

**BOE Policy Committee Agenda
Wednesday, March 24, 2021
Virtual Meeting 8:30 A.M.**

In consideration of public health, open meetings and the Governor’s Executive Order No. 7B dated March 10, 2020 regarding PROTECTION OF PUBLIC HEALTH AND SAFETY DURING COVID- 19 PANDEMIC AND RESPONSE - FURTHER SUSPENSION OR MODIFICATION OF STATUTES; this meeting will include an option for the public to phone in to listen to the audio of the meeting. Please note that public comment will be received by phone at the beginning and end of this meeting.

**Joining Info: Join by phone
(US) +1 478-324-0637 PIN: 611 564 715#**

CALL TO ORDER

IN ATTENDANCE

PUBLIC PARTICIPATION

APPROVE MINUTES March 10, 2021

NEW BUSINESS

Discussion and possible action:

Item	Reports
Policy 5145.11 – Police in Schools / Questioning and Apprehension – The committee will re-review this policy for Board review.	<ul style="list-style-type: none"> • S. Connell will invite M. Pompano to this virtual meeting.
Policy 4117 – Separation/Disciplinary Action L. Rodrigue will reach out to Shipman and Goodwin to confirm that language in the contracts is adequate.	<ul style="list-style-type: none"> • S. Connell will invite S. D’Eramo to this virtual meeting
Policy 4118.321 – Certified - Alcohol, Drugs and Tobacco The committee requested that L. Rodrigue and S. D’Eramo review Newtown’s current practice and create a list of consequences as a possible Administrative Regulation.	<ul style="list-style-type: none"> • L. Rodrigue and S. D’Eramo will discuss adding an Administrative Regulation to this policy. • S. Connell will invite S. D’Eramo to this virtual meeting.
Policy 4117.31 - Return to Work The committee requested that L. Rodrigue and S. D’Eramo discuss Newtown’s current practice with legal counsel and decide if a policy is needed.	<ul style="list-style-type: none"> • S. Connell will invite S. D’Eramo to this virtual meeting • L. Rodrigue will bring Shipman and Goodwin’s recommendations back to the Committee
Policy 4118 – Rights, Responsibilities, and Duties Newtown does not have a current policy.	<ul style="list-style-type: none"> • S. Connell will invite S. D’Eramo to this virtual meeting
Policy 4118.11 – Nondiscrimination Newtown does not have a current policy.	<ul style="list-style-type: none"> • S. Connell will invite S. D’Eramo to this virtual meeting

<p>Policy 4118.112 – Sexual Harassment Newtown’s current policy, Policy 4-704- Harassment, discusses this topic.</p>	<ul style="list-style-type: none"> • S. Connell will invite S. D’Eramo to this virtual meeting
<p>Policy 4118.113 – Harassment Newtown has a current policy on this topic: Policy 4-704 - Harassment.</p>	<ul style="list-style-type: none"> • S. Connell will invite S. D’Eramo to this virtual meeting
<p>Policy 4118.12 – Freedom of Speech Newtown does not have a current policy.</p>	<ul style="list-style-type: none"> • S. Connell will invite S. D’Eramo to this virtual meeting
<p>Policy 4118.13 – Conflict of Interest Newtown does not have a current policy.</p>	<ul style="list-style-type: none"> • S. Connell will invite S. D’Eramo to this virtual meeting

UPDATE FROM THE SUPERINTENDENT

PUBLIC PARTICIPATION

ADJOURNMENT

Students

Police and School Resource Officers in Schools

Schools are responsible for students during school hours, which includes protecting each student's constitutional rights, assuring due process in questioning and arrest, and protecting students from any form of illegal coercion and physical or emotional harm.

A School Resource Officer (“SRO”), by federal definition, is a career law enforcement officer with sworn authority who is deployed by an employing police department or agency in a community-oriented policing assignment to work in collaboration with one or more schools.

When Police Officers and/or the School Resource Officer are investigating possible criminal acts which have occurred, or may have occurred, on school property, or while under the jurisdiction of the school district, they may question students at school when the following procedures are observed:

1. Students will be questioned as confidentially and inconspicuously as possible.
2. An attempt will be made to notify the student's parents prior to the student being interviewed by police so that they may be present during the questioning. In the absence of the parent or guardian, the school principal, or his/her designee, will be present.
3. Preferably, whenever possible, the officer doing the questioning will wear civilian clothes.

When investigating a possible criminal violation that has occurred off school grounds or is not part of a school program, the police and/or the SRO will be encouraged to question students in their homes. However, the police and/or the SRO may be permitted to question students in the schools only when Procedures 1-3 outlined above are followed.

In order to promote school security and safety, police may conduct periodic walk-throughs of school facilities and grounds without the prior approval of the respective school administrator.

(cf. 1411 - Law Enforcement Agencies)

Policy adopted:

Students

Police and School Resource Officers in Schools

Questioning and Apprehension

In these regulations, the administration is reminded that a student who has attained the age of 18 enjoys the responsibility of speaking for him/herself without the agreement of a parent, guardian or representative as to whether or not he/she will submit to questioning.

Questioning Initiated by School Administrators and Conducted by Administrators

Building Principals shall have the authority and duty to conduct investigations and to question students pertaining to infractions of school rules, whether or not the alleged conduct is a violation of criminal law. Such investigations shall be conducted in a manner which does not interfere with school activities.

Initiated by School Administrators and Conducted by Law Enforcement Officers

The building Principal shall determine when the necessity exists that law enforcement officers be asked to conduct an investigation of alleged criminal behavior which jeopardizes the safety of other people or school property, or which interferes with the operation of the schools.

The building Principal may request that law enforcement officers conduct an investigation and question students who are potential witnesses of such alleged criminal behavior during school hours. A reasonable attempt shall be made to contact the student's parents, guardian or representative prior to questioning by law enforcement officers. Reasonable requests of the parents, guardian or representative shall be observed. The administrator involved shall document such notifications or attempted notifications to parents, guardian or representative. In the absence of a student's parents, guardian or representative during any questioning of such students, the Principal or a designated, certified school staff person shall be present as may be allowed by law.

If the investigation has centered on any particular student under the age of 16 suspected of any alleged criminal activity, the police may not question the student without the presence of his/her parent or guardian, absent exigent circumstances. Police questioning of a student age 16-17 suspected of engaging in criminal activity shall be done in accordance with current Connecticut State Law.

The procedure for taking students into custody by the procedure set forth below shall be followed to the extent that it does not interfere with reasonable law enforcement procedures.

