

July 22, 2020

**RESCIND BOARD REPORT 19-0522-PO1
COMPREHENSIVE NON-DISCRIMINATION, HARASSMENT, AND RETALIATION POLICY
AND ADOPT AN INTERIM NEW COMPREHENSIVE NON-DISCRIMINATION, HARASSMENT,
SEXUAL HARASSMENT, SEXUAL MISCONDUCT AND RETALIATION POLICY**

THE CHIEF EXECUTIVE OFFICER RECOMMENDS:

That the Chicago Board of Education (“Board”) rescind Board Report 19-0522-PO1 Comprehensive Non-Discrimination, Harassment, and Retaliation Policy and adopt on an Interim Basis a New Comprehensive Non-Discrimination, Harassment, Sexual Harassment, Sexual Misconduct and Retaliation Policy effective August 14, 2020. This Policy is being submitted as an Interim Policy to ensure that the District is in compliance with the new United States’ Department of Education’s Title IX regulations, effective August 14, 2020. The policy will be subject to public comment from July 23, 2020 to August 17, 2020.

PURPOSE: The Board is committed to providing a safe and secure working and learning environment free from Discrimination, Harassment, Sexual Harassment, Sexual Misconduct and/or Retaliation, as these terms are defined in Section I in this Policy, in any program or activity it conducts. It is the policy of the Board to maintain a safe and secure work and learning environment in which all individuals are treated with dignity and respect. Each employee, student, and all other Covered Individuals have the right to work and learn in an environment that is free of Discrimination, Harassment, Sexual Harassment, Sexual Misconduct and/or Retaliation. No person must endure Discrimination, Harassment, Sexual Harassment, Sexual Misconduct or Retaliation as a condition of employment or participation in any academic/educational program or activity.

This Policy establishes procedures for the reporting, investigating and resolving complaints of Discrimination, Harassment, Sexual Harassment, Sexual Misconduct and/or Retaliation.

POLICY TEXT:

I. DEFINITIONS

- A. Protected Categories:** An individual’s actual or perceived sexual orientation, gender or sex (includes gender identity, gender expression, pregnancy, childbirth, breastfeeding, and pregnancy related medical conditions), race or ethnicity, ethnic group identification, ancestry, nationality, national origin, religion, color, mental or physical disability, age (40 and above), immigration status, marital status, registered domestic partner status, genetic information, political belief or affiliation (not union related), military status, unfavorable discharge from military service, or on the basis of a person’s association with a person or group with one or more of these actual or perceived characteristics, or any other basis protected by federal, state or local law, ordinance, or regulation.
- B. Discrimination:** Treating an individual less favorably because of their actual or perceived membership in one or more of the Protected Categories.

C. Harassment: Unwelcome verbal, nonverbal, visual, or physical conduct that is based on an individual's actual or perceived membership in one or more of the Protected Categories, as defined in this policy, that is persistent, pervasive, or severe and objectively offensive and unreasonably interferes with, limits, or denies an individual's educational or employment access, benefits, or opportunities. Unwelcome conduct may include, but is not limited to, bullying, intimidation, offensive jokes, slurs, epithets or name calling, assaults or threats, touching, ridicule or mockery, insults or put-downs, offensive objects or pictures, messages sent via email, text or social media, sexual advances, requests for sexual favors, conduct of a sexual nature, or any other sex-based conduct.

D. Sexual Harassment: Conduct on the basis of sex that satisfies one or more of the following:

(1) An employee of the District conditioning the provision of an aid, benefit, or service of the District on an individual's participation in unwelcome sexual conduct;

(2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the District's education program or activity; or

(3) "Sexual assault," defined as:

- (i) Sex Offenses, Forcible - Any sexual act or attempted sexual act directed against a complainant, without the consent of the complainant including instances where the complainant is incapable of giving consent.
 - Forcible Rape - Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of complainant, without the consent of the complainant.
 - Forcible Sodomy - Oral or anal sexual intercourse with another person, forcibly and/or against that person's will (non-consensually) or not forcibly or against the person's will in instances where the complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
 - Sexual Assault With An Object - To use an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will (non-consensually) or not forcibly or against the person's will in instances where the complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
 - Forcible Fondling - The touching of the private body parts of another person (buttocks, groin, breasts) for the purpose of sexual gratification, forcibly and/or against that person's will (non-consensually) or not forcibly or against the person's will in instances where the complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- (ii) Sex Offenses, Nonforcible - Nonforcible sexual intercourse.
 - Incest - Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Illinois law.

