provide technical assistance and dispute resolution methods to assist in resolving a complaint.

D. Level Four - OSPI Administrative Hearing

A complainant or school district that desires to appeal the written decision of OSPI may file a written notice of appeal with OSPI within thirty (30) calendar days following receipt of OPSI's written decision. OSPI will conduct a formal administrative hearing in conformance with RCW 34.05.

VII. Mediation

- A. At any time during the complaint procedure set forth in WAC 392-190-065 through 392-190-075, the district may, at its own expense, offer mediation. The complainant and the district may agree to extend the complaint process deadlines in order to pursue mediation.

- B. The purpose of mediation is to provide both the complainant and the district an opportunity to resolve disputes and reach a mutually acceptable agreement through the use of an impartial mediator.
- C. Mediation is voluntary and requires the mutual agreement of both parties.
- D. Mediation may be terminated by either party at any time during the mediation process.
- E. Mediation will not be used to deny or delay a complainant's right to utilize the complaint procedures.
- F. Mediation will be conducted by a qualified and impartial mediator who will not:
1) be an employee of the school district; or 2) have a personal or professional conflict of interest. A mediator is not considered an employee of the district solely by serving as a mediator.
- G. If the parties reach agreement through mediation, they will execute a legally binding agreement that sets forth the resolution and states that all discussions that occurred during the course of mediation remain confidential and may not be used as evidence in any subsequent complaint, due process hearing or civil proceeding. The agreement will be signed by the complainant and a district representative who has authority to bind the district.

VIII. Training and Orientation

- A. District orientation sessions for staff, students and regular volunteers will review the content of this regulation. Staff will be provided information on recognizing and preventing sexual harassment. Staff will also be fully informed of the formal and informal complaint processes and their roles and responsibilities under the district's policy and regulation.
- B. Certificated staff will be reminded of their legal responsibility to report suspected child abuse, and how that responsibility may be implicated by some allegations of sexual harassment. Regular volunteers will also receive relevant information regarding their responsibilities as part of their orientation.
- C. Students will be provided with age-appropriate information on the recognition and prevention of sexual harassment and their rights and responsibilities under this and other district policies and regulations at student orientation sessions and on other appropriate occasions.
- D. As part of the information on the recognition and prevention of sexual harassment staff, volunteers, students and parents will be informed that sexual harassment may include, but is not limited to:
 - 1. Demands for sexual favors in exchange for preferential treatment or something of value;

2. Stating or implying that a person will lose something if he or she does not submit to a sexual request;
3. Penalizing a person for refusing to submit to a sexual advance, or providing a benefit to someone who does;
4. Making unwelcome, offensive or inappropriate sexually suggestive remarks, comments, gestures, or jokes; or remarks of a sexual nature about a person's appearance, gender or conduct;
5. Using derogatory sexual terms for a person;
6. Standing too close, inappropriately touching, cornering or stalking a person;
or
7. Displaying offensive or inappropriate sexual illustrations on school property.

IX. Policy and Procedure Review

Periodically, the administrative policy committee will review and make recommendations to the full Board on Policy and Regulation 5161.

X. Notice

Information about the district's sexual harassment policy will be conspicuously posted throughout each school building, available on the district's website, available to each student and reproduced in each staff, volunteer, student and parent handbook. In addition to the posting and reproduction of Policy and Regulation 5161, the district will provide annual notice to students that complaints pursuant to this regulation may be filed at their school of attendance or at Vancouver School District, 2901 Falk Road, Vancouver, Washington 98661.

Legal Reference: Clark County School District v. Breedon
Gebser v. Lago Vista Independent School District
Davis v. Monroe County Board of Education
Title IX, Education Amendments of 1972
OCR 2000 Guidance, 65 Fed. Reg 66092
RCW 49.60
Chapter 28A.640 RCW
Chapter 392-190 WAC

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