Initiated and Conducted by Law Enforcement Officers

Although cooperation with law enforcement officers will be maintained, it is the preference of the District that it will not normally be necessary for law enforcement officers to initiate and conduct any investigation and interrogation on the school premises during school hours pertaining to criminal activities unrelated to the operation of the school. It is preferred that only in demonstrated emergency situations, when law enforcement officers find it absolutely

Students

Police and School Resource Officers in Schools

Questioning and Apprehension (continued)

necessary, will they conduct such an investigation during school hours. These circumstances might be limited to those in which delay might result in danger to any person, flight of a person reasonably suspected of a crime from the jurisdiction or local authorities, destruction of evidence, or continued criminal behavior. No school official, however, should ever place him/herself in the position of interfering with a law enforcement official in the performance of his or her duties as an officer of the law.

If the law enforcement officials are not recognized and/or are lacking a warrant or court order, the building Principal shall require proper identification of such officials and the reason(s) for the visit to the school. If the Principal is not satisfied he/she shall **immediately** notify the Superintendent, documenting such action.

In all cases, **police** officers shall be requested to obtain **the** prior approval of the Principal or other designated person before beginning such an investigation on school premises. The **Principal** shall document the circumstances of such investigations as soon as practical. Alleged criminal behavior related to the school environment brought to the Principal's attention by law enforcement officers shall be dealt with under the provisions of the two previous sections.

Interrogation of Student during Investigation of Violations of School Rules

In instances where school rules have allegedly been violated, the Principal may notify the suspected rule violator(s) or potential witness(es) to the infraction. When suspension or expulsion may be a consideration, the suspect student shall be advised orally or in writing of the nature of the alleged offense and of the evidence, if any, against the student.

In questioning a potential student witness to an alleged disciplinary infraction, care should be taken by the administrator to ensure there is a reasonable likelihood that the student was indeed a witness. School officials should not engage in detailed questioning of students at random without reasonable cause in hope of gathering information as to school misconduct. Probable witnesses should be told the nature of the alleged misconduct and the reason to believe that they were witnesses. Such students should be given the opportunity to give their consent before answering questions of school officials.

Circumstances may arise where it would be advisable to have another adult present during questioning of students.

Violations of Criminal Law

During an investigation of violation of school rules, it may come to the attention of an administrator that the investigated activity may also be a violation of criminal law. In proceeding with the investigation, the Principal shall attempt to ascertain whether there is sufficient justification to believe that a criminal offense was committed that warrants notifying law enforcement officials.

Students

Police and School Resource Officers in Schools

Questioning and Apprehension (continued)

Interrogation and Investigations Conducted in School

When a suspected violation of criminal law has occurred on the school grounds involving the operation of the school or at a school-sponsored activity, law enforcement officials may be notified and their presence requested during the administrator's questioning of suspected students. If such officials are notified, unless circumstances dictate otherwise, the administrator's questioning of the student(s) shall not begin or continue until the arrival of law enforcement officers.

Reasonable attempts shall be made to contact a student's parents, guardian or representative who, unless an emergency exists, shall be given the opportunity to confer with the student and to be present with the student during such questioning. The administrator shall document the notification or attempted notification to the student's parents, guardian, or representative.

In the absence of parent/guardian and student consent, it is the preference of the District that law enforcement officers on school premises shall not question a student. The law enforcement officers shall be asked to advise the student of his/her legal rights. If the parent/guardian or student refuses to consent to the questioning, the law enforcement officer(s) will determine the course of action to be pursued.

Information of criminal conduct not related to the schools shall be turned over to law enforcement officials, without additional investigation by school officials.

Taking a Student into Custody

School officials shall not release students to law enforcement authorities voluntarily unless the student has been placed under arrest, or unless the parent, guardian or representative and the student agree to the release.

When students are removed from school for any reason by law enforcement authorities, every reasonable effort will be made to notify the student's parents, guardian or representative immediately. Such effort shall be documented.

Whenever an attempt to remove a student from school occurs without an arrest warrant or court order, or without acquiescence of the parent, guardian/representative or the student, the administrator shall immediately attempt to notify the parents/guardians of the student. The Superintendent's office shall be notified immediately of any removal of a student from school by law enforcement officers under any circumstances.

Students

Police and School Resource Officers in Schools

Questioning and Apprehension (continued)

Taking a Student into Custody (continued)

The building Principal shall make reasonable efforts to persuade law enforcement officers not to make arrests or to take students into custody on school premises. Whenever the need arises to make arrests or take students into custody on school premises, the Principal shall make reasonable efforts to persuade the law enforcement officers to utilize a non-uniformed officer in making the arrest and/or to make the arrest out of the public view.

When it is necessary to take a student into custody on school premises and time permits, the law enforcement officer shall be requested to notify the building Principal and relate the circumstances necessitating such action. When possible, the Principal shall have the student summoned to the Principal's office where the student may be taken into custody.

When an emergency exists, the Principal may summon law enforcement officials to the school to take a student into custody.

When a student has been taken into custody or arrested on school premises without prior notification to the building Principal, the school staff present shall encourage the law enforcement officers to notify the Principal of the circumstances as quickly as possible. In the event that the officers decline to notify the Principal, the school staff members present shall immediately notify the Principal or the Superintendent.

If at all possible, the parents, guardian or representative of the student shall be notified by the Principal or other school administrator before the student is taken into custody by law enforcement officers or as quickly thereafter as possible. The administrator shall document such notification or attempted notification.

Disturbance of School Environment

Law enforcement officers may be requested to assist in controlling disturbances of the school environment which the building Principal or other school administrator has found to be unmanageable by school personnel and which disturbances have the potential of causing harm to students, other persons, or school property. Such potential of possible disturbance includes members of the general public who have exhibited undesirable or illegal conduct on school premises or at a school event held on school property and who have been requested to leave by an administrator, but have failed or refused to do so.

Students

Police and School Resource Officers in Schools

Questioning and Apprehension (continued)

Coordination of Policies by Enforcement Officials

School administrators shall meet at least annually with local law enforcement officials to discuss the District's policy and rules regarding law enforcement contacts with the District. Law enforcement officials will be asked to instruct their staffs as to the terms of the school's policies and rules.

Regulation approved:

Suggested policy to consider.

Personnel -- Certified

Disciplinary Action/Suspension/Dismissal

The Superintendent is directed to adhere to the following regulations and procedures for the dismissal, suspension or demotion of any employee for reasons of incompetence, willful neglect of duty, malfeasance, immoral or improper conduct, insubordination, behavior in violation of the policies and regulations of the district, mental and/or physical illness or disability and actions which are, in the opinion of the Board of Education, a hindrance to the district, the staff or the students. A notice of disciplinary action taken shall contain a statement in ordinary and concise language of the specific charges on which the disciplinary action is based. The notice shall contain specific action or behavior with which the employee is charged. Dismissal or demotion will be made only for just and reasonable cause, and only after written charges have been filed. The Board, acting through its Superintendent, will notify the employee in writing, stating the charges brought against him/her, and if necessary, arrange for a hearing to be held. Disciplinary sanction up to and including dismissal and referral for prosecution will be imposed on employees who violate the standards of conduct or commit a crime against State or Federal law.

Employees will be given a copy of the standards and the statement of disciplinary sanctions, as well as information about any drug and alcohol counseling and rehabilitation programs that are available to employees.

