

# Chicago Public Schools Policy Manual

**Title:** COMPREHENSIVE NON-DISCRIMINATION TITLE IX AND SEXUAL HARASSMENT

**Section:** 102.8

**Board Report:** 09-1216-PO1

**Date Adopted:** December 16, 2009

## Policy:

### THE CHIEF EXECUTIVE OFFICER RECOMMENDS:

That the Board amend Board Report 08-0123-PO4 Comprehensive Non-Discrimination, Title IX and Sexual Harassment Policy.

**PURPOSE:** The Board recognizes that the goal of eliminating all forms of unlawful discrimination, sexual harassment and retaliation in the workplace and attendance centers will create a better work and learning environment for Board employees and students. This policy establishes procedures for the reporting, investigation and resolution of complaints of sexual harassment, discrimination and retaliation occurring in the Chicago Public Schools (CPS) as well as any of its administrative offices. This policy also establishes procedures to investigate claims of discrimination based on gender pursuant to Title IX of the Education Amendments of 1972. Requests for accommodations for disabilities are not covered under this policy, rather are handled under the Board's Policy on Compliance with the Americans with Disability Act.

### POLICY TEXT:

#### I. REPORTING

Individuals may make an oral or written complaint of discrimination, sexual harassment, or retaliation if they:

- believe they are the subject of discrimination, sexual harassment, or retaliation;
- have knowledge of discriminatory or sexual harassment conduct, or retaliation; or
- believe that they have been retaliated against for making a good faith complaint or report of sexual harassment, discrimination, or for participating or aiding in an investigation of such complaints.

To report suspected acts of sexual harassment, discrimination or retaliation or to request general information regarding this policy, contact the Equal Opportunity Compliance Office Manager (EOCO Manager) at 125 South Clark, Suite 1100, Chicago, Illinois 60603, (773) 553-5499. Specific reporting procedures are found in Section IV herein. The EOCO Manager or designee shall investigate allegations of sexual harassment, allegations of discrimination and allegations of retaliation as later described in this policy.

#### II. GENERAL PROVISIONS

**A. Work and Learning Environment:** It is the policy of the Board of Education of the City of Chicago, ("Board") to maintain a work and learning environment in which all individuals are treated with dignity and respect. Each employee and student shall enjoy the right to work and learn in an environment that is free of discrimination, sexual harassment or retaliation. No person shall be required to endure discrimination, sexual harassment or retaliation as a condition of employment or in pursuit of academic endeavors. Unlawful discrimination, sexual harassment and retaliation will not be tolerated regardless of whether it takes place in the Board's administrative offices, its attendance centers, during work-related assignments outside of administrative offices or attendance centers, during school-related or work-related extracurricular functions or during work-related social functions.

**B. Covered Individuals:** No employee, student, contractor, consultant, vendor, or volunteer (collectively referred to as "covered individuals") shall engage in any conduct that unlawfully discriminates, sexually harasses or retaliates against another while employed, working for, attending school or participating in district endeavors.

**C. Scope:** This policy covers all phases of employment, and academic status, including, but not limited to recruitment, educational testing, hiring, upgrading, promotions, demotions, transfers, layoffs, termination, suspensions, expulsions, rates of pay, benefits, and the selection for training. This policy also covers allegations by persons seeking or receiving Board services as described herein.

**D. Limitations:** Nothing in this policy is intended nor shall be construed to create a private right of action against the Board or any of its employees. Furthermore, no part of this policy shall be construed to create contractual or other rights or expectations. Nothing herein is intended to affect the right of any person to make a charge of discrimination, retaliation or sexual harassment at any agency with jurisdiction over such claims.

**E. Guidelines:** The EOCO Manager shall establish guidelines which include procedures necessary to implement the requirements of this policy and shall make them available to interested persons. Guidelines shall include complaint forms which must be signed by the complainant, timelines for initiation and completion of an investigation, the creation and maintenance of a record-keeping system for all complaints, investigations, findings, and action(s) taken. The procedures shall ensure that the EOCO's records pertaining to its investigations will, to the extent possible, be kept confidential and that employees and students are afforded their rights provided for under Title IX of the Education Amendments of 1972.

### **III. CONDUCT PROHIBITED**

#### **A. Discrimination:**

1. *Definition* - As used in this policy, discrimination means unlawful discrimination on the basis of any classifications protected by the Constitution of the United States, the Constitution of the State of Illinois and applicable federal, state or local laws or ordinances, including but not limited to discrimination on the basis of race, color, sex, gender identity/expression, age, religion, disability, national origin or sexual orientation or maintaining facially neutral policies, practices, or requirements that have a negative effect on employment or academic opportunities of protected groups without a legitimate nondiscriminatory reason. Acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex, but not involving conduct of a sexual nature, may constitute a form of sex discrimination.

