

**TYNGSBOROUGH SCHOOL DISTRICT**

**POLICY**

**SEXUAL HARASSMENT POLICY (STUDENT)**

**INTRODUCTION**

The Tyngsborough Public Schools are committed to providing students with an environment in which they may pursue their studies without being sexually harassed. All persons associated with the school system including, but not limited to, the School Committee, the administration, the staff and the students are expected to conduct themselves at all times so as to provide an atmosphere free from sexual harassment. Any person who engages in sexual harassment while acting as a member of the school community will be in violation of this policy and may be individually liable to a victim for damages.

**DEFINITIONS**

Sexual harassment, as here defined, is a violation of Title VII of the 1964 Civil Rights Act and M.G.L., c. 151B, sec. 4(16A). For the purposes of this policy, and to supplement but not supplant the legal authorities cited above, sexual harassment is defined as follows:

Sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- 1) Submission to or rejection of such advances, requests, or conduct is made either explicitly or implicitly a term or condition of an individual's attendance at school, academic status, or participation in school sponsored activities;
- 2) Submission to or rejection of such advances, requests, or conduct is used as the basis for decisions affecting such individual's attendance, academic status, or participation in school sponsored activities; or
- 3) Such advances, requests, or conduct have the purpose or effect of unreasonably interfering with an individual's attendance, academic status or participation in school sponsored activities, or creating an intimidating, hostile, humiliating, or sexually offensive academic environment.

## **POLICY #5.16 (Continued)**

The following are examples of conduct which may, depending upon the circumstances, constitute sexual harassment:

- 1) Explicit communications or comments stating or strongly implying the individual will get a grade increase if the individual performs sexual favors.
- 2) Conditioning the attendance at an out of town activity or conference on sharing one hotel room or socializing in an isolated, non group setting.
- 3) An individual is subjected to leering, sexual remarks and whistles upon visiting the cafeteria or other areas in school with the result that over time the individual is reluctant to enter the cafeteria or other areas in school.
- 4) Any sexually motivated touching or inappropriate patting, pinching, or other physical contact including intentional brushing against a person's body.
- 5) Revealing or displaying sexually suggestive pictures, objects, cartoons, posters, or other inappropriate materials, pornographic or otherwise, or accessing same by technological means, in a way which renders such materials accessible to students and which are not used in an appropriate fashion as part of the curriculum for a particular course of study.
- 6) Harassing conduct need not be motivated by sexual desire in order to constitute sexual harassment.

Persons of either sex may be victims of sexual harassment.

In addition, any person who engages in any of the following conduct while acting as a member of the school community will be in violation of this policy:

- 1) Retaliation against any individual for filing a complaint of sexual harassment; or
- 2) Retaliation against an individual for cooperating in an investigation of a complaint of sexual harassment.
- 3) Any individual who knowingly or actively participates or assists another in acts prohibited by this policy or the law may be liable as an aider and abettor to harassment.
- 4) Employees may have a duty to report harassment of which they have knowledge. They may be liable as an individual if they fail to report or take remedial action regarding such harassment by which inaction they contribute to the complainant's injuries.

## **REPORTING OF SEXUAL HARASSMENT**

Any student who believes that he/she has been subject to sexual harassment is to report the incident(s) directly to the Superintendent, David J. Hawkins, 50 Norris Road, Tyngsborough, Massachusetts 01879, telephone number (978) 649-7488, Nancy Wadleigh, the Title IX Coordinator or to their building principal, who shall contact the Superintendent. All complaints will be investigated even if a complainant asks that his or her claim not be investigated.

## **INFORMAL PROCEDURE**

In determining whether an alleged incident constitutes sexual harassment, the Superintendent of Schools, or an individual appointed by the Superintendent, will serve as the hearing officer vested with the authority and responsibility of processing all reports of sexual harassment in accordance with the procedure outlined below:

- 1) Any student who believes that he/she has been subjected to sexual harassment is to report the incident(s) to their guidance counselor, building principal or directly to the Superintendent. The individual contacted is to contact the Superintendent.
- 2) The hearing officer will attempt to resolve the problem by conferring with both parties separately and if appropriate, jointly, in order to obtain a clear understanding of the facts. All parties will be directed not to discuss the matter with other members of the school community. All matters involving sexual harassment complaints will remain confidential to the extent practicable. The hearing officer will look at the totality of the circumstances and the context in which the alleged incidents occurred.
- 3) The hearing officer shall advise all parties that retaliation of any form will not be tolerated.
- 4) At any phase of this process or subsequent hearing before the Committee students or employees may elect to be represented by counsel or union advocates as the process may result in the imposition of discipline at the Superintendent's or School Committee level.
- 5) During the investigation it may be advisable to take interim measures to ensure the integrity of the investigation, reduce the potential of further incidents or complaints, or for the safety of either party and the efficiency of the operations of the schools.

## **POLICY #5.16 (Continued)**

### **FORMAL PROCEDURE**

A complainant may file a formal complaint immediately or may do so after the hearing officer's efforts to reach a settlement have proven unsuccessful.

The complaint will state clearly and concisely the complainant's description of the incident and it will also indicate any remedy sought. Written complaints must be signed by the complainant. Oral complaints will be confirmed and summarized in writing to the complainant. The complainant must immediately (24 hours) contact the investigator if he or she disagrees with the proposed summary of the complaint. If no contact is received the summary shall form the basis of the complaint. The Superintendent's office will send the respondent a copy of the complaint within five working days after it is received.