- Statutory Rape - Nonforcible sexual intercourse with a person who is under the statutory age of consent of 17 years old (or 18 years old when the perpetrator is in a position of trust or authority, such as a teacher or coach).

(4) "dating violence," defined as: violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant. The existence of such a relationship shall be determined based on the complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition:

- Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
- Dating violence does not include acts covered under the definition of domestic violence.

(5) "domestic violence," defined as: a felony or misdemeanor crime of violence committed

- By a current or former spouse or intimate partner of the complainant;
- By a person with whom the complainant shares a child in common;
- By a person who is cohabitating with, or has cohabitated with, the complainant as a spouse or intimate partner;
- By a person similarly situated to a spouse of the complainant under the domestic or family violence laws of Illinois;
- By any other person against an adult or youth complainant who is protected from that person's acts under the domestic or family violence laws of Illinois.

To categorize an incident as Domestic Violence, the relationship between the respondent and the complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

(6) "stalking," defined as: engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- Fear for the person's safety or the safety of others; or
- Suffer substantial emotional distress.

For the purposes of this definition:

- (i) Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- (ii) Reasonable person means a reasonable person under similar circumstances and with similar identities to the complainant.
- (iii) Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

E. Retaliation: Any adverse action to employment, educational program or activity, or adverse change in employment, educational program or activity, taken against a Covered Individual for having made a complaint or report of Discrimination, Harassment, Sexual Harassment or Sexual Misconduct, whether made internally, or externally with a federal, state, or local agency; or for participating, aiding, or refusing to participate in an investigation, proceeding or hearing related to a report or complaint of Discrimination,

Harassment, Sexual Harassment or Sexual Misconduct under this Policy, whether internal, or external with a federal, state, or local agency, is strictly prohibited. An adverse action can include, discipline or denial of access to a service or benefit. For purposes of Title IX, intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation. Any person who believes that they have been subjected to Retaliation should refer to Section III. Subject to applicable laws and regulations, including Title IX, nothing herein is intended to conflict with an employee's obligations under Board Rule 4□4 (m) to cooperate in investigations by the Office of the Inspector General.

- F. Sexual Misconduct:** A form of sex or gender-based discrimination or harassment that includes any conduct that is sex-based or of a sexual nature that is unwelcome or inappropriate and unreasonably interferes with, limits, or denies an individual's educational or employment access, benefits, or opportunities. CPS uses six (6) categories to further breakdown sexual misconduct incidents. Those categories are: grooming, inappropriate touching, sexual electronic communication, sexual bullying, sexual exploitation, and exposure/voyeurism/masturbation. With respect to conduct between Covered Individual adults and students, any sexual or romantic conduct constitutes Sexual Misconduct.
- G. Racial Discrimination:** Any distinction, exclusion, restriction or preference based on race, color, community, national or ethnic origin which has the impact of nullifying or impairing the recognition, enjoyment or exercise, of a right to an equitable educational experience and fundamental freedoms in the social, economic, cultural, political, and linguistic aspects of school, school and district life (Adapted from United Nations, 2019).
- H. Microaggressions:** The everyday verbal, nonverbal, and environmental slights, snubs, or insults, whether intentional or unintentional, which communicate hostile, derogatory, or negative messages to target persons based solely upon their Protected Category membership such as race, sexual orientation, and gender identity (Adapted from Wing Sue, Derald. "Racial Microaggressions in Everyday Life," 2010).

II. GENERAL PROVISIONS

- A. Conduct Prohibited:** The Board prohibits unlawful discrimination, harassment, sexual harassment, sexual misconduct and retaliation on the basis of any protected category 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 Title VI of the Civil Rights Act of 1964 (Title VI), Title VII of the Civil Rights Act of 1964 (Title VII), Age Discrimination in Employment Act of 1967 (ADEA), Title IX of the Education Amendments of 1972 (Title IX), the Americans with Disabilities Act (ADA), the Individuals with Disabilities Education Act (IDEA), and Section 504 of the Rehabilitation Act of 1973 (Section 504), or on the basis of a person's association with a person or group with one or more of these actual or perceived characteristics in the educational programs or activities the Board operates.

