

# REGULATION

## Medford Township School District

Section: Pupils

5751. SEXUAL HARASSMENT OF PUPILS

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Sexual harassment of pupils is prohibited by the Board of Education. The Superintendent and school district staff will use the following methods to investigate and resolve allegations of sexual harassment of pupils engaged in by school employees, other pupils (peers), or third parties.

#### A. Definitions

1. Quid Pro Quo Harassment - When a school employee explicitly or implicitly conditions a pupil's participation in an educational program or activity or basis an educational decision on the pupil's submission to unwelcomed sexual advances, requests for sexual favors, or other favors, or other verbal, nonverbal, or physical conduct of a sexual nature. Quid Pro Quo Harassment is equally unlawful whether the pupil resists and suffers the threatened harm or submits and thus avoids the threatened harm.
2. Hostile Environment Sexual Harassment - Sexual harassing conduct (which can include unwelcomed sexual advances, requests for sexual favors, or other favors, or other verbal, nonverbal, or physical conduct of a sexual nature) by an employee, by another pupil, or by a third party that is sufficiently severe, persistent, or pervasive to limit a pupil's ability to participate in or benefit from an educational program or activity, or to create a hostile or abusive educational environment.
3. Notice - The school district has notice if it actually "knew, or in the exercise of reasonable care, should have known" about the harassment. If an agent or responsible employee of the school district received notice, the school district is deemed to have notice. The school district may receive notice in many different ways:
  - a. A pupil may have filed a grievance or complained to a teacher about fellow pupils harassing him or her.
  - b. A pupil, parent, or other pupil may have contacted other appropriate school personnel.
  - c. An agent or a responsible employee of the school district may have witnessed the harassment.
  - d. The school district may obtain information in an indirect manner such as staff, community members, newspapers, etc.

4. Constructive Notice - A school district will be in violation if the school district has "constructive notice" of a sexually hostile environment and fails to take immediate and appropriate corrective action. Constructive notice exists if the school district "should have" known about the harassment and if the school district would have found out about the harassment through a "reasonable diligent inquiry."
5. Gender-based Harassment - Gender-based harassment that includes acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on gender, but not involving conduct of a sexual nature, may be a form of sex discrimination if it is sufficiently severe, persistent, or pervasive and directed at individuals because of their gender.
6. Title IX of the Education Amendments of 1972 - Title IX applies to all public school districts that receive federal funds and protects pupils in connection with all the academic, educational, extra-curricular, athletic, and other programs of the school district, whether they take place in the school facilities, on the school bus, at a class or training program sponsored by the school at another location, or elsewhere. Title IX protects any "person" from sex discrimination; accordingly both male and female pupils are protected from sexual harassment engaged in by school district employees, other pupils, or third parties. Title IX prohibits sexual harassment regardless of the gender of the harasser even if the harasser and the pupil being harassed are members of the same gender. Although Title IX does not specifically prohibit discrimination on the basis of sexual orientation, sexual harassment directed at gay or lesbian pupils may constitute sexual harassment as prohibited by Title IX. Harassing conduct of a sexual nature directed toward gay or lesbian pupils may create a sexually hostile environment and therefore be prohibited under Title IX.
7. Grievance Procedure - The grievance procedure provides for prompt and equitable resolution of discrimination complaints, including complaints of sexual harassment. The grievance procedure provides the school district with a mechanism for discovering sexual harassment as early as possible and for effectively correcting problems.
8. Office Of Civil Rights (OCR) - The OCR of the United States Department of Education has federal government's enforcement authority of Title IX.
9. Unwelcomeness - In order to be actionable as harassment, sexual conduct must be unwelcomed. Conduct is unwelcomed if the pupil did not request or invite it and "regarded the conduct as undesirable or offensive." The school district will be concerned about the issue of welcomeness if the harasser is in a position of authority.
10. Acquiescence - Acquiescence in the conduct or the failure to complain does not always mean the conduct was welcome. The fact that a pupil may have accepted the conduct does not mean that he/she welcomed it. The fact the a pupil willingly participated in conduct on one occasion does not prevent him or her from indicating that the same conduct has become unwelcome on a subsequent occasion. On the other hand, if a pupil actively participates in sexual banter and discussions and gives no indication he/she objects, then the evidence generally

will not support a conclusion that the conduct was unwelcomed.