Definitions:

"Suspension" means temporary removal of an employee from a position with loss of pay, as a disciplinary measure, or removal from a position preliminary to a decision by the Board on charges leading to dismissal or demotion.

"Demotion" means reduction of an employee from a given class or group of similar positions combined under a common title to a class or group having a lower salary rate.

"Dismissal" means separation, discharge or permanent removal of an employee from service in the district for cause, in accordance with the policies and regulations of the district.

Suspension of the Employee Pending Disciplinary Action by the Board

Except where circumstances justify, disciplinary action shall follow this order: (a) verbal warning, (b) written warning-probation, (c) suspension and (d) demotion and/or dismissal.

In any case where the Superintendent or his/her designee deems it necessary or proper, the employee may be suspended until the Board of Education has determined what disciplinary action to take, if any, against the employee.

Personnel -- Certified

Disciplinary Action/Suspension/Dismissal

Suspension of the Employee Pending Disciplinary Action by the Board (continued)

This suspension shall be without pay, except that if the Board of Education denies the recommendation of the Superintendent or designee, the employee shall be entitled to full pay for the suspension period. If the Board modifies the recommendation of the Superintendent, the Board shall determine as part of its action whether the suspension or any part of the suspension shall be without pay.

Just Cause

One or more of the following causes may be sufficient grounds for imposing a disciplinary measure:

1. Incompetency, ~~or~~ inefficiency, or ineffectiveness in the performance of the duties of the assigned position;
2. Insubordination (including, but not limited to, refusal to do assigned work);
3. Carelessness or negligence in the performance of duty or in the care or use of district property;
4. Discourteous or offensive or abusive language or conduct toward other employees, students or the public;
5. Dishonesty;
6. Drinking alcoholic beverages on the job, or reporting for work while intoxicated;
7. The unlawful possession, use, or distribution of illicit drugs or alcohol on school premises or as part of any of its activities;
8. Personal conduct unbecoming an employee of the district;
9. Engaging in political activities during assigned hours of employment or otherwise in violation of applicable policies or regulations of the district;
10. Conviction of any crime involving moral turpitude, including a sex offense;
11. Repeated and unexcused absences or tardiness;

Personnel -- Certified

Disciplinary Action/Suspension/Dismissal

Just Cause (continued)

12. Abuse of leave privileges;
13. Falsifying any information supplied to the school district, including but not limited to, information supplied on application forms, employment records or any other school district records;
14. Persistent violations of, or refusal to obey, safety rules and regulations made applicable to the public schools by the Board of Education, the Superintendent or by any appropriate state or governmental agency;
15. Offering anything of value or offering any service in exchange for special treatment in connection with the employee's job or to any member of the public;
16. Abandonment of position.

Consequences for the Use, Sale or Possession of Controlled Substances or Alcohol

Any employee using, possessing, or selling controlled substances on school premises or as part of any of its activities shall automatically be subject to the following actions:

First Violation: Any employee found to be in violation of the policy for the first time during his/her tenure in the _____ Public Schools will be referred by the Superintendent to an appropriate agency licensed to assess and treat drug/alcohol involved individuals. If the employee does not agree to be assessed and participate or agrees to participate and then fails to complete the program prescribed by the agency he/she will be dismissed.

Any employee convicted of selling or distributing a controlled substance will be dismissed. In cases of possession, law enforcement officials will be notified. The violator will also be subject to disciplinary action stipulated in this policy.

Second Violation: The law enforcement agency will be notified of all second violations involving a controlled substance. Employees who are convicted of workplace drug abuse will be dismissed.

Personnel -- Certified

Disciplinary Action/Suspension/Dismissal

Legal Reference: Connecticut General Statutes

10-151(b) Employment of teachers. Definitions. Tenure, etc. (as amended by P.A. 10-111, and P.A. 12-116, An Act Concerning Educational Reform)

10-154 (a) Professional communications between teacher or nurse and student. Surrender of physical evidence obtained from students.

21(a)-240 Definitions

Policy adopted:

cps 1/99

rev 5/12

Personnel – Certified

Alcohol, Drugs, and Tobacco

The Board of Education is concerned with maintaining a safe and healthy working and learning environment for all staff and students. Medical research indicates that the use of alcohol, drugs and tobacco are hazardous to one's health. In addition to the health hazard to the individual, certified employees are entrusted with the responsibility of imparting knowledge and serving as role models to students.

Alcohol and Drugs

The Board of Education recognizes the importance of maintaining a drug-free environment for its staff and students. In compliance with federal and state requirements, employees are prohibited from the unlawful manufacture, distribution, dispensing, possession or use on or in the workplace any alcohol, narcotic drug, hallucinogenic drug, amphetamine, barbiturate, marijuana (including for palliative purposes) or any other controlled substance. Controlled drugs are further defined in Schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation at 21 C.F.R. 1300.11 through 1300.15.

The "workplace" is defined to mean the site for the performance of work done. That includes any school building or any school premises; any school-owned vehicle or any other school-approved vehicle used to transport students to and from school or school activities; off school property during any school-sponsored or school-approved activity, event or function, such as a field trip or athletic event, where students are under the jurisdiction of the school district.

Each employee shall notify his or her supervisor of his or her conviction occurring in the workplace as defined above, no later than 5 days after such conviction.

Each employee shall abide by the terms of the school district policy respecting a drug-free and alcohol-free workplace.

An employee who violates the terms of this policy may be required to successfully complete an appropriate rehabilitation program, may not be renewed or his/her employment may be suspended or terminated, at the discretion of the Board.

Tobacco

There shall be no smoking or other use of tobacco products on school property during regular school hours, on transportation provided by the Board of Education, or during the course of any trip sponsored by the Board or under the supervision of the Board or its authorized agent.

Tobacco and nicotine products include but are not limited to cigarettes, electronic cigarettes, cigars, pipe tobacco, chewing tobacco or snuff, smoking tobacco, smokeless tobacco, nicotine delivering devices chemicals or devices that produce the same flavor or physical effect of nicotine substances, or any other tobacco or nicotine innovations.

A copy of this policy and the consequences of violating the policy shall be distributed to all employees of the Board of Education. Failure to comply with the policy may result in disciplinary action as detailed by the administration.

Legal Reference: Drug-Free Workplace Act. 102 Stat. 4305-4308.

Drug-Free Schools and Community Act, P.L. 99-570, as amended by P.L. 101-226 (1991)

21 U.S.C. 812, Controlled Substances Act, I through V, 202.

21 C.F.R. 1300.11 through 1300.15 regulation.

54 Fed. Reg. 4946 (1989)

Connecticut General Statutes

1-21b Smoking prohibited in certain places.

21a-408a Qualifying patient not subject to arrest, prosecution or certain other penalties. Requirements. Exceptions.

Policy adopted: 6/3/2014, Replaces 4-701

An optional policy and regulation to consider, developed originally by Old Saybrook.