- B. Covered Individuals:** All employees, students, contractors, consultants, vendors, volunteers, visitors, applicants for employment or members of the Board of Education of the City of Chicago or local school council are Covered Individuals and subject to this Policy. Covered Individuals must not engage in any Discrimination, Harassment, Sexual Harassment, Sexual Misconduct or Retaliation against another Covered Individual while employed, working for, attending school or participating in district programs or activities. Covered Individuals must not be subjected to any Discrimination, Harassment, Sexual Misconduct or Retaliation by another Covered Individual while employed, working for, attending school or participating in district programs or activities
- C. Scope:** This Policy applies to all District programs and activities and covers all phases of employment and academic status, including, but not limited to, recruitment, hiring, evaluations, rates of pay, the selection for training, promotions, demotions, transfers, layoffs, employment non-renewals, termination, benefits, discipline, expulsions, admissions, educational testing, extracurricular programs, and athletics.
- D. Jurisdiction:** This Policy applies to conduct that takes place on school grounds or on property owned, leased, or controlled by the District. This Policy also applies at District-sponsored activities or events, and while being transported to and from District-sponsored activities or events. This Policy may also apply to conduct that occurs outside of school or work and to online conduct when the District determines that the conduct affects a substantial District interest. Regardless of where the conduct occurred, the District will address all allegations to determine whether the conduct occurred in the context of employment, educational program or activity and whether the conduct has continuing effects within the District. A substantial District interest includes any of the following:
- (1) Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law;
 - (2) Any situation in which it appears that a Covered Individual may present a danger or threat to the health or safety of self or others;
 - (3) Any situation that significantly interferes with the rights, property, or achievements of self or others or significantly breaches the peace or causes social disorder; or
 - (4) Any situation that is detrimental to the educational interests of the District.
- E. 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 file a charge or complaint of Discrimination, Harassment, Sexual Harassment, Sexual Misconduct, and/or Retaliation with any agency with jurisdiction over such charge or complaint.

III. REPORTING AND INVESTIGATING DISCRIMINATION, HARASSMENT, SEXUAL HARASSMENT, SEXUAL MISCONDUCT OR RETALIATION

All Covered Individual adults must report Sexual Harassment to the District's Title IX Coordinator. A Covered Individual adult's failure to report violations of this Policy is subject to discipline/sanctions, up to and including termination, removal from and prohibiting access to District premises. The District's Title IX Coordinator shall forward to the Office of the Inspector General all complaints related to or potentially related to Covered Individual adults-to-student Sexual Harassment, Sexual Misconduct, Retaliation, and any other conduct or Harassment of a sexual nature.

**A. District's Chief Title IX Officer (the district's designated Title IX Coordinator)
Office of Student Protections & Title IX (OSP)**

Camie C. Pratt

42 W. Madison Street

Chicago, IL 60602

Phone: 773- 535-4400 Email: osp@cps.edu

- For any inquiries or complaints by anyone related to Discrimination, Harassment, Sexual Harassment, Sexual Misconduct, and Retaliation based on a student's disability and on actual or perceived sexual orientation, gender or sex (includes gender identity, gender expression, pregnancy, childbirth, breastfeeding, and pregnancy related medical conditions), and gender equity in athletics or academics.
- Refer to the OSP Procedure Manual for additional information ([Click Here](#)).

B. Office of the Inspector General (OIG)

833-835-5277 (833-TELL-CPS)

- For inquiries or complaints related to Covered Individual adults-to-student Sexual Harassment, Sexual Misconduct, Retaliation, and any other conduct or Harassment of a sexual nature.
- Notwithstanding anything in this policy, the Office of the Inspector General, consistent with Board Resolution 20-0624-RS5, shall have sole responsibility to investigate reports of sexual misconduct by employees, vendors, or volunteers where a CPS student may be the victim.

