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NCA Policy 413 based on
MSBA/MASA Model Policy 413
Orig. 1995
Rev. 1999

*MUST BE REVIEWED ANNUALLY

413 HARASSMENT AND VIOLENCE

This form of policy has been reviewed and approved by the Minnesota Department of Education in compliance with the mandatory legislation.]

I. PURPOSE

The purpose of this policy is to maintain a learning and working environment that is free from religious, racial or sexual harassment and violence. New Century Academy prohibits any form of religious, racial or sexual harassment and violence.

II. GENERAL STATEMENT OF POLICY

A. It is the policy of New Century Academy to maintain a learning and working environment that is free from religious, racial or sexual harassment and violence. New Century Academy prohibits any form of religious, racial or sexual harassment and violence.

B. It shall be a violation of this policy for any pupil, educator, administrator or other school personnel of New Century Academy to harass a pupil, educator, administrator or other school personnel through conduct or communication of a sexual nature or regarding religion and race as defined by this policy. (For purposes of this policy, school personnel include school board members, school employees, agents, volunteers, contractors or persons subject to the supervision and control of New Century Academy.)

C. It shall be a violation of this policy for any pupil, educator administrator or other school personnel of New Century Academy to inflict, threaten to inflict, or attempt to inflict religious, racial or sexual violence upon any pupil, educator, administrator or other school personnel.

D. New Century Academy will act to investigate all complaints, either formal or informal, verbal or written, of religious, racial or sexual harassment or violence, and to discipline or take appropriate action against any pupil, educator, administrator or other school personnel who is found to have violated this policy.

E. The school's title IX coordinator will be the person that is serving in the role of either (school) social worker, school/guidance counselor, dean of students, or student services professionals. This person will be identified by the director at back to school in-service for staff,

to new/enrolling families, and to the community via the webpage. It is expected this person's contact info is readily available posted in the school, in both employee and student/family handbooks, and on the website. This person will have to be identified to new employees, students, and families as they come in throughout the year.

III. RELIGIOUS, RACIAL AND SEXUAL HARASSMENT AND VIOLENCE DEFINED

A. Sexual Harassment; Definition

Previously, sexual harassment for purposes of Title IX was defined as "unwelcome conduct of a sexual nature" that included "unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature." Under the new regulations, however, sexual harassment is now formally defined as conduct on the basis of sex that consists of:

1. An employee conditioning an individual's receipt of aid, benefit, or service on that individual's participation in unwelcome sexual conduct;

2. Unwelcome conduct that a reasonable person would find "so severe, pervasive, and objectively offensive" that it effectively denies a person equal access to the school's education program or activity; or

3. Sexual assault, dating violence, domestic violence, or stalking, as those terms are defined by federal law. 34 C.F.R. § 106.30.

In addition to changing the definition, the new regulations now require that, if the conduct described by a formal complaint does not meet the regulatory definition, a complaint must be dismissed with respect to whether it constitutes sexual harassment under Title IX. 34 C.F.R. § 106.45(b)(2)(B)(3)(i). The school can move forward under its own code of conduct. However, for Title IX purposes, a formal complaint cannot move forward unless the complained-of conduct meets the new definition.

The Title IX Coordinator will meet with a member of the school board policy committee and will receive the list of requirements that constitutes a formal complaint/sexual harassment report.

B. Harassment; Definition

"Harassment" consists of physical or verbal conduct, including but not limited to, electronic communications, relating to an individual's or group of individuals' race,

color, creed, religion, national origin, sex, age, marital status, familial status, status with regard to public assistance, sexual orientation, including gender identity or expression, or disability, when the conduct:

1. has the purpose or effect of creating an intimidating, hostile or offensive working or academic environment;

2. has the purpose or effect of substantially or unreasonably interfering with an individual's work or academic performance; or

3. otherwise adversely affects an individual's employment or academic opportunities.

C. Sexual Violence; Definition

1. Sexual violence is a physical act of aggression or force or the threat thereof which involves the touching of another's intimate parts, or forcing a person to touch any person's intimate parts. Intimate parts, as defined in Minn. Stat. § 609.341, includes the primary genital area, groin, inner thigh, buttocks or breast, as well as the clothing covering these areas.