Personnel -- Certified

Return to Work

Responsibility

Every employee of the Board of Education has a responsibility to minimize loss exposure as a factor in the work place by participating in quality improvement programs and strictly observing safety and standard operating policies and procedures. The term “loss exposure,” as applied to the workplace, is defined as the potential for accidents, which result in illness or injury.

Policy

Employees of the Board of Education who are, or could be, on leave of absence from their duties as a result of a work related illness or injury may be eligible for the Return-To-Work Program upon written certification of a medical care provider. The medical care provider must certify that the employee may return to work with restrictions on physical requirements of the job in questions, and that those restrictions are not expected to last for more than 30 days.

A restriction identifies a physical condition, which prevents an employee from performing the full scope of his/her job duties as outlined in their job description. There are two types of restrictions: temporary and permanent. Temporary restrictions are defined as those limitations placed on an injured employee by a physician, which are of a relatively short duration (i.e., the employee is expected to fully recover and to return to normal working conditions.)

Permanent restrictions are defined as those limitations placed on an employee by a physician which is expected to be long term (more than 180 days) or from which recovery is not expected. Those employees who fall in this category are not eligible for participation in the Return-To-Work Program. They may elect to seek alternative employment, or file for a “reasonable accommodation” under the Americans with Disabilities Act.

When an employee is approved for participation in the Return to Work Program, primary consideration will be given to job placement within the employee’s department and normal job duties. A secondary consideration will be alternative placement into another department or another assignment, which is within the same bargaining unit. A critical consideration is to place the injured employee in a position to perform productive work that is both useful to the school district and achievable within the limits of the restrictions placed on the employee. Employee must be able to perform the duties established under the applicable job description.

Alternative placement will not be used to avoid the filling of vacancies within the department in question.

Personnel -- Certified

Return to Work (continued)

An employee participating in the Return-To-Work Program is subject to all rules, regulations, contractual memoranda of understanding, standards, policies and procedures of the Board of Education.

Each situation will stand on its own merits. An Employee Return-To-Work form, completed by a physician, noting an employee's restrictions, will be evaluated by the appropriate school personnel in order to determine whether or not an employee is able to return to his/her assigned position. A final determination will be made by the Superintendent or designee.

If an employee is approved for the Return-To-Work Program, he/she shall be provided tasks, which fall within the physical restrictions identified by the treating physician. In no case will an employee authorized to participate in the Return-To-Work Program be placed in an area that will pose a health or safety risk to the Board of Education, other staff or themselves. An employee shall not be returned to work to any job that is punitive in nature.

Reference: American with Disabilities Act (ADA)

A sample regulation to consider.

Personnel -- Certified

Return to Work

The following criteria may be used to initiate Return-To-Work procedures.

Employee suffers a catastrophic injury that will prevent that person from performing the essential functions of the position they hold.

Employee has reached maximum medical improvement with restrictions that prevent the employee from performing essential functions of the job.

There is a medical opinion that the employees' permanent medical restrictions prevent performance of the essential functions of the job, even though maximum medical improvement has not been achieved.

The Superintendent or designee will determine if any of the department's workers compensation claims meet one or more of the above mentioned criteria. This notice will be sent to the Superintendent or designee. The Superintendent or designee will evaluate, on a case-by-case basis, work accommodations in compliance with the provisions of the American with Disabilities Act (ADA,) and collective bargaining agreements.

After this evaluation, the Superintendent or designee will make a recommendation to either accommodate the employee in their current position or an alternate position, or to initiate the separation of the employees' service with the Board of Education. This may be accomplished by, but not limited to, service retirement, disability retirement or unvested separation.

The comprehensive Return-To-Work Program has been designed in order to minimize losses and produce better outcomes for both the employee and the Board of Education in case of a work related injury or illness. By fulfilling their roles in the process, participants will insure that the district and its employees realize the goals of reduced costs for work related injuries and illnesses and a more healthy and productive work force.

Another version of this policy to consider.

Personnel – Certified/Non-Certified

Return to Work

Full-time employees of the Board of Education (Board) who are, or could be, on leave of absence from their duties as a result of a work-related illness or injury may be eligible for the Return-to-Work Program upon written certification of a medical care provider. The medical care provider must certify that the employee may return to work with restrictions on physical requirements of the job in question, and that those restrictions are expected to last at least three days.

A restriction identifies a physical condition which prevents an employee from performing the full scope of his/her job duties as outlined in their job description. A temporary restriction is defined as those limitations placed on an injured employee by a physician which are of a relatively short duration and when the employee is expected to fully recover and to return to normal working conditions. A permanent restriction is defined as those limitations placed on an employee by a physician, which are expected to last more than 90 days and from which recovery is not expected. Those employees who fall into the “permanent” category are not eligible for participation in the Return-to-Work Program but may elect to seek alternative employment, or file for a “reasonable accommodation” under the Americans with Disabilities Act.

When an employee is approved for participation in the Return-to-Work Program, the primary consideration will be a modification of the employee’s normal job duties. A critical consideration is to place the injured employee in a position to perform productive work that is useful to the Board and achievable within the restrictions placed on the employee by the medical advisor.

Each situation will stand on its own merit. Once the employee has obtained a medical certification of restrictions from the physician, the Superintendent will review the circumstances and determine if an employee qualifies for the program. If so, the employee shall be provided tasks which fall within the physical restrictions identified by the treating physician. In no case will an employee authorized to participate in the Return-to-Work Program be placed in an area that will pose a health or safety risk to the Board, other staff, or the injured employee.

Procedure

Employees injured at work will seek or, if necessary, be brought to the medical care provider for initial treatment. If, after treatment, the employee is unable to return to work within three days, the employee will provide the medical care provider with this/her Job Description detailing the duties the employee is expected to perform under normal conditions. The employee will provide to the Superintendent of Schools, within three days following the injury, a statement from the medical provider of any restriction of duties and an expected return to work date.

If the care provider indicates that the employee is not able to return to his/her regular duties but is physically able to perform a modified duty assignment, then the employee will be required to report for modified duty.

Personnel – Certified/Non-Certified

Return to Work (continued)

The employee and principal will review the physical restrictions documented by the medical care provider and determine what job duties the employee can perform, as well as establish a work schedule and return to work date. Modified duty assignments will, to the extent practical, be related to the type of work normally performed by the employee.

Modified duty status may be continually monitored by CIRMA-care Nurse Case Managers. Employees will be assigned to the Return-to-Work Program until a physician provides a written release for the employee to return to work at his/her regular position. A maximum of 30 days in the Program will be permitted, but duration may be increased to 60 days if physical restrictions dictate and a satisfactory job performance has been demonstrated.

Employees do not waive any rights to Workers' Compensation benefits by participating in the Return-to-Work Program. Employees participating in the Return-to-Work Program will continue to be covered by the Workers' Compensation Act for all reasonable and necessary medical expenses and disability benefits related to the injury or illness.

