

# THE SCHOOL DISTRICT OF PHILADELPHIA

SECTION: EMPLOYEES

TITLE: Unlawful Harassment

ADOPTED:

REVISED: October 15, 1996

## 348 UNLAWFUL HARASSMENT

### Definitions

This is to reaffirm the policy of the School District of Philadelphia (District) that sexual harassment of a School District employee or applicant for employment is prohibited. Sexual harassment, or harassment because of one's gender has been defined by the Equal Employment Opportunity Commission (EEOC), as well as by federal, state and local laws, and for the purposes of this Policy, District has adopted this definition.

Unwelcome sexual advances, requests for sexual favors, or other verbal or physical acts of a sexual nature constitute sexual harassment when:

- (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment,
- (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or
- (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

Recent court cases have recognized acts of harassment directed at a person because of gender to be sexual harassment, despite the intent behind the act. District adopts this interpretation as part of its policy. Sexual harassment is a violation of federal and state laws and the Philadelphia Fair Practices Ordinance, and may expose not only the District, but individuals to significant liability under the law.

While sexual harassment will not be tolerated by any employee, supervisors shall be held to a higher standard of conduct and shall be subject to a higher level of discipline when engaging in sexual harassment.

Any person who feels he or she is being subjected to sexually harassing behavior of any kind is encouraged to object to the behavior and/or report the behavior to his/her supervisor or other

appropriate official(s) as indicated in the "Procedures for Processing Sexual Harassment Complaints" and Board Policy 301 which is incorporated herewith. It is a violation of this policy to retaliate or engage in any form of reprisal because a person has raised a concern, filed a complaint of, or been a witness to sexual harassment. Any supervisor who receives a sexual harassment complaint or who has reason to believe sexual harassment is occurring shall refer to the procedures for processing sexual harassment complaints.

It shall also be the policy of the District that the basic rights of all concerned must be respected at all times.

### **Guidelines**

#### **PROHIBITED CONDUCT**

The following are examples of acts which violate the District's Sexual Harassment Policy. These *examples* are not to be construed as an all inclusive list of prohibited acts under the Policy.

##### **A. Physical assaults of a sexual nature, such as:**

- (1) rape, sexual battery, molestation or attempts to commit those offenses, or committing an act with intent to cause fear in another of immediate bodily harm or death; and
- (2) intentional physical *contact* which is sexual in nature, such as touching, pinching, patting, grabbing, brushing against another employee's body, or poking another employee's body, or touching of the clothing covering the immediate area of the complainant's intimate *body* parts.

##### **B. Unwelcome sexual advances, propositions or other sexual comments, such as:**

- (1) sexually-oriented gestures, sounds, remarks, jokes or comments about a person's sexuality or sexual experience directed at or made in the presence of any employee;
- (2) preferential treatment or promise of preferential treatment for submitting to sexual conduct, including soliciting or attempting to solicit any employee to engage in sexual activity for compensation or reward; and
- (3) subjecting, or threatening to subject, an employee to unwelcome sexual attention or conduct or intentionally making job performance more difficult because of the employee's gender.

##### **C. Display of publications anywhere in the District's work place such as:**

- (1) Displaying pictures, posters, cartoons, calendars, graffiti, objects, promotional materials, reading materials, music or other materials that are sexually suggestive, sexually demeaning, or pornographic.

Exceptions will be considered in situations where nudity or sexually explicit language is necessary to convey a message important to public health and/or safety or pedagogically appropriate.

Subject to the foregoing exceptions, visual material will be presumed to be sexually suggestive if it depicts a person of either sex who is nude or seminude and/or who is posed for the obvious purposes of displaying or drawing attention to private portions of his or her body.

- (2) displaying or publicizing, in the work environment, materials that are sexually revealing, sexually suggestive, sexually demeaning or pornographic;
- (3) displaying signs or other materials purporting to segregate an employee by gender in any area of the work place (other than rest rooms and similar semi-private lockers/ changing rooms); or
- (4) possession of such material in a manner that it is reasonably foreseeable that they might be seen by others.

**D. Sexual favoritism. Impact on other employees:**

The granting or withholding of employment opportunities and benefits including, but not limited to, job assignments, discipline, promotion, evaluation and compensation constitute sexual harassment when it is based on sexual favoritism, and is prohibited.

**E. Other Forms of Prohibited Sexual Harassment:**

Other conduct that has the purpose or effect of unreasonably interfering with an employee's work performance or working conditions on the basis of gender may also constitute sexual harassment, and therefore, is prohibited. Examples of conduct which, when based upon gender, constitute prohibited sexual harassment include:

- (1) Assigning disagreeable or unsafe duties; or not making comparable assignments that would tend to disadvantage an employee's development or career;
- (2) withholding information, materials, equipment or supplies which are necessary for the efficient performance of a job;
- (3) unreasonably failing to cooperate or assist employees with work-related matters;
- (4) interfering with an employee's efforts to satisfactorily complete a job assignment;
- (5) maintaining unequal standards of performance;
- (6) ostracizing employees, or otherwise making it known to employees that they are not welcome in the work place because of their gender; or
- (7) referring to employees by sexually denigrating or insulting names because of their gender.

**F. Retaliation for sexual harassment complaints. Examples of retaliation may include:**

- (1) Arbitrary discipline, *threats*, unwarranted change of work assignments, providing inaccurate work information, or failing to cooperate or discuss work-related matters with any employee because that employee has complained about, been a witness to or resisted harassment, discrimination or retaliation; and
- (2) intentionally pressuring, falsely denying, lying about, or covering up or attempting to cover up conduct such as that described in any item above.

**PROCEDURES FOR MAKING COMPLAINTS**

The District is committed to resolving these complaints as quickly and efficiently as possible. If you believe that you have been sexually harassed, or have knowledge that others have been sexually harassed, you are encouraged to contact your supervisor, the Director of Human Resources or the Law Department of the School District of Philadelphia.

The employee may seek either an informal or formal resolution to their complaint:

#### **A. INFORMAL**

Where behaviors may be offensive and the offended party has a desire to stop the behaviors without formal procedure, the employee may notify the offending party directly, but is not required to do so. The employee may also request a supervisor to intervene by notifying the alleged offender that the specific offensive behavior(s) will not be tolerated in the work place. In such case the supervisor must discuss the matter with the alleged offender, and, if warranted require that he/she participate in non-disciplinary counseling. The supervisor shall document actions taken and inform the Director of Human Resources in writing. Copies will also be forwarded to the Law Department of the School District of Philadelphia. ***The accused shall have the right of representation during his/her interview with the supervisor as required by the Collective Bargaining Agreement.***

#### **B. FORMAL**

An individual who believes that he/she has been sexually harassed can file a complaint requesting an investigation into the allegation. Formal complaints shall be taken in writing and signed by the complainant. A thorough and complete investigation shall be conducted by the supervisor.

To the extent possible and allowed by law, confidentiality shall be maintained within the confines of the investigation of the alleged prohibited behavior. All parties will be treated with dignity and due process.

### **PROCEDURES FOR INVESTIGATIONS AND RESOLVING COMPLAINTS**

#### **A. EQUAL EMPLOYMENT OPPORTUNITY OFFICER**

The principal of each school shall be designated as the EEO Officer capable of conducting a thorough and complete investigation. In non-school offices the administrator in charge of such office shall be the EEO officer. The principal or administrator shall seek advice and assistance from the Cluster Leader (in the case of the principal) or the next higher administrator (in the case of an administrator in charge of a non-school office) if the principal or administrator believes that he/she lacks the capacity to conduct a thorough and complete investigation or the alleged misconduct. ***If the principal or the administrator in charge is the alleged harasser or is alleged to have been responsible for the harassment, such person's direct line supervisor will conduct the investigation.***

#### **B. CONDUCTING INVESTIGATIONS**

Any Supervisor or EEO Officer receiving a complaint of sexual harassment shall take the details of the complaint in writing and have the complainant sign it. Copies of this document will be forwarded to the Law Department of the School District of Philadelphia and the Director of Human Resources. All complaints of sexual harassment against a District employee shall be received, investigated and disposed of in accordance with the procedures set forth in this Policy, and complainants shall be notified of the final disposition/action taken by the District.

If the complaint involves sexual assault, rape or conduct of a criminal nature, the Philadelphia Police Department shall be contacted and a report of the incident made. If there is any question whether the conduct complained of constituted criminal activity, the Law Department of the School District of Philadelphia should be contacted and consulted.

The assigned investigator shall attempt to secure statements from all participants in, and witnesses to the alleged incident. The accused shall have the right of representation during his/her interview as required by the applicable collective bargaining agreement or practice.

All investigations shall be completed by the assigned investigator within sixty (60) days from the filing date of the complaint. Extenuating circumstances for not being able to comply with the deadline must be approved by the Director of Human Resources. The extension must be a specified period of time not exceeding twenty-five (25) days, and must be communicated to the complainant.

If the charge is substantiated, the EEO Officer shall determine the appropriate level of discipline *consistent with the School District's strong policy against sexual harassment*. Such discipline as is deemed appropriate will be initiated in accordance with District disciplinary procedures and applicable collective bargaining agreements. Documents regarding substantiated charges of sexual harassment shall be placed in the accused employee's personnel file. Documents regarding unsubstantiated charges shall not be placed in personnel files, but shall be maintained by the Law Department of the School District of Philadelphia in a confidential EEO file established expressly for retaining complaints of sexual harassment against employees of the District.

### **C. TRAINING**

It is the responsibility of the District to insure that all supervisors receive the appropriate training to enforce this Policy.

### **CONCLUSION**

- (1) Nothing in this Policy shall be construed as violating existing labor contracts.
- (2) If any section of this procedure is declared *invalid*, the remaining sections shall remain valid and unaffected.