2. Sexual violence may include, but is not limited to:

a. touching, patting, grabbing, or pinching another person's intimate parts, whether that person is of the same sex or the opposite sex;

b. coercing, forcing or attempting to coerce or force the touching of anyone's intimate parts;

c. coercing, forcing or attempting to coerce or force sexual intercourse or a sexual act on another; or

d. threatening to force or coerce sexual acts, including the touching of intimate parts or intercourse, on another.

D. Assault; Definition

Assault is:

1. an act done with intent to cause fear in another of immediate bodily harm or death;

2. the intentional infliction of or attempt to inflict bodily harm upon another; or

3. the threat to do bodily harm to another with present ability to carry out the threat.

IV. REPORTING PROCEDURES

A. Any person who believes he or she has been the victim of religious, racial or sexual harassment or violence by a pupil, educator, administrator or other school personnel of New Century Academy, or any person with knowledge or belief of conduct which may constitute religious, racial or sexual harassment or violence toward a pupil, educator, administrator or other school personnel should report the alleged acts immediately to an appropriate school district official designated by this policy. New Century Academy encourages the reporting party or complainant to use the report form available from the director or available from the office of student data management, but oral reports shall be considered complaints as well. Nothing in this policy shall prevent any person from reporting harassment or violence directly to the New Century Academy human rights officer or to the director.

B. The director or the Title IX coordinator are people responsible for receiving oral or written reports of religious, racial or sexual harassment or violence at the building level. Any adult school district personnel who receives a report of religious, racial or sexual harassment or violence shall inform the director or title IX coordinator immediately.

The Formal Complaint Requirement The new title IX regulations require schools to develop a grievance process for responding to formal complaints. For purposes of this requirement, a "formal complaint" is defined as a document that is either filed by the complainant or signed by the Title IX coordinator alleging sexual harassment and requesting that the school investigate the allegation of sexual harassment. The existence of the term "formal complaint," however, does not mean that there can be an informal complaint. To the contrary, while the new regulations do allow for complaints to be addressed via an informal resolution process if the complainant and respondent both voluntarily agree in writing to participate in that process, schools cannot offer an informal resolution process until a formal complaint has been filed. 34 C.F.R. § 106.45(b)(9). Moreover, as the Department of Education stated in commentary accompanying the new regulations, a third party is not allowed to file a formal complaint on the complainant's behalf; the definition of formal complaint limits filers to complainants themselves and the Title IX coordinator. Thus, while third parties may still report sexual harassment, such reports do not constitute "formal complaints." In the event that a complainant does not complete a formal complaint, a Title IX coordinator will need to do so to initiate the formal grievance procedure.

General Requirements In general, the new regulations provide a school's grievance process must treat respondents and complainants equally, objectively evaluate the evidence, presume the respondent is innocent until proven guilty, refrain from making credibility determinations based on the complainant/witness/respondent's role in the proceedings, maintain reasonable timeframes, and describe both the range of disciplinary sanctions and supportive measures available under the process. See 34 C.F.R. § 106.45(b)(1). One issue that is getting a lot of attention is the standard of proof. Previously, OCR encouraged schools to apply a preponderance of the evidence –"more

likely than not"– standard. However, the new guidelines allow schools to choose to apply a "clear and convincing evidence" standard, which is often interpreted to mean "substantially more likely than not," and is always construed as a greater weight of evidence than the preponderance of the evidence. Whichever standard a school chooses to apply must be applied for all sexual harassment complaints, regardless of whether the complaint is brought against a staff member or student. See 34 C.F.R. § 106.45(b)(1)(vii).

C. Upon receipt of a report, the director must notify the school district human rights officer immediately, without screening or investigating the report. The director may request, but may not insist upon a written complaint. A written statement of the facts alleged will be forwarded as soon as practicable by the director to the human rights officer. If the report was given verbally, the director shall personally reduce it to written form within 24 hours and forward it to the human rights officer. Failure to forward any harassment or violence report or complaint as provided herein will result in disciplinary action against the director. If the complaint involves the director, the complaint shall be made or filed directly with human rights officer by the reporting party or complainant.

D. In the District. The school board hereby designates the School Counselor as the school district human rights officer(s) to receive reports or complaints of religious, racial or sexual harassment or violence. If the complaint involves a human rights officer, the complaint shall be filed directly with the director.