Policy adopted:
cps 5/13

A version of this policy from East Hartford to consider.

Personnel -- Certified

Rights, Responsibilities and Duties

All current employees of the school system are subject to the policies of the Board, applicable laws, and current employee agreements.

Job descriptions shall be established for each type of work to be performed by instructional employees.

Job descriptions shall include the following:

I. General

- a. Job Title
- b. Job Description
- c. Job Qualifications

II. Essential/Non-Essential Job Functions

III. Other Related Factors

- a. Physical Demands
- b. Working Conditions
- c. Vocational Preparation
- d. Educational Preparation
- e. Temperament Requirements
- f. Sensory Abilities

Policy adopted:

EAST HARTFORD PUBLIC SCHOOLS
East Hartford, Connecticut

Another version to consider.

Personnel -- Certified

Rights, Responsibilities and Duties

The Board of Education recognizes that teachers are entitled to regular time and work schedules on which they can rely in the regular course and which will be maintained fairly and evenly throughout the school system.

The duties of teachers, as part of a normal working day, shall include, but not be limited to, the following:

1. Instructional duties
2. Supervisory duties
3. Curriculum activity
4. Parent conferences
5. Staff meetings
6. Filling-in in emergency situations
7. Other duties required by the school program

The teacher is directly responsible to the Building Administrator and, through the Building Administrator, to the Superintendent of Schools. The teacher shall discharge all duties in accordance with the policies and the rules and regulations of the Board of Education, shall comply with the rules and instructions of the Superintendent and the Building Administrator, and in keeping with provisions of the bargaining unit agreement.

Policy adopted:

cps 4/11

A sample policy to consider.

Personnel - Certified/Non-Certified

Nondiscrimination

It is the intent of the Board of Education to provide a fair employment setting for all persons and to comply with state and federal law. The conditions or privileges of employment in the school district, including the wages, hours, terms and benefits, shall be applied without regard to race, color, religion, age, veteran status, genetic information, marital status, national origin, sex, sexual orientation, gender identity or expression, ancestry, present or past history of mental disorder, or disability (including pregnancy), except in the case of a bonafide occupational qualification.

The District shall not discriminate against qualified individuals with disabilities because of the disabilities of such individuals in regard to job application procedures, hiring, advancement, discharge, compensation, job training and other terms, conditions and privileges of employment.

The District shall not engage in contractual or other arrangements that have the effect of subjecting its qualified applicants or employees with disabilities to discrimination on the basis of disability. The District shall not exclude or otherwise deny equal jobs or job benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association.

Further, the District shall make reasonable accommodations for the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless the accommodation would impose undue hardship on the operation of the business of the District.

Any job applicant or employee wishing to discuss the need for a reasonable accommodation, or other matters related to a disability or the enforcement and application of this policy, should contact the District's ADA/Section 504 Coordinator. The District's coordinator is _____.

(cf. 0521 – Nondiscrimination)

(cf. 4000.1/5145.44 – Title IX)

(cf. 4111 - Recruitment and Selection)

(cf. 4118.112/4218.112 – Sex Discrimination and Sexual Harassment in the Workplace)

(cf. 4118.14/4218.14 – Disabilities)

(cf. 5145.5 – Sexual Harassment)

(cf. 5145.51 – Peer Sexual Harassment)

Legal Reference: Connecticut General Statutes

4a-60 Nondiscrimination and affirmative action provisions in contracts of the state and political subdivisions rather than municipalities

4a-60a Contracts of the state and political subdivisions, other than municipalities, to contain provisions re nondiscrimination on the basis of sexual orientation

10-153 Discrimination on account of marital status

Personnel - Certified/Non-Certified

Nondiscrimination

Legal Reference: Connecticut General Statutes (continued)
Connecticut Fair Employment Practices Act, C.G.S. §469-60
46a-51 Definitions (as amended by PA 17-127)
46a-58 Deprivation of rights. Desecration of property. Placing of burning cross or noose on property. Penalty. (as amended by PA 17-127)
46a-60 Discriminatory employment practices prohibited. (as amended by PA 17-127)
46a-81a Discrimination on the basis of sexual orientation; Definitions
P.A. 11-55 An Act Concerning Discrimination
Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d et. seq.
Title VII, Civil Rights Act 42 U.S.C. 2000e, et seq.
Title IX of the Education Amendments of 1972, 20 U.S.C. §1681 et. seq.
Title IX Final Rule, May 6, 2020
The Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. §4212
Title II of the Genetic Information Nondiscrimination Act of 2008
42 U.S.C. §2000ff; 29CFR1635.1 et. seq.
Age Discrimination in Employment Act, 29 U.S.C. §621
Americans with Disabilities Act, 42 U.S.C. §12101
Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794

Policy adopted:

rev 7/11
rev 9/11
rev 1/17
rev 7/17
rev 6/20

Another version of this policy to consider.

Personnel - Certified/Non-Certified

Nondiscrimination

The Board of Education will not make employment decisions (including decisions related to hiring, assignment, compensation, promotion, demotion, disciplinary action and termination) on the basis of race, color, religion, age, sex, marital status, sexual orientation, national origin, ancestry, disability, (including pregnancy), genetic information, Veteran status or gender identity or expression, except in the case of a bona fide occupational qualification.

It is the policy of the Board of Education that any form of discrimination or harassment on the basis of race, religion, color, national origin, ancestry, sex, sexual orientation, marital status, age, disability, (including pregnancy), genetic information, gender identity or expression, status as a Veteran or any other basis prohibited by state or federal law is prohibited, whether by students, Board employees or third parties subject to the control of the Board. The Board's prohibition of discrimination or harassment in its educational programs or activities expressly extends to academic, nonacademic and extracurricular activities, including athletics. It is also the policy of the Board of Education to provide for the prompt and equitable resolution of complaints alleging any discrimination on the basis of protected characteristics such as race, color, religion, age, sex, sexual orientation, marital status, national origin, disability (including pregnancy), or gender identity or expression and status as a Veteran.

For the purposes of this policy, "genetic information" means the information about genes, gene products, or inherited characteristics that may derive from an individual or a family member. "Genetic information" may also include an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.

For the purposes of this policy, "gender identity or expression" means a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth, which gender-related identity can be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of a person's core identity or not being asserted for an improper purpose.

For purposes of this policy, "veteran" means any person honorably discharged from, or released under honorable conditions from active services in the U.S. Army, Navy, Marine Corps, Coast Guard and Air Force and any reserve component thereof, including the Connecticut National Guard.

The following person has been designated to handle inquiries regarding the Board's nondiscrimination policies: _____.

