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MSBA/MASA Model Policy 413

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## 413 HARASSMENT AND VIOLENCE

*[Note: This policy is required by statute. This form of policy has been reviewed and approved by the Minnesota Department of Education in compliance with the mandatory legislation.]*

### I. PURPOSE

The purpose of this policy is to maintain a learning and working environment that is free from religious, racial or sexual harassment and violence. The school district prohibits any form of religious, racial or sexual harassment and violence.

### II. GENERAL STATEMENT OF POLICY

- A. It is the policy of the school district to maintain a learning and working environment that is free from religious, racial or sexual harassment and violence. The school district prohibits any form of religious, racial or sexual harassment and violence.
- B. It shall be a violation of this policy for any pupil, teacher, administrator or other school personnel of the school district to harass a pupil, teacher, administrator or other school personnel through conduct or communication of a sexual nature or regarding religion and race as defined by this policy. (For purposes of this policy, school personnel includes school board members, school employees, agents, volunteers, contractors or persons subject to the supervision and control of the district.)
- C. It shall be a violation of this policy for any pupil, teacher, administrator or other school personnel of the school district to inflict, threaten to inflict, or attempt to inflict religious, racial or sexual violence upon any pupil, teacher, administrator or other school personnel.
- D. The school district will act to investigate all complaints, either formal or informal, verbal or written, of religious, racial or sexual harassment or violence, and to discipline or take appropriate action against any pupil, teacher, administrator or other school personnel who is found to have violated this policy.

### III. RELIGIOUS, RACIAL AND SEXUAL HARASSMENT AND VIOLENCE DEFINED

- A. Sexual Harassment: Definition

1. Sexual harassment consists of unwelcome sexual advances, requests for sexual favors, sexually motivated physical conduct or other verbal or physical conduct or communication of a sexual nature when:
  - a. submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining or retaining employment, or of obtaining an education; or
  - b. submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's employment or education; or
  - c. that conduct or communication has the purpose or effect of substantially or unreasonably interfering with an individual's employment or education, or creating an intimidating, hostile or offensive employment or educational environment.

2. Sexual harassment may include but is not limited to:

- a. unwelcome verbal harassment or abuse;
- b. unwelcome pressure for sexual activity;
- c. unwelcome, sexually motivated or inappropriate patting, pinching or physical contact, other than necessary restraint of pupil(s) by teachers, administrators or other school personnel to avoid physical harm to persons or property;
- d. unwelcome sexual behavior or words, including demands for sexual favors, accompanied by implied or overt threats concerning an individual's employment or educational status;
- e. unwelcome sexual behavior or words, including demands for sexual favors, accompanied by implied or overt promises of preferential treatment with regard to an individual's employment or educational status; or
- f. unwelcome behavior or words directed at an individual because of gender.

B. Racial Harassment: Definition

Racial harassment consists of physical or verbal conduct relating to an individual's race when the conduct:

1. has the purpose or effect of creating an intimidating, hostile or offensive working or academic environment;
2. has the purpose or effect of substantially or unreasonably interfering with an individual's work or academic performance; or
3. otherwise adversely affects an individual's employment or academic opportunities.

C. Religious Harassment; Definition

Religious harassment consists of physical or verbal conduct which is related to an individual's religion when the conduct:

1. has the purpose or effect of creating an intimidating, hostile or offensive working or academic environment;
2. has the purpose or effect of substantially or unreasonably interfering with an individual's work or academic performance; or
3. otherwise adversely affects an individual's employment or academic opportunities.

D. Sexual Violence; Definition

1. Sexual violence is a physical act of aggression or force or the threat thereof which involves the touching of another's intimate parts, or forcing a person to touch any person's intimate parts. Intimate parts, as defined in Minn. Stat. § 609.341, includes the primary genital area, groin, inner thigh, buttocks or breast, as well as the clothing covering these areas.
2. Sexual violence may include, but is not limited to:
  - a. touching, patting, grabbing, or pinching another person's intimate parts, whether that person is of the same sex or the opposite sex;
  - b. coercing, forcing or attempting to coerce or force the touching of anyone's intimate parts;
  - c. coercing, forcing or attempting to coerce or force sexual intercourse or a sexual act on another; or
  - d. threatening to force or coerce sexual acts, including the touching of intimate parts or intercourse, on another.

E. Racial Violence: Definition

Racial violence is a physical act of aggression or assault upon another because of, or in a manner reasonably related to, race.

F. Religious Violence: Definition

Religious violence is a physical act of aggression or assault upon another because of, or in a manner reasonably related to, religion.

G. Assault: Definition

Assault is:

1. an act done with intent to cause fear in another of immediate bodily harm or death;
2. the intentional infliction of or attempt to inflict bodily harm upon another; or
3. the threat to do bodily harm to another with present ability to carry out the threat.

#### IV. REPORTING PROCEDURES

- A. Any person who believes he or she has been the victim of religious, racial or sexual harassment or violence by a pupil, teacher, administrator or other school personnel of the school district, or any person with knowledge or belief of conduct which may constitute religious, racial or sexual harassment or violence toward a pupil, teacher, administrator or other school personnel should report the alleged acts immediately to an appropriate school district official designated by this policy. The school district encourages the reporting party or complainant to use the report form available from the principal of each building or available from the school district office, but oral reports shall be considered complaints as well. Nothing in this policy shall prevent any person from reporting harassment or violence directly to a school district human rights officer or to the superintendent.
- B. In Each School Building. The building principal is the person responsible for receiving oral or written reports of religious, racial or sexual harassment or violence at the building level. Any adult school district personnel who receives a report of religious, racial or sexual harassment or violence shall inform the building principal immediately.
- C. Upon receipt of a report, the principal must notify the school district human rights officer immediately, without screening or investigating the report. The principal may request, but may not insist upon a written complaint. A written statement of the facts

alleged will be forwarded as soon as practicable by the principal to the human rights officer. If the report was given verbally, the principal shall personally reduce it to written form within 24 hours and forward it to the human rights officer. Failure to forward any harassment or violence report or complaint as provided herein will result in disciplinary action against the principal. If the complaint involves the building principal, the complaint shall be made or filed directly with the superintendent or the school district human rights officer by the reporting party or complainant.