C. School Principal

Contact information for each school principal can be found on

<https://cps.edu/Pages/AboutOurSchools.aspx>

- For inquiries or complaints related to student-to-student Discrimination, Harassment and/or Retaliation based on Protected Categories other than gender, sex or disability.
- Refer to the Student Code of Conduct ([Click Here](#)) or the Anti - Bullying Policy ([Click Here](#))

D. Equal Opportunity Compliance Office (EOCO)

110 N. Paulina Street

Chicago, IL 60612

Phone: 773-553-1013

- For inquiries or complaints related to Covered Individual adult complainants regarding Discrimination, Harassment, Sexual Harassment, Sexual Misconduct and Retaliation based on Protected Categories.
- Refer to the EOCO Procedure Manual ([Click Here](#))

E. File an incident report in Aspen

Consult the Investigations Unit of the Law Department for assistance at

773-553-2120

- For inquiries or complaints related to adult-to-student Discrimination, Harassment and/or Retaliation based on Protected Categories other than gender, sex or disability.

In compliance with the Board's Policy on Reporting of Child Abuse, Neglect and Inappropriate Relations Between Adults and Students, Board Report: 18-0627-PO3A, all school personnel are mandated reporters who are required to immediately call the DCFS Hotline at 1-800-252-2873 (1-800-25-ABUSE) when there is reasonable cause to believe that a child known to the reporter in the reporter's official capacity may have been abused or neglected, as well as any interactions or behaviors which suggest that an adult has or had an inappropriately intimate relationship with a child or may be grooming a child, even if the employee does not have reasonable suspicion that sex abuse is occurring or has occurred.

IV. TITLE IX OFFICER'S ROLE AND RESPONSIBILITY

- A.** In compliance with Title IX, the CEO has created the Title IX Officer, the district's designated Title IX Coordinator. The Title IX Officer coordinates the Board's efforts to comply with and carry out its responsibilities under this Policy and Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681-1688, and its implementing regulation at 34 C.F.R. Part 106. Specifically, the Title IX Officer:

- (1) coordinates all Title IX and other complaint investigations under this Policy,
- (2) determines supportive measures, if any, that are necessary to protect student and adult rights, and
- (3) coordinates appropriate next steps including appropriate remedial support for any identified complainants and respondents, educational programs changes required, commencement of student discipline and commencement of employee discipline or dismissal.
- (4) consults with other departments as they deem necessary to determine appropriate actions in accordance with Title IX, other applicable local, state and federal laws, Board Rules and Policies and collective bargaining agreements.

- B. All complaints of sex or gender-Based Discrimination, Harassment, Sexual Harassment, Sexual Misconduct, or Retaliation will be coordinated by the District's Chief Title IX Officer and investigated using the procedures outlined in the OSP Procedures Manual ([Click Here](#)).
- C. The Title IX Officer at all times reports directly to the Board's Chief Executive Officer, must inform the CEO and the Board of the steps being taken to coordinate the Board's efforts to comply with and carry out its responsibilities under this Policy and Title IX, and make recommendations to the CEO to improve and enhance such efforts.
- D. In compliance with Title IX, the Title IX Officer on an annual and on-going basis shall provide notice to the stakeholders listed below via print, electronic or other means of (1) the requirements of this Policy and Title IX and (2) the procedures for making complaints regarding alleged Policy and/or Title IX violations.
 - (1) all Board schools (including Charter, Contract and Alternative Schools),
 - (2) all staff (including network staff, principals, Title IX School Representatives, teachers, paraprofessionals and education support personnel),
 - (3) parents (including foster parents) or guardians of or, where necessary, adults acting *in loco parentis* to enrolled students, and,
 - (4) applicants for admission to a school and employment, sources of referral of applicants for admission to a school and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the Board.
- E. The Title IX Officer must provide training programs to be delivered on an annual basis that informs the stakeholders listed below of (a) the requirements of this Policy and Title IX; (b) the procedures for making complaints regarding alleged Policy and/or Title IX violations; (c) signs and ways to recognize when Sex Discrimination, Sexual Harassment, Sexual Misconduct, and Retaliation has occurred; (d) the rights of parties when a complaint has been filed, including the right to on-going notices with respect to the status of a complaint and the right for all parties to have a prompt and equitable resolution of the complaint; and (e) the rights of all parties to a complaint to have supportive measures put in place to ensure that the right to a free and appropriate education has been honored.
 - (1) all Board schools (including Charter, Contract and Alternative Schools),
 - (2) all staff (including Network staff, principals, teachers, paraprofessionals and education support personnel), and
 - (3) students and parents (including foster parents) or guardians of or, where necessary, adults acting *in loco parentis* to enrolled students.
- F. Any inquiries regarding the application of Title IX should be addressed to the District's Chief Title IX Officer and/or to the Office for Civil Rights (OCR), U.S. Department of Education, 230 South Dearborn Street, 37th Floor, Chicago, Illinois, 60604, Telephone: (312) 730-1560; Email: OCR.Chicago@ed.gov.