Personnel - Certified/Non-Certified

Nondiscrimination

(cf. 0521 – Nondiscrimination)
(cf. 4000.1/5145.44 – Title IX
(cf. 4111 - Recruitment and Selection)
(cf. 4118.112/4218.112 – Sex Discrimination and Sexual Harassment in the Workplace)
(cf. 4118.14/4218.14 – Disabilities)
(cf. 5145.5 – Sexual Harassment)
(cf. 5145.51 – Peer Sexual Harassment)

Legal References: Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*
Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*
Title IX of the Education Amendments of 1972, 20 USCS § 1681, *et seq.*
Title IX Final Rule, May 6, 2020
Age Discrimination in Employment Act, 29 U.S.C. § 621
Americans with Disabilities Act, 42 U.S.C. § 12101
Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794
Title II of the Genetic Information Nondiscrimination Act of 2008, Pub.L. 110 233, 42 USC 2000ff; 34 CFR 1635
Connecticut General Statutes
10-153 Discrimination on basis of marital status
46a-51 Definitions (as amended by PA 17-127)
46a-58 Deprivation of rights. Desecration of property. Placing of burning cross or noose on property. Penalty. (as amended by PA 17-127)
46a-60 Connecticut Fair Employment Practices Act (as amended by PA 17-127)
46a-81a Discrimination on basis of sexual orientation: Definitions
46a-81c Sexual orientation discrimination: Employment.
Public Act 11-55, An Act Concerning Discrimination.

Policy adopted:

cps 5/16
rev 1/17
rev 7/17
rev 10/18
rev 6/20

Another sample. The following sample policy covers a number of topics.

Personnel -- Certified/Non-Certified

Nondiscrimination

The conditions or privileges of employment in the school district, including the wages, hours, terms and benefits, shall be applied without regard to race, color, religion, age, marital status, national origin, sex, sexual orientation, gender identity or expression, ancestry, mental or physical disability, (including pregnancy), Veteran status, or genetic information, except in the case of a bona fide occupational qualification. The Board of Education seeks to extend the advantages of public education with full equality of educational opportunity to all students and personnel. The Board, any employee or any other person may not aid or compel the performance of an unfair labor practice as defined by law. For purposes of this policy, “genetic information” means the information about genes, gene products, or inherited characteristics that may derive from an individual or family members.

Harassment

No member of the Board, agent of the Board, or agent of any employee organization may harass any employee or person seeking employment or any member on the basis of sex. “Sexual harassment” as defined by law includes any unwelcome sexual advances or requests for sexual favors or any conduct of a sexual nature affecting a person's employment, continuity of employment or work performance or creating an offensive working environment. The grievance/investigation process contained in policy 4000.1/5145.44 “Title IX” shall be utilized in situations involving claims of sex discrimination or sexual harassment based on Title IX.

Discipline

No employee will be disciplined, reprimanded, reduced in rank or compensation or deprived of any professional advantage without just cause.

Association Membership

No employee shall suffer any professional disadvantage by reason of the employee's membership in an employee association or participation in its lawful activities.

Grievances

No employee, employee association representative, member of any employee organization or any other participant in a grievance procedure shall suffer reprisals in any other way or suffer any professional disadvantage by reason of their opposition to any unfair labor practices or because of participation in the processing of any grievance. The Superintendent will provide procedures for alleged violations of Board policies, administrative regulations, and school district operations in general when not otherwise covered in employee organization agreements.

Personnel -- Certified/Non-Certified

Nondiscrimination

(cf. 0521 – Nondiscrimination)
(cf. 4000.1/5145.44 – Title IX
(cf. 4111 - Recruitment and Selection)
(cf. 4118.112/4218.112 – Sex Discrimination and Sexual Harassment in the Workplace)
(cf. 4118.14/4218.14 – Disabilities)
(cf. 4135 – Organizations/Units)
(cf. 5145.5 – Sexual Harassment)
(cf. 5145.51 – Peer Sexual Harassment)

Legal Reference: Connecticut General Statutes

- 46a-51 Definitions (as amended by PA 17-127)
- 46a-58 Deprivation of rights. Desecration of property. Placing of burning cross or noose on property. Penalty. (as amended by PA 17-127)
- 46a-60 Discriminatory employment practices prohibited. (as amended by PA 17-127)
- 46a-81a Discrimination on the basis of sexual orientation
- 10-153 Discrimination on account of marital status.
- 10-153a Rights concerning professional organization and regulations.
- P.A. 11-55 An Act Concerning Discrimination

Federal Law:

- Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e et. seq.
- Section 504 of the Federal Vocational Rehabilitation Act of 1973, 20 U.S.C. 706(7)(b)
- American Disability Act 42 U.S.C. 12101 as amended by the ADA Amendments Act of 2008
- Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, et. seq.
- Title IX Final Rule, May 6, 2020
- Civil Rights Act of 1987
- Title VI of the Civil Rights Acts of 1964, 42 U.S.C. 2000d, et. seq.
- Age Discrimination in Employment Act, 29 U.S.C. 621

Policy adopted:

rev 10/18
rev 6/20

Another sample to consider.

Personnel -- Certified/Non-Certified

Nondiscrimination

In compliance with regulations of Title VII of the Civil Rights Act 1964, Title IX of the Education Amendments of 1972 as amended, and Section 504 of the Rehabilitation Act of 1973, the Civil Rights Act of 1987 and the American With Disabilities Act, the _____ Board of Education adopts the following Equal Employment Opportunity and Equal Education Opportunity Policies.

Equal Employment Opportunity

Both federal and state law prohibits discriminatory practices in hiring and employment. The Board of Education prohibits discriminatory acts in all district matters dealing with employees and applicants for positions and requires equal employment opportunities for all employees and applicants. As an equal opportunity employer, the _____ Board of Education does not discriminate on the basis of race, color, religious creed, age, marital status, national origin, ancestry, sex, sexual orientation, genetic information, gender identity or expression, disability, (including pregnancy), status as a Veteran, or any classification protected by state or federal law, regarding any individual who can perform the essential functions of the job with or without reasonable accommodations physical disability (including blindness) or other disability (except in the case of a bona fide occupational qualification or need.)

Alternate Language:

The Board of Education shall not exclude or otherwise deny equal jobs or job benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association. Further, the District shall make reasonable accommodations for the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless the accommodation would impose undue hardship on the operations of the District.

Equal Education Opportunity

Pursuant to the IDEA, Americans With Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973, no otherwise qualified individual with handicaps shall, solely by reason of such handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program of the _____ Board of Education.

Every student has the right to participate fully in classroom instruction and extracurricular activities and shall not be abridged or impaired because of age, sex, sexual orientation, gender identity or expression, race, religion, color, national origin, disability (including pregnancy), parenthood, marital status, or for any reason not related to his/her individual capabilities.