The respondent will have ten working days to respond in writing. This statement will contain full and specific references to each claim in the complaint, admitting, denying or explaining the complainant's allegations. The respondent must sign his or her statement which will then be appended to the original complaint. Within three working days, the Superintendent's office will forward both statements to the complainant and the respondent.

There will be two modes of resolution for formal complaints. A complaint may be settled through mediation or through a hearing. If the complainant and respondent agree to pursue mediation, a date mutually acceptable to both parties will be set within ten working days. If the mediation results in a mutually acceptable agreement, copies of the agreement will be forwarded to both parties. If the mediation does not result in an agreement, the case will be forwarded to the Tyngsborough School Committee for a hearing.

When a hearing is requested, the Superintendent will inform the School Committee and the case will be heard at the next regularly scheduled meeting of the School Committee.

### **SCHOOL COMMITTEE HEARING**

The purpose of the School Committee hearing will be to determine whether the school system's policy on sexual harassment has been violated, and, if so, will recommend appropriate consequences for the violation.

Both parties will be given a full and fair hearing. The proceeding, although formal, is not a court proceeding and the Committee will not be bound by the procedures and rules of evidence of a court of law. In most instances, complainants and respondents will be expected to speak for themselves, although, if desired, each party may be accompanied by an advocate.

## **POLICY #5.16 (Continued)**

The chairperson of the School Committee or his or her designee will act as the presiding officer of the hearing and may have counsel present for purposes of assisting the orderly conduct of the hearing. The complainant and the respondent, will be asked to clarify the issues and to define the areas of disagreement. To encourage a fair and focused hearing, the chairperson will notify the Committee at the start of the proceedings about the points of agreement and disagreement. The Committee will hear testimony and consider whether the School Committee policy on sexual harassment has been violated, and if so, will recommend appropriate consequences.

The Presiding Officer or his or her designee will:

- 1) Ensure an orderly presentation of all evidence;
- 2) Ensure that the proceedings are accurately recorded by means of a tape or stenographic recording;
- 3) See that a fair and impartial decision based on the issues and evidence presented at the hearing is issued by the School Committee no later than ten working days after the conclusion of the hearing or, when written arguments are submitted, ten working days after their submission;
- 4) Conduct a fair and impartial hearing which ensures the rights of all parties involved;
- 5) Define issues of contention by reference, where appropriate, to legal precedent;
- 6) Receive and consider all relevant evidence which reasonable people customarily rely upon in the conduct of serious business;
- 7) Ask relevant questions of the complainant, respondent, and any witness if needed to elicit information which may assist the Committee in making a decision; and
- 8) Ensure that the complainant and respondent have full opportunity to present their claims orally or in writing, and to present witnesses and evidence which may establish their claims.

The proceedings before the Committee will be as follows:

- 1) The Presiding Officer will read the charge(s) and ask the respondent to either admit or challenge the allegations.
- 2) The complainant may present a brief opening statement, followed by the same from the respondent.

## **PO LICY #5.16 (Continued)**

- 3) The Presiding Officer will give each party the opportunity to present all relevant evidence.
- 4) Each party may make a concluding statement to the Committee.
- 5) The Committee, by a majority vote of its members, may make other rules concerning the procedure of a hearing which it deems appropriate and consistent with this sexual harassment policy.

### **DECISION OF THE HEARING COMMITTEE**

After all the evidence and testimony is presented, the hearing will adjourn. Private deliberations will commence to determine whether the school system's policy on sexual harassment has been violated. If it is found that the policy has not been violated, that fact will be registered in the records of the hearing, and the written decision will be forwarded to the complainant and the respondent no later than fifteen working days after completion of the hearing.

If it is found that the school system's policy on sexual harassment has been violated, the hearing committee will prepare findings and will recommend a penalty for the respondent and relief for the complainant. The findings of fact as well as the recommended penalty and relief will be based solely on the testimony and evidence presented at the hearing.

### **POSSIBLE OPTIONS FOLLOWING DECISION**

The penalty should reflect the severity of the harassment or other relevant factors and is not subject to the principle of progressive discipline. The penalties may include, but will not be limited to, any one or combination of the following: verbal admonition, written warning placed in the respondent's personnel file or student record, probation, suspension without pay, demotion, removal from administrative duties within a department or dismissal; students may be subject to suspension or expulsion proceedings following a finding that the policy has been violated. The Committee may also make appropriate recommendations, such as professional counseling, and may recommend relief for the complainant which reinstates and restores, as much as possible, the aggrieved party.

**POLICY #5.16 (Continued)**

**FILING A COMPLAINT OF SEXUAL HARASSMENT**

An individual who feels he or she has been sexually harassed may file a complaint with the Massachusetts Commission Against Discrimination at the following address:

Massachusetts Commission Against Discrimination  
One Ashburton Place, Room 601  
Boston, MA 02108  
(617) 727-3990

A complaint may also be filed with the Equal Employment Opportunity Commission at its area office:

Equal Employment Opportunity Commission  
John F. Kennedy Federal Office Building Rm. 475  
Government Center  
Boston, MA 02203  
(617) 565-3200

A “complaint” filed after November 5, 2002 within 300 days of the discriminatory act or when the complainant knows or should have known that he or she is being discriminated against. Under certain circumstances acts of harassment which occur more than 300 days prior to the complaint may be considered timely if at least one act is within the 300 day period.

**APPROVED: JANUARY 7, 2003**