11. Sufficiently Severe, Persistent, or Pervasive Conduct - In determining whether conduct is sufficiently severe, persistent, or pervasive, the conduct should be considered from a subjective and objective perspective. In making this determination, all relevant circumstances should be considered:
  - a. The degree to which the conduct affected one or more pupils' behavior. The conduct must have limited a pupil's ability to participate in or benefit from his/her education or altered the conditions of the pupils educational environment.
  - b. The type, frequency, and duration of the conduct.
  - c. The identity of and relationship between the alleged harasser and the subject or subjects of the harassment.
  - d. The number of individuals involved.
  - e. The age and gender of the alleged harasser and the subject or subjects of the harassment.
  - f. The size of the school, location of the incidents, and context in which they occurred.
  - g. Other incidents at the school.
  - h. Incidents of gender-based, but non-sexual harassment.

**B. Grievance Procedure**

The following Grievance Procedure shall be used for an allegation(s) of Harassment of Pupils by School Employees, Other Pupils, or Third Parties:

1. Reporting of Sexual Harassment Conduct
  - a. Any person with any information regarding actual and/or potential sexual harassment of a pupil by any school employee, other pupils, or third parties must report the information to the school building principal, their immediate supervisor or the Affirmative Action Officer.
    - (1) If the building principal deems it appropriate, he/she may immediately notify the parent/legal guardian of the alleged harasser(s) or alleged victim(s) upon receipt of any information prior to notifying the Affirmative Action Officer.
    - (2) The building principal will not disclose the name(s) of the alleged harasser(s) or alleged victim(s) to the other party.
  - b. The school district can learn of sexual harassment through other means such as from a witness to an incident, an anonymous letter or telephone call.

- c. Nothing in the Policy and Regulation on Pupil Sexual Harassment shall preclude the building principal, or designee, from complying with the provisions of Policy No. 5600 - Pupil Discipline in order to maintain the health, safety and welfare of staff and/or pupils.
- d. A report from the school building principal or an immediate supervisor will be forwarded to the school district Affirmative Action Officer within one working day, even if the school building principal or immediate supervisor feels sexual harassment conduct was not present.
- e. Upon receipt of an allegation and/or report, the Affirmative Action Officer shall immediately notify the parents/legal guardians of any alleged harasser(s) and victim(s) for which a report has been filed even if the building principal has previously notified the parents/legal guardian.
- f. The Affirmative Action Officer shall notify the parents/legal guardian of all involved pupils and any other involved individuals of the process to be followed in investigating a report or complaint.

## 2. Affirmative Action Officer's Investigation

- a. Upon receipt of any report of potential sexual harassment conduct, the Affirmative Action Officer will begin an immediate investigation. The Affirmative Action Officer will promptly investigate all alleged complaints of sexual harassment, whether or not a formal grievance is filed and steps will be taken to resolve the situation, if needed. This investigation will be prompt, thorough, and impartial. The investigation will be completed no more than ten working days after receiving notice.
- b. When a pupil or the parent/legal guardian of a pupil provides information or complains about sexual harassment of the pupil, the Affirmative Action Officer will initially discuss what actions the pupil or parent/legal guardian is seeking in response to the harassment.
- c. The Affirmative Action Officer's investigation may include, but is not limited to, interviews with all persons with potential knowledge of the alleged conduct, interviews with any pupils who may have been sexually harassed by any school employee, other pupils, or third parties and any other reasonable methods to determine if sexual harassment conduct existed.
- d. The Affirmative Action Officer will request, if relevant to an investigation, the parent/legal guardian of any pupil involved in the investigation to assist in the investigation to determine if sexual harassment conduct exist(ed).
- e. The Affirmative Action Officer will provide a copy of the Board Policy and Regulation to all persons who are interviewed with potential knowledge and to any other person the Affirmative Action Officer feels would be served by a copy of such documents.

- f. The Affirmative Action Officer will explain the avenues for formal and informal action, including a description of the grievance procedure that is available for sexual harassment complaints and an explanation on how the procedure works.
- g. Any person interviewed by the Affirmative Action Officer may be provided an opportunity to present witnesses and other evidence.
- h. The Affirmative Action Officer and/or Superintendent may contact law enforcement agencies if there is potential criminal conduct by any party.
- i. The school district administrators may take interim measures during an Affirmative Action Officer's investigation of a complaint in order to alleviate any conditions which prohibits the pupil from assisting in the investigation.

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1886 Hinds Road, Suite 1, Toms River, NJ 08753  
ph: (732)255-1500 fax: (732)255-1502