Personnel -- Certified/Non-Certified

Nondiscrimination

Equal Education Opportunity (continued)

The Civil Rights Coordinators and the Title IX Coordinators for the _____ Board of Education have the responsibility to monitor the compliance of this policy. The names and location of the Civil Rights Coordinators are set forth below. Further compliance with policy is a responsibility of all district administrators in accordance with the procedures set forth in the attached regulations

Students shall not be discriminated against, including but not limited to, in the areas of:

- Admission
- Use of School Facilities
- Vocational Education
- Competitive Athletics
- Student Rules, Regulations and Benefits
- Financial Assistance
- School-sponsored Extracurricular Activities
- Enrollment in Courses
- Counseling and Guidance
- Physical Education
- Graduation Requirements
- Treatment as a Married and/or Pregnant Student
- Health Services
- Most Other Aid, Benefits or Services

Employee/or applicants shall not be discriminated against, including but not limited to, the areas of:

- Hiring and Promotion
- Compensation
- Job Assignments
- Leaves of Absence
- Fringe Benefits
- Labor Organization
- Contracts or Professional Agreements

Sexual harassment has been established as a form of sexual discrimination and is defined as follows:

"Any **unwelcome** sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, when (1) submission to such conduct is made either explicitly or implicitly a term or condition of employment or participation in an educational function (2) submission or rejection of such conduct by an individual is used as the basis for employment or educational decisions affecting the individual or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work or educational performance or creating an intimidating, hostile or offensive working environment."

Personnel -- Certified/Non-Certified

Nondiscrimination

Equal Education Opportunity (continued)

Examples of specific behaviors (that are unwanted and sexual in nature) that could constitute sexual harassment include, but not be limited to:

Inappropriate Touching	Sexually explicit comments
Sexual name calling	Sexual rumors
Inappropriate public display of affections	Overly personal a conversation
Gestures	Corner/blocking
Sexually explicit jokes/cartoons/pictures	Leers
Pulling at clothes	Attempted rape/rape
	Harassing telephone calls

If an employee believes that he or she has been discriminated against in regard to either of the preceding policies, a grievance may be filed charging that the employee's personal rights have been denied or violated.

Employees wishing to discuss these regulations or rights under this policy, the need for a reasonable accommodation, or wish to discuss or file a grievance, should contact _____, the District's Civil Rights Coordinators, or an administrator.

Forms are available in our Guidance Office or from our Civil Rights Coordinators. Contact with the Civil Rights Coordinators should take place within forty (40) calendar days of the alleged occurrence.

Discrimination Grievance Procedure (This procedure is not applicable to a Title IX sex discrimination or sexual harassment claim)

The purpose of this procedure is to secure, at the lowest possible administrative level, equitable solutions to problems which may arise concerning claims of discrimination. Evidence of reprisal against a complainant or witness shall be viewed as a violation of this policy.

Any person who wishes to inquire or to register a complaint concerning alleged discrimination in the _____ Public Schools shall have an opportunity to bring such concerns to the attention of the Civil Rights Officers or Superintendent, who has the authority to resolve such complaints. The following grievance procedure shall be utilized by any student, parent or employee in making a complaint or inquiry. Officials shall be governed by this procedure.

Personnel -- Certified/Non-Certified

Nondiscrimination

Discrimination Grievance Procedure (continued)

- Level I:** The complainant shall discuss the alleged discriminatory act or practice with the Civil Rights Officers or the individual closest to the daily decision-making level. This will normally be a Principal, teacher, counselor, Department Chairperson, Head Custodian, or Cafeteria Manager. If satisfaction cannot be achieved through informal discussion, the following procedure must be initiated.
- Level II:** The complainant shall, within forty (40) calendar days of the alleged incident, on forms provided, put the complaint in writing and file it with either of the Civil Rights Officers. Within five (5) working days a conference must be held. Within five (5) working days following the conference, the complaint must be resolved to the satisfaction of both parties or referred to the Superintendent of Schools. Within five (5) working days, the Civil Rights Officer shall notify the Superintendent and must notify the complainant of this notification. The Board will be apprised by the Superintendent of any grievance reaching Level II.
- Level III:** Within ten (10) working days after receipt of such complaint, the Superintendent must hold a hearing; and within five (5) working days of the hearing, resolve the complaint, negotiate a long-term solution or refer the matter to the Board of Education for consideration.
- Level IV:** The Board of Education, Superintendent and the Civil Rights Officers shall proceed in accordance with appropriate laws or regulations.

Legal Reference: Connecticut General Statutes
10-153 Discrimination on account of marital status.
46a-51 Definitions (as amended by PA 17-127)
46a-58 Deprivation of rights. Desecration of property. Placing of burning cross or noose on property. Penalty. (as amended by PA 17-127)
46a-60 Discriminatory employment practices prohibited. (as amended by PA 17-127)
P.A. 11-55 An Act Concerning Discrimination
Federal Law
Title VII of the Civil Rights Act 1964
Section 504 and the Federal Vocational Rehabilitation Act of 1973, 20 U.S.C. 706(7)(b).
American Disability Act of 1989, as amended by the ADA Amendments Act of 2008
Chalk v. The United States District Court of Central California.
Title IX of the Education Amendments of 1972.
Title IX Final Rule, May 6, 2020
Civil Rights Act of 1987.

Policy adopted:

rev 10/18
rev 6/20

Discrimination Grievance Form

Any student, parent/guardian, employee or employment applicant who feels that he/she has been discriminated against on the basis of race, color, age, religion, national origin, ancestry, sex, sexual orientation, gender identity or expression, marital status, genetic information, status as a Veteran or mental or physical disability, (including pregnancy), may discuss and/or file a grievance with either of the Civil Rights Coordinators of the _____ Public Schools. Reporting should take place within 40 calendar days of the alleged discrimination. Civil Rights Coordinators:

_____ at _____ or _____ at _____

Name of Presenter/Complainant: _____

Employee _____ Employment Applicant _____ Student _____ Parent/Guardian _____

Home address _____

Phone _____ Date of Claim _____ Date of Incident _____

1. Statement of Incident/Issue (include all pertinent information: who, how, where, when, how often, feelings, witness).
2. Please attach any additional information/documentation as necessary.

Signature of Presenter: _____

Signature of Civil Rights Coordinator: _____

Date Received: _____

*Forms are available from either of the Civil Rights Coordinators,
Administrators and Guidance Offices.*

New Fairfield's regulation to consider/modify, updated to reflect new legislation.

Personnel - Certified/Non-Certified

Nondiscrimination

It is the express policy of the New Fairfield Board of Education to provide for the prompt and equitable resolution of complaints alleging any discrimination on the basis of protected characteristics such as race, color, religion, age, sex, marital status, sexual orientation, gender identity or expression, national origin, ancestry, mental or physical disability, (including pregnancy), status as a Veteran or genetic information. In order to facilitate the timely resolution of such complaints and/or grievances, any employee who feels that he/she has been discriminated against on the basis of these protected characteristics should file a written complaint with:

Office of the Superintendent of Schools
New Fairfield Board of Education
3 Brush Hill Road
New Fairfield, CT 06812

Preferably, complaints should be filed within thirty (30) days of the alleged occurrence. Timely reporting of complaints and/or grievances facilitates the investigation and resolution of such complaints and/or grievances.