2. *Conduct Prohibited* – Discrimination is prohibited when making employment-related decisions, including but not limited to decisions relating to recruitment, hiring, promotion, transfers, benefits and any other terms and conditions of employment. Education-related programs and activities, including but not limited to admissions, financial aid, academic programs and extracurricular activities, will be administered without regard to the student's or applicant's race, color, national origin, sex, gender identity/expression, sexual orientation, age, religion or disability.

3. *Reporting* - The procedures for reporting claims of discrimination are set out in Section IV of this policy.

#### **B. Sexual Harassment:**

1. *Definition* - As used in this policy, sexual harassment means any un-welcomed sexual advance or request for sexual favors or conduct of a sexual nature:

(i) when submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or participation in an education program or activity or receipt of Board services;

(ii) when submission to or rejection of such conduct by an individual is used as the basis of any employment, educational or service decision affecting the individual; or

(iii) when such conduct has the purpose or effect of substantially interfering with the work performance of an employee, a student's ability to participate in or benefit from an education program or activity or creating an intimidating, hostile or offensive work or learning environment.

2. *Conduct Prohibited* - Covered individuals shall not sexually harass another while employed, working for, attending or participating in district endeavors. There is a broad range of conduct which can, in certain circumstances, be considered a violation of this policy. This may include, but is not limited to sexually suggestive or offensive remarks; sexually suggestive pictures; sexually suggestive gesturing; verbal harassment or abuse of a sexual nature; harassing, abusive or sexually suggestive or offensive messages sent by e-mail or other electronic medium; subtle or direct propositions for sexual favors, and touching, patting, or pinching. Sexual harassment may be directed against a particular person or persons, or a group, whether of the opposite sex or the same sex.

3. *Reporting* - The procedures for reporting claims of sexual harassment are set out in Section IV of this policy.

**C. Non-Fraternization:** No employee shall engage in or maintain a romantic relationship with another employee that they manage, supervise or may control or influence the supervision, evaluation or compensation of the other. Employees who become involved in such a relationship must communicate this fact to their principal or department head. The principal or department head will confer with the EOCO Manager to evaluate and determine an appropriate resolution in compliance with this policy. One or both employees may have to seek other employment, as the Board is under no obligation to reassign one or both employees. Romantic relationships between Board employees where there is no supervisory affiliation are not prohibited by this policy. Conflicts of interest involving a Board employee and their spouse, domestic partner or relative(s) are addressed in the Board's Ethics Policy.

**D. Conduct with Students:** Romantic or sexual conduct between school employees, contractors, consultants, vendors or volunteers and Chicago Public School students is strictly prohibited. For purposes of this policy, such conduct includes but is not limited to, physical contact of a sexual nature or use of sexually suggestive, offensive or inappropriate remarks. Any person with knowledge of an improper relationship between a student and a school employee, contractor, consultant, vendor or volunteer must immediately report the conduct to the Law Department. In such instances, employees shall also complete the mandatory reporting requirements identified for suspected child abuse/neglect by school personnel set out in the Board's Policy on Reporting Child Abuse and Neglect.

**E. Retaliation:** Retaliation against any person for having made a complaint or report of discrimination or sexual harassment, or participating or aiding in an investigation of discrimination or sexual harassment, is strictly prohibited. Any person who believes that he or she has been subjected to retaliation should report the retaliatory conduct to the EOCO Manager. Acts of retaliation shall subject an employee to discipline up to and including dismissal.

#### **IV. REPORTING PROCEDURES**

**A. Timely Reporting:** Complaints of discrimination, sexual harassment, retaliation or other violations of this policy shall be made within 90 days of the discrimination, sexual harassment or retaliation complained of. The 90 day reporting requirement shall be strictly applied, except when the EOCO Manager determines, in his/her discretion that extraordinary circumstances exist and authorizes a waiver of the 90 day reporting requirement.

Nothing in this policy prevents anyone from submitting a report of discrimination, sexual harassment, retaliation or non-compliance with this policy of which they have witnessed or have knowledge of.

**B. Complaints by Students:** A student, or a parent/guardian on the student's behalf, may make a complaint of discrimination, sexual harassment or retaliation to the school principal, assistant principal or EOCO Manager. If the student alleges that an employee, contractor or vendor has discriminated against, retaliated against or sexually harassed him or her, the EOCO Manager, school principal or assistant principal shall refer the matter to Law Department for investigation. If a student, or a parent/guardian on behalf of a student complains to the school principal or assistant principal, that another student has discriminated against, retaliated against or sexually harassed him or her, the school principal or assistant principal shall investigate the matter and, if the complaint is substantiated, commence appropriate disciplinary action against the offending student in accordance with the Student Code of Conduct.