E. New Century Academy shall conspicuously post the name of the human rights officer, including mailing addresses and telephone numbers.

F. Submission of a good faith complaint or report of religious, racial or sexual harassment or violence will not affect the complainant or reporter's future employment, grades or work assignments.

G. Use of formal reporting forms is not mandatory.

H. New Century Academy will respect the privacy of the complainant, the individual(s) against whom the complaint is filed, and the witnesses as much as possible, consistent with New Century Academy's legal obligations to investigate, to take appropriate action, and to conform with any discovery or disclosure obligations.

V. INVESTIGATION

A. Parties must be provided equivalent opportunities to present and review evidence, to have an advisor (who may be an attorney) present, and to have their advisor participate in any meeting, hearing, or investigative interview.

B. Parties must be provided all the evidence subject to inspection and review in electronic format or hard copy, before the investigation report is completed.

C. The parties must be given 10 days to submit written responses, and the investigator must consider any written responses when finalizing their investigation report. 34 C.F.R. § 106.45(b)(5)(vi).

D. When a complainant or respondent is being interviewed or otherwise met with, the school must give written notice of the date, time, location, participants, and purpose of such interview, meeting, or hearing, with sufficient time for the party to prepare to participate. "Sufficient time" is not defined by the regulations or their accompanying guidance.

E. Investigation reports that fairly summarize the relevant evidence must be sent to the complainant and respondent at least 10 days before any determination of responsibility is made, for the parties' review and written response. This 10- day window is separate from the 10-day window for the parties to review and respond in writing to the evidence, and this also constitutes a separate opportunity for the parties to respond. 34 C.F.R. § 106.45(b)(5)(vii). The investigation report cannot be "completed" until the first 10-day period and opportunity to respond has passed, and then the parties must have another 10 days to respond to the completed investigation report before any final determination is made.

F. In addition, New Century Academy may take immediate steps, at its discretion, to protect the complainant, pupils, educators, administrators or other school personnel pending completion of an investigation of alleged religious, racial or sexual harassment or violence.

G. The investigation will be completed as soon as practicable. The school district human rights officer shall make a written report to the superintendent upon completion of the investigation. If the complaint involves the superintendent, the report may be filed directly with the school board. The report shall include a determination of whether the allegations have been substantiated as factual and whether they appear to be violations of this policy.

VI. SCHOOL DISTRICT ACTION/ DETERMINATION OF RESPONSIBILITY

A. Upon receipt of a report, New Century Academy will take appropriate action. Such action may include, but is not limited to, warning, suspension, exclusion, expulsion, transfer, remediation, termination or discharge. School district action taken for violation of this policy will be consistent with requirements of applicable collective bargaining agreements, Minnesota and federal law and school district policies.

B. The result of New Century Academy's investigation of each complaint filed under these procedures will be reported in writing to the complainant by the school district in accordance with state and federal law regarding data or records privacy.

C. Determinations of Responsibility Under the new regulations, elementary and secondary schools subject to Title IX may voluntarily choose to provide for a live hearing as part of their grievance process, but are not required to do so. 34 C.F.R. § 106.45(b)(6)(ii).

D. If the school chooses not to provide for a live hearing, after the investigation report has been provided to the parties, and before the school makes a final determination of whether or not the respondent is responsible for the alleged behavior, the school also has to provide each party the opportunity to submit "written, relevant questions" that the party wants asked of the opposing party or any witness, provide each party with the answers to their questions, and allow for additional, limited follow-up questions. Irrelevant questions can be excluded; however, the decision to exclude a question as irrelevant must be explained. Certain questions regarding the complainant's sexual predisposition or sexual behavior are generally irrelevant, except for specific purposes related to demonstrating that someone other than the respondent engaged in the alleged behavior or if specifically related to an issue of consent. Neither the Title IX Coordinator nor any investigator can make the final determination of whether or not the respondent is responsible for the alleged behavior. 34 C.F.R. § 106.45(b)(7).