Complaints and/or grievances will be investigated promptly and corrective action will be taken when allegations are verified.

Specifically, upon receipt of a written complaint of discrimination, the Superintendent and/or his or her designee should:

1. offer to meet with the complainant to discuss the nature of his/her complaint;
2. provide the complainant with a copy of the Board's anti-discrimination policy and accompanying regulations;
3. investigate the factual basis of the complaint, including, as applicable, conducting interviews with individuals deemed relevant to the complaint;
4. conduct the investigation in a confidential manner, to the extent practicable, adhering to the requirements of state and federal law;
5. communicate the findings and/or results of any investigation to the complainant; and
6. take appropriate corrective and disciplinary action, as deemed appropriate by the Superintendent and/or his or her designee.

If the complaint involves an allegation of discrimination based on disability or sex, the complainant should be referred to the Board's policies and procedures related to Section 504 of the Rehabilitation Act (for claims of discrimination and/or harassment based on disability) and Sex Discrimination/Sexual Harassment. (for claims of discrimination and/or harassment based on sex).

Personnel - Certified/Non-Certified

Nondiscrimination

For allegations pertaining to race, color or national origin discrimination, at any stage in this complaint procedure, the complainant has the right to file formal complaints regarding such matters with:

Boston Office
Office of Civil Rights
U.S. Department of Education
8th Floor
5 Post Office Square
Boston, MA 02109-3921
Tel. (617) 289-0111

If a complaint is filed with the Office of Civil Rights, it must be filed in writing no later than one hundred eighty (180) days after the occurrence of the alleged discrimination.

A complainant may also file a complaint with the Connecticut Commission on Human Rights and Opportunities, 1229 Albany Avenue, Hartford, CT 06112 (860 566-7710) and/or the Equal Employment Opportunity Commission, Boston Area Office, John F. Kennedy Federal Building, 475 Government Center, Boston, MA 02203 (617-565-3200).

(cf. 4118.112 – Sexual Harassment)
(cf. 5145.4 – Nondiscrimination on the Basis of Disability)
(cf. 5145.5 – Exploitation: Sexual Harassment)

Regulation approved:

rev 7/11
rev 7/17
rev 10/18

NEW FAIRFIELD PUBLIC SCHOOLS
New Fairfield, Connecticut

P.A. 19-16: An Act Combatting Sexual Assault and Sexual Harassment

~Page 1~

(Background Information for Policy Review Committee)

This Act makes various changes concerning sexual harassment, sexual assault, discrimination complaints filed with the Commission on Human Rights and Opportunities (CHRO), and related matters. This legislation:

1. expands requirements for employers to train employees on sexual harassment laws (§1);
2. extends the time to file a CHRO complaint alleging employer discrimination, including sexual harassment (§6);
3. allows courts to order punitive damages in discrimination cases released from CHRO jurisdiction (§10);
4. extends the time to file a civil lawsuit related to sexual abuse or related conduct for victims under age 21 (§13); and
5. eliminates the criminal statute of limitations for sexual assault crimes against minors and extends it for such crimes against adults (§17).

The effective date of this Act is October 1, 2019.

This is a lengthy piece of legislation. The following narrative is restricted to providing information from the Act impacting board of education policy. Other sections are briefly listed to provide an overview of the Act's contents. As listed below, the term "employer" includes a board of education.

§§1, 3 & 9 – Sexual Harassment Training and Information Requirements for Employers

Expands requirements for employers on training employees about sexual harassment laws and providing related information, and requires CHRO to make related training materials available.

Training (§§1 & 3)

Previous law required employers with at least 50 employees to provide supervisory employees with two hours of training on federal and state sexual harassment laws and remedies available to victims. The Act expands this requirement to cover employers of any size and also non-supervisory employees for employers with at least three employees.

Such training must occur within one year of October 1, 2019, except that any employer who provided the Act's training after October 1, 2018, is not required to provide it a second time.

The Act requires CHRO to develop and make available to employers a free, online training and education video or other interactive method that fulfills the Act's training requirements. As long as CHRO does so, the Act's required employee training must take place within six months of the hiring date, starting October 1, 2019, for all new hires by employers with at least three employees and all new supervisory hires by smaller employers.

In addition, employers required to provide this training must provide supplemental training at least every 10 years to update employees on the content of the training and education.

P.A. 19-16: An Act Combatting Sexual Assault and Sexual Harassment

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Information (§§1 & 3)

Employers with three or more employees have been required to post in a prominent and accessible place a notice stating that sexual harassment is illegal and the remedies available to victims. This Act requires these employers to also send a copy of this information to employees by email within three months of their hire if the employer has provided an email account to the employee or the employee has provided the employer with an email address. If an employer has not provided email accounts to employees, it must post the information on its website, if it has one.

The Act requires CHRO to develop and include on its website a link about the illegality of sexual harassment and the remedies available to victims. An employer can comply with the requirement above by providing this link to employees by email, text message, or in writing.

Covered Employees (§1)

The Act specifies that for the above provisions on sexual harassment training and information, “employee” includes anyone employed by an employer, including someone employed by his or her parent, spouse, or child.

Penalty (§9)

The Act subjects employers to a fine of up to \$1,000 if they fail to provide the training and education as required. The Act additionally classifies this inaction as a discriminatory practice.

Ensuring Compliance (§9)

The Act allows designated CHRO representatives to enter an employer’s business location, during normal business hours, to ensure compliance with these requirements and requirements for employers to post notices on sexual harassment. The designated representatives may also examine the employers’ records, policies, procedures, postings, and sexual harassment training materials to ensure compliance with these posting requirements and the sexual harassment training requirements described above.

§2 – Discriminatory Practice Definition

Expands the definition of “discriminatory practice” in the CHRO statutes to include either an employer’s failure to provide sexual harassment training or post required notices.

The Act expands the definition of “discriminatory practice” in the CHRO statutes to include violations of the following requirements for:

1. employers to provide training and information to employees (as specified above) about sexual harassment and available remedies and
2. state agencies to provide diversity training and education to employees, annually report on the training, and submit information demonstrating compliance as part of their affirmative action plans.

By adding these violations to the definition of discriminatory practice, the Act allows individuals aggrieved by any such violation, or CHRO itself, to file a complaint with CHRO alleging discrimination.

P.A. 19-16: An Act Combatting Sexual Assault and Sexual Harassment

~Page 3~

§4 – Corrective Action in Employer Sexual Harassment Cases

Allows employers to modify the conditions of an alleged harassment victim's employment only with that person's consent.

The Act prohibits an employer, when taking immediate corrective action in response to an employee's sexual harassment claim, from modifying the claimant's conditions of employment unless the claimant agrees in writing to the modification. This includes actions such as relocating the employee, assigning him or her to a different work schedule, or making other substantive changes to the terms and conditions of employment.

§5 – Equal Employment Opportunