

SUBJECT: SEXUAL HARASSMENT OF STUDENTS

The Port Jervis Board of Education affirms its commitment to non-discrimination and recognizes its responsibility to provide for all District students an environment that is free of sexual harassment, including sexual violence. Sexual harassment including sexual violence is a violation of law and stands in direct opposition to District policy. Therefore, the Board prohibits and condemns all forms of sexual harassment by employees, school volunteers, students, and non-employees such as contractors and vendors which occur on school grounds and at all school-sponsored events, programs and activities including those that take place on a school bus at locations off school premises or those that take place in another state. Since sexual violence is a form of sexual harassment, the term, "sexual harassment" in this policy will implicitly include sexual violence even if it is not explicitly stated.

Sexual Harassment

Generally, sexual harassment is defined as unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct or communication of a sexual nature when:

- a) Submission to or rejection of such sexually harassing conduct and/or communication by a student affects decisions regarding any aspect of the student's education, including participation in school-sponsored activities;
- b) Conditions exist within the school environment that allow or foster obscene pictures, lewd jokes, sexual advances, requests for sexual favors or other harassing activities of a sexual nature; and
- c) Such conduct and/or communication has the purpose or effect of substantially or unreasonably interfering with a student's academic performance or participation in an educational or extracurricular activity, or creating an intimidating, hostile or offensive learning environment; and/or effectively bars the student's access to an educational opportunity or benefit.

Sexual Violence

Sexual violence is defined by New York Penal Law as physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent. Sexual violence includes but is not limited to acts such as:

- a) Rape;
- b) Sexual assault;
- c) Sexual battery;
- d) Sexual coercion.

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Student

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A person may be unable to consent to a sexual act due to his/her age, use of drugs or alcohol or due to intellectual or other disability. In order to encourage victims of sexual violence to come forward, a District must inform students that the District's primary concern is with their safety. The school should assure victims that any broken rules or violations made by them will be addressed separately from the sexual harassment allegation. For example, victims need to know that their use of alcohol or drugs never makes them at fault for sexual violence.

The Board acknowledges that in determining whether sexual harassment has occurred the totality of the circumstances, expectations, and relationships should be evaluated including, but not limited to, the ages of the offender and the victim; the number of individuals involved; and the type, frequency and duration of the conduct. A single incident of sexual harassment may be sufficiently severe to create a hostile environment in the school and a student may experience the continuing effects from off-campus sexual harassment when in the school setting. The Board recognizes that sexual harassment can originate from a person of either sex against a person of the opposite or same sex, and from a third party such as a school visitor, volunteer, or vendor, or any other individual associated with the School District. Sexual harassment may occur from student-to-student, from staff-to-student, from student-to-staff, as well as staff-to-staff. The District will designate, at a minimum, two (2) Compliance Officers, one (1) of each gender.

In order for the Board to enforce this policy, and to take corrective measures as may be necessary, it is essential that any student who believes he/she has been a victim of sexual harassment, as well as any other person who is aware of and/or who has knowledge of or witnesses any possible occurrence of sexual harassment, should immediately report such alleged harassment. Such report shall be directed to or forwarded to the District's designated Compliance Officers through informal and/or formal complaint procedures as developed by the District. Such complaints are recommended to be in writing, although verbal complaints of alleged sexual harassment will also be promptly investigated in accordance with the terms of this policy. In the event that the Compliance Officer is the alleged offender, the report will be directed to the next level of supervisory authority.

Upon receipt of an informal/formal complaint (even an anonymous complaint), the District will conduct a prompt, equitable, and thorough investigation of the charges. However, even in the absence of a complaint, if the District has knowledge of or has reason to know of or suspect any occurrence of sexual harassment, the District will investigate such conduct promptly, equitably, and thoroughly. To the extent possible, within legal constraints, all complaints will be treated as confidentially and privately as possible. However, disclosure may be necessary to complete a thorough investigation of the charges, and any disclosure will be provided on a "need to know" basis. The Superintendent will inform the Board of Education of investigations involving findings of harassment.