V. VIOLATIONS AND DISCIPLINE/SANCTIONS

A. Violations: It is a violation of this Policy for:

- (1) Any Covered Individuals to engage in Discrimination, Harassment, Sexual Harassment, Sexual Misconduct, or Retaliation;
- (2) A Covered Individual adult to intentionally ignore conduct of which they are aware or happens in their presence. An adult intentionally ignores conduct by failing to report that conduct pursuant to Section III of this policy.
- (3) Any employee, contractor, consultant or vendor to fail to report Discrimination, Harassment, Sexual Harassment, Sexual Misconduct or Retaliation;
- (4) Any Covered Individual adult to refuse to cooperate, participate and/or provide truthful information in an investigation conducted in compliance with this Policy; and
- (5) Any Covered Individual to knowingly report false allegations and/or knowingly provide false information during the course of an investigation.

B. Discipline/Sanctions:

- (1) Employees who violate this Policy are subject to disciplinary action up to and including termination.
- (2) Students who violate this Policy are subject to disciplinary action under the Student Code of Conduct, as amended.
- (3) Contractors, consultants or vendors who violate this Policy are subject to removal from and prohibiting access to District premises, remedies of law, and/or remedies under their contract.
- (4) Local School Council members who violate this policy are subject to removal from their elected office.
- (5) Volunteers who violate this Policy are subject to their authorization to serve as a volunteer being rescinded.
- (6) Visitors who violate this Policy are subject to being barred from District premises.

VI. NOTICE

A. Notice of this policy will be regularly and widely disseminated as follows:

- (1) All new employees shall receive information on this Policy within the first 30 days of hire. Annually, the Policy will be distributed to all active Covered Individual Adults, and posted on the Board of Education's website.
- (2) Each school must maintain copies of this Policy in its Main Office and annually the Principal should advise all Covered Individuals, including students, who attend, work for, or provide services to their school about this Policy.


(3) Notice to Covered Individuals regarding prohibited Discrimination, Harassment, Sexual Harassment, Sexual Misconduct and Retaliation will be posted in a prominent location at all schools, Network offices, in each Central Office location and on the District's website.

(4) The District's Non-Discrimination Statement ([Click Here](#)) will be posted in common areas throughout the District, including at every District school, Network Office, and Central Office, on the District's website, and on every District school webpage.

LEGAL REFERENCES:


Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000a et seq.; Title VII of the Civil Rights Act of 1964, 42 U.S.C. §1981; Age Discrimination in Employment Act of 1967 (ADEA), 29 U.S.C. §§ 621–634; Title IX of the Education Amendments of 1972, 20 U.S.C. §1681 et seq.; Americans with Disabilities Act (ADA), 42 U.S.C. §12101 et seq.; Individuals with Disabilities Education Act (IDEA), 20 U.S. Code § 1400; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 701 et seq.; Illinois Human Rights Act, 775 ILCS 5/7A-102; Chicago Human Rights Ordinance, Chicago Mun. Code § 2-160-020 (1990).

Approved for Consideration:

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LaTanya D. McDade
Chief Education Officer

Approved:

DocuSigned by:

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Janice K. Jackson
Chief Executive Officer


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Camie C. Pratt
Chief Title IX Officer

Approved as to Legal Form:



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Joseph T. Moriarty
General Counsel