- D. In the District. The school board hereby designates \_\_\_\_\_ as the school district human rights officer(s) to receive reports or complaints of religious, racial or sexual harassment or violence. If the complaint involves a human rights officer, the complaint shall be filed directly with the superintendent.<sup>1</sup>
- E. The school district shall conspicuously post the name of the human rights officer(s), including mailing addresses and telephone numbers.
- F. Submission of a good faith complaint or report of religious, racial or sexual harassment or violence will not affect the complainant or reporter's future employment, grades or work assignments.
- G. Use of formal reporting forms is not mandatory.
- H. The school district will respect the privacy of the complainant, the individual(s) against whom the complaint is filed, and the witnesses as much as possible, consistent with the school district's legal obligations to investigate, to take appropriate action, and to conform with any discovery or disclosure obligations.

## V. INVESTIGATION

- A. By authority of the school district, the human rights officer, upon receipt of a report or complaint alleging religious, racial or sexual harassment or violence, shall immediately undertake or authorize an investigation. The investigation may be conducted by school district officials or by a third party designated by the school district.
- B. The investigation may consist of personal interviews with the complainant, the individual(s) against whom the complaint is filed, and others who may have knowledge of the alleged incident(s) or circumstances giving rise to the complaint. The investigation may also consist of any other methods and documents deemed pertinent by the investigator.

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<sup>1</sup> In some school districts the superintendent may be the human rights officer. If so, an alternative individual should be designated by the school board.

- C. In determining whether alleged conduct constitutes a violation of this policy, the school district should consider the surrounding circumstances, the nature of the behavior, past incidents or past or continuing patterns of behavior, the relationships between the parties involved and the context in which the alleged incidents occurred. Whether a particular action or incident constitutes a violation of this policy requires a determination based on all the facts and surrounding circumstances.
- D. In addition, the school district may take immediate steps, at its discretion, to protect the complainant, pupils, teachers, administrators or other school personnel pending completion of an investigation of alleged religious, racial or sexual harassment or violence.
- E. The investigation will be completed as soon as practicable. The school district human rights officer shall make a written report to the superintendent upon completion of the investigation. If the complaint involves the superintendent, the report may be filed directly with the school board. The report shall include a determination of whether the allegations have been substantiated as factual and whether they appear to be violations of this policy.

## **VI. SCHOOL DISTRICT ACTION**

- A. Upon receipt of a report, the school district will take appropriate action. Such action may include, but is not limited to, warning, suspension, exclusion, expulsion, transfer, remediation, termination or discharge. School district action taken for violation of this policy will be consistent with requirements of applicable collective bargaining agreements, Minnesota and federal law and school district policies.
- B. The result of the school district's investigation of each complaint filed under these procedures will be reported in writing to the complainant by the school district in accordance with state and federal law regarding data or records privacy.

## **VII. REPRISAL**

The school district will discipline or take appropriate action against any pupil, teacher, administrator or other school personnel who retaliates against any person who makes a good faith report of alleged religious, racial or sexual harassment or violence or any person who testifies, assists or participates in an investigation, or who testifies, assists or participates in a proceeding or hearing relating to such harassment or violence. Retaliation includes, but is not limited to, any form of intimidation, reprisal or harassment.

## **VIII. RIGHT TO ALTERNATIVE COMPLAINT PROCEDURES**

These procedures do not deny the right of any individual to pursue other avenues of recourse which may include filing charges with the Minnesota Department of Human Rights, initiating civil action or seeking redress under state criminal statutes and/or federal law.

**IX. HARASSMENT OR VIOLENCE AS ABUSE**

- A. Under certain circumstances, alleged harassment or violence may also be possible abuse under Minnesota law. If so, the duties of mandatory reporting under Minn. Stat. § 626.556 may be applicable.
- B. Nothing in this policy will prohibit the school district from taking immediate action to protect victims of alleged harassment, violence or abuse.

**X. DISSEMINATION OF POLICY AND TRAINING**

- A. This policy shall be conspicuously posted throughout each school building in areas accessible to pupils and staff members.
- B. This policy shall be given to each school district employee and independent contractor at the time of entering into the person's employment contract.
- C. This policy shall appear in the student handbook.
- D. The school district will develop a method of discussing this policy with students and employees.
- E. This policy shall be reviewed at least annually for compliance with state and federal law.

**Legal References:** Minn. Stat. § 121A.03, Subd. 2 (Sexual, Religious and Racial Harassment and Violence Policy)  
Minn. Stat. Ch. 363 (Minnesota Human Rights Act)  
Minn. Stat. § 626.556 *et seq.* (Reporting of Maltreatment of Minors)  
42 U.S.C. § 2000e *et seq.* (Title VII of the Civil Rights Act)

**Cross References:** MSBA/MASA Model Policy 102 (Equal Educational Opportunity)  
MSBA/MASA Model Policy 403 (Discipline, Suspension, and Dismissal of School District Employees)  
MSBA/MASA Model Policy 406 (Public and Private Personnel Data)  
MSBA/MASA Model Policy 414 (Mandated Reporting of Child Neglect or Physical or Sexual Abuse)  
MSBA/MASA Model Policy 506 (Student Discipline)  
MSBA/MASA Model Policy 525 (Violence Prevention)