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Student

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Based upon the results of the investigation, if the District determines that an employee and/or student has violated the terms of this policy and/or accompanying regulations, immediate corrective action will be taken as warranted. Should the offending individual be a student, appropriate disciplinary measures will be applied, up to and including suspension, in accordance with District policy and regulation, the Code of Conduct, and applicable laws and/or regulations. Should the offending individual be a school employee, appropriate disciplinary measures will be applied, up to and including termination of the offender's employment, in accordance with legal guidelines, District policy and regulation, the Code of Conduct and the applicable collective bargaining agreement(s). Third parties (such as school volunteers, vendors, etc.) who are found to have violated this policy and/or accompanying regulations will be subject to appropriate sanctions as warranted and in compliance with law.

Prohibition of Retaliatory Behavior (Commonly Known as "Whistle-Blower" Protection)

The Board prohibits any retaliatory behavior directed against complainants, victims, witnesses, and/or any other individuals who participated in the investigation of a complaint of sexual harassment. Follow-up inquiries shall be made to ensure that sexual harassment has not resumed and that all those involved in the investigation of the sexual harassment complaint have not suffered retaliation.

Finding That Sexual Harassment Did Not Occur

At any level/stage of investigation of alleged harassment, if a determination is made that harassment did not occur, the Compliance Officer will so notify the complainant, the alleged offender and the Superintendent of this determination. Such a finding does not preclude the complainant from filing an appeal pursuant to District policy or regulation and/or pursuing other legal avenues of recourse.

However, even if a determination is made that harassment did not occur, the Superintendent/designee reserves the right to initiate staff awareness and training, as applicable, to help ensure that the school community is not conducive to fostering harassment in the workplace.

In all cases, the Superintendent will inform the Board of Education of the results of each investigation involving a finding that sexual harassment did not occur.

Knowingly Makes False Accusations

Employees and/or students who *knowingly* make false accusations against another individual as to allegations of harassment may also face appropriate disciplinary action.

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SUBJECT: SEXUAL HARASSMENT OF STUDENTS (Cont'd.)**Privacy Rights**

As part of the investigation, the District has the right to search all school property and equipment including District computers. Although rooms, desks, cabinets, lockers, computers, etc. are provided by the District for the use of staff and students, the users do not have exclusive use of these locations or equipment and should not expect that materials stored therein will be private.

Development and Dissemination of Administrative Regulations

Regulations will be developed for reporting, investigating and remedying allegations of sexual harassment. An appeal procedure will also be provided to address any unresolved complaints and/or unsatisfactory prior determinations by the applicable Compliance Officer(s).

Such regulations will be developed in accordance with federal and state law as well as any applicable collective bargaining agreement(s).

The Superintendent/designee(s) will affirmatively discuss the topic of sexual harassment with all employees and students, express the District's condemnation of such conduct, and explain the sanctions for such harassment. Appropriate training and/or "awareness" programs will be established for staff and students to help ensure knowledge of and familiarity with the issues pertaining to sexual harassment in the schools, and to disseminate preventative measures to help reduce such incidents of prohibited conduct. Furthermore, special training will be provided for designated supervisors and managerial employees, as may be necessary, for training in the investigation of sexual harassment complaints.

A copy of this policy and its accompanying regulations will be available upon request and may be posted at various locations in each school building. The District's policy and regulations on sexual harassment will be published in appropriate school publications such as teacher/employee handbooks, student handbooks, and/or school calendars.

Civil Rights Act of 1991, 42 United States Code (USC) Section 1981(a)
Title VII of the Civil Rights Act of 1964, 42 United States Code (USC) Section 2000e et seq.
Title IX of the Education Amendments of 1972, 20 United States Code (USC) Section 1681 et seq.
34 Code of Federal Regulations (CFR) Section 100 et seq.
29 Code of Federal Regulations (CFR) Section 1604.11(a)
Civil Service Law Section 75-B
Education Law Section 2801(1)
Executive Law Sections 296 and 297