E. The decision maker must issue a written determination that includes:

1. Identification of the allegations potentially constituting sexual harassment under the definition provided by the regulations;

2. A description of the procedural steps taken in the grievance process;

3. Findings of fact supporting the determination;

4. Conclusions regarding the application of the school's code of conduct to the facts;

5. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any discipline imposed on the respondent, and any remedies provided to the complainant; and

6. The school's procedures and permissible reasons for either party to appeal. 34 C.F.R. § 106.45(b)(7)(ii). This determination must be provided to both parties simultaneously. The determination is not final, however, until the appeal period expires or any appeal is resolved. 34 C.F.R. § 106.45(b)(7)(iii).

VII. REPRISAL

New Century Academy will discipline or take appropriate action against any pupil, educator, administrator or other school personnel who retaliates against any person who makes a good faith report of alleged religious, racial or sexual harassment or violence or any person who testifies, assists or participates in an investigation, or who testifies, assists or participates in a proceeding or hearing relating to such harassment or violence. Retaliation includes, but is not limited to, any form of intimidation, reprisal or harassment.

VIII. RIGHT TO ALTERNATIVE COMPLAINT PROCEDURES

These procedures do not deny the right of any individual to pursue other avenues of recourse which may include filing charges with the Minnesota Department of Human Rights, initiating civil action or seeking redress under state criminal statutes and/or federal law.

IX. HARASSMENT OR VIOLENCE AS ABUSE

A. Under certain circumstances, alleged harassment or violence may also be possible abuse under Minnesota law. If so, the duties of mandatory reporting under Minn. Stat. § 626.556 may be applicable.

B. Nothing in this policy will prohibit New Century Academy from taking immediate action to protect victims of alleged harassment, violence or abuse.

X. DISSEMINATION OF POLICY AND TRAINING

A. This policy shall be conspicuously posted throughout the school building in areas accessible to pupils and staff members.

B. This policy shall be given to each school district employee and independent contractor at the time of entering into the person's employment contract.

C. This policy shall appear in the *Family Guidebook*.

D. New Century Academy will develop a method of discussing this policy with students and employees.

E. This policy shall be reviewed at least annually for compliance with state and federal law.

XI. APPEALS OF COMPLAINTS (SPECIFICALLY SEXUAL HARASSMENT)

Appeals Schools' Title IX grievance procedures must now allow either party to appeal a dismissal or determination that sexual harassment occurred. There are three required bases where all schools must allow for an appeal:

A. If there was a procedural irregularity that affected the outcome;

B. If new evidence that was not reasonably available at the time of the determination regarding responsibility or dismissal is subsequently discovered and could reasonably affect the outcome; or

C. If the Title IX Coordinator, investigator(s), and or decision-maker(s) had a conflict of interest or was biased against either of the individual parties, or against complainants or respondents in general, and that conflict of interest or bias affected the outcome of the matter. 34 C.F.R. § 106.45(b)(8)(i).

D. Schools may allow additional bases for appeal, so long as those bases are equally available to both parties. 34 C.F.R. § 106.45(b)(8)(i)(ii).

E. In the event of an appeal, the school sets equal procedures for both parties, provide that both parties have an opportunity to submit a written statement in support of, or challenging the outcome. The decision-maker(s) on appeal must be different than the initial decision maker(s), but still cannot be the Title IX Coordinator or the investigator(s)—accordingly, schools need to consider who will serve as decision maker(s) on these sorts of complaints at both levels, as well as who will serve as investigators or the Title IX coordinator. A written decision must be issued on appeal simultaneously to both parties.

Legal References: Minn. Stat. § 121A.03, Subd. 2 (Sexual, Religious and Racial Harassment and Violence Policy)

Minn. Stat. Ch. 363A (Minnesota Human Rights Act), as amended (2023)

Minn. Stat. § 260E.20, as amended (2023)

42 U.S.C. § 2000e *et seq.* (Title VII of the Civil Rights Act)

Cross References: MSBA/MASA Model Policy 102 (Equal Educational Opportunity)

MSBA/MASA Model Policy 403 (Discipline, Suspension, and Dismissal of School District Employees)

MSBA/MASA Model Policy 406 (Public and Private Personnel Data)

MSBA/MASA Model Policy 414 (Mandated Reporting of Child Neglect or Physical or Sexual Abuse)

MSBA/MASA Model Policy 506 (Student Discipline)

MSBA/MASA Model Policy 525 (Violence Prevention)