If a student, or their parent/guardian on the student's behalf, complains to the EOCO that another student has discriminated against, retaliated against or sexually harassed him or her, the EOCO shall investigate the matter. If the EOCO substantiates the complaint, the EOCO Manager will submit an investigation report to the Law Department for referral to the offending student's principal who will consult with the Law Department about appropriate disciplinary action.

If a student, parent or guardian making the complaint to the school principal or assistant principal feels the intervention or consequence rendered by the school principal or assistant principal is insufficient to address the discrimination, sexual harassment or retaliation, he or she may appeal the matter within 15 calendar days to the EOCO Manager. The EOCO Manager shall render a final determination in accordance with the timeline and procedures set out in the Guidelines to this policy. If the EOCO determines the intervention or consequence rendered at the school level is insufficient, the EOCO Manager will submit an investigation report to the Law Department.

The EOCO Manager shall also ensure that the affected students are afforded their rights provided for under Title IX of the Education Amendments of 1972.

**C. Complaints by Employees, Contractors, Consultants, Vendors and Volunteers:** For employees, contractors, consultants, vendors and volunteers complaints of discrimination, sexual harassment or retaliation shall be made to any of the following persons:

1. The Principal of the school that the Complainant works in;
2. The department head of the Complainant's office, or if the Complainant is a consultant/vendor/contractor, the department head of the hiring department; or
3. The EOCO Manager or designee.

Any school principal or department head receiving an oral or written complaint alleging discrimination, sexual harassment or retaliation by an employee, contractor, consultant, vendor, volunteer shall handle the complaint in accordance with Sections IV. E. and F. below.

**D. Complaints by Members of the Public:** Any member of the public who is aware of a violation of this policy or believes that he or she has been subjected to discrimination, sexual harassment or retaliation by a Board employee, contractor, consultant, vendor or volunteer may submit a complaint to any of the following persons:

1. The Principal of the applicable school;
2. The department head of the applicable office; or
3. The EOCO Manager or designee.

Any school principal or department head receiving an oral or written complaint alleging discrimination, sexual harassment or retaliation by an employee, contractor, consultant, vendor, volunteer shall handle the complaint in accordance with Sections IV. E. and F. below.

**E. Supervisor Handling, Confirmation and Reporting:** Any school principal or department head receiving an oral or written complaint alleging discrimination, sexual harassment or retaliation by an employee, contractor, consultant, vendor, volunteer must refer it to the EOCO's Manager or designee for handling within three (3) business days following receipt or knowledge of the allegations. If the allegation from the Complainant is in writing, that document must be submitted to the EOCO. If the complaint is oral, the party receiving the complaint must summarize the allegation in writing and submit it to the EOCO. The principal or department head must submit the written allegation to the EOCO Manager in a manner that ensures the integrity and confidentiality of the contents. For example, if the principal or department head elects to send the findings via facsimile, email or U.S. Mail, they should mark the findings, "Confidential," and send the findings to the EOCO Manager and not to the parties involved, or any other third parties. Upon receipt of the written allegations from the principal or department head, the EOCO Manager or its designee will contact the Complainant to open a formal complaint.

**F. School/Department's Involvement:** No school-based or department-based investigation or discipline may be initiated or imposed regarding allegations of discrimination, sexual harassment or retaliation by an employee, contractor, consultant, vendor, volunteer until the EOCO Manager or the Law Department has investigated the matter and made a determination. If the EOCO Manager unsubstantiates a claim, nothing in this policy prevents:

1. the supervisor from disciplining an employee for an Act of Misconduct under the Employee Discipline and Due Process Policy other than for those Acts covering discrimination, harassment or retaliation; or
2. the principal from relinquishing a volunteer's authorization to serve; or

3. the Board from subjecting a contractor, consultant or vendor to remedies of law or remedies pursuant to their contract.

## V. EOCO RESPONSES TO COMPLAINTS

**A. Information and Advice:** Covered individuals and members of the public may contact the EOCO to seek advice, information or counseling on matters related to discrimination, sexual harassment and retaliation, and options available under this policy.

### **B. Formal Complaint**

1. *Signed Complaint* - When an individual seeks resolution of a discrimination, sexual harassment or retaliation complaint, the EOCO will request a signed complaint from the Complainant. The EOCO will attempt to contact the Complainant within fifteen calendar days after receiving notice of the complaint to obtain the identity of witnesses and any other evidence the Complainant chooses to submit. The EOCO Manager will inform the Complainant that if the complaint is sustained and the Board seeks to discipline the Respondent, that the Complainant may be called to testify at subsequent disciplinary or other court proceedings.

2. *Exception* - The EOCO Manager may act on allegations of discrimination, sexual harassment, retaliation or other violations of this policy even if there is no signed complaint or a Complainant chooses not to pursue the matter.

3. *Investigation* - After receipt of a signed complaint, the EOCO Manager or designee will commence an investigation within fifteen calendar days after contacting the Complainant. At the conclusion of the investigation, the EOCO Manager will prepare and issue a summary report containing a synopsis of the evidence and findings. Both the Complainant and the Respondent will receive notification of the investigation outcome and determination.

4. *Disciplinary Determination* - In cases where the EOCO substantiates the allegations, the EOCO Manager will submit an investigation report to the Law Department for referral to the offending employee's supervisor who will consult with the Law Department about appropriate disciplinary action.

5. *Amended and Additional Complaints* - Nothing herein prevents a Complainant from amending a complaint to include new allegations, or from submitting multiple complaints on unrelated incidents.

## VI. VIOLATIONS AND DISCIPLINE

**A. Violations:** It is a violation of this policy for:

1. Any covered individuals to engage in illegal discrimination, sexual harassment or retaliation;
2. Any principal, assistant principal or department head to fail to abide by the reporting and other obligations identified in this policy;
3. Any principal, assistant principal or department head to intentionally ignore sexually harassing conduct, unlawful discriminatory conduct or retaliation by a covered individual that occurs in their presence, by failing to report that conduct. Discipline may be imposed in instances where a principal, assistant principal or department head ignores such conduct even when the alleged victim does not complain about the observed conduct;
4. Any principal, assistant principal or department head to fail to fulfill their duties and responsibilities as described in this policy;
5. Any Board employee to intentionally ignore sexually harassing conduct or unlawful discriminatory conduct by a Board employee, contractor, consultant, vendor or volunteer towards a student that occurs in their presence, by failing to report that conduct. Discipline may be imposed in this instance regardless of whether or not the student complains about the conduct; and
6. Any covered individual to bring allegations in bad faith, and which the EOCO Manager or its designee finds to be false.

**B. Discipline:** Employees and students who violate this policy are subject to disciplinary action. Contractors, consultants or vendors who violate this policy are subject to remedies of law or remedies pursuant to their contract. Volunteers who violate this policy are subject to the relinquishment of their authorization.

## **VII. NOTICE**

Upon adoption of this policy, all new employees shall receive information on this policy at the date of hire. Each school shall maintain copies of this policy in its Main Office and annually the Principal shall advise each employee (full or part-time), student, contractor, consultant and volunteer who attends/works for/provides services to their school about this policy. Chief Area Officers and Department Heads shall maintain a copy of this policy in their offices and annually shall advise each employee or consultant/contractor they supervise about this policy. A poster informing covered individuals regarding prohibited discrimination, sexual harassment and retaliation will be posted in a prominent location at all schools, area offices and in each Central Office department site.

## **VIII. PUBLICATIONS**

Beginning March 1, 2010, the following statement will be used in any and all new publications directed to students, parents, employees or applicants: "It is the policy of the Board to prohibit unlawful discrimination on the basis of any classifications protected by the Constitution of the United States, the Constitution of the State of Illinois and applicable federal, state or local laws or ordinances, including but not limited to discrimination on the basis of race, color, sex, gender identity/expression, age, religion, disability, national origin or sexual orientation."

The following paragraph will also be included in publications directed to parents and students: "Inquiries concerning the application of Title IX of the Education Amendments of 1972 and related regulations concerning sex discrimination should be referred to the CPS Equal Opportunity Compliance Office."

For purposes of this section, publication refers to handbooks, catalogs, manuals, applications and other similar published materials.

## **IX. EDUCATION, TRAINING AND PREVENTION**

The EOCO Manager or designee will conduct training or arrange for training to be provided on this policy and related legal developments to principals, Chief Area Officers, Chief Officers and Department Heads.

**Amends/Rescinds:** Amends 08-0123-PO4

**Cross References:** 03-0326-PO02, 97-1119-PO2, 86-1008-PE17, 86-1008-PE18 and 81-51-1

**Legal References:** 20 U.S.C. §1681 et seq.; 29 U.S.C. §764; 42 U.S.C. §1981; 42 U.S.C. §2000e et seq; 42 U.S.C. §12101; 775 ILCS 5/7A-102; 29 U.S.C. §764; 42 U.S.C. §1981; 42 U.S.C. §2000e et seq; 42 U.S.C. §12101; 775 ILCS 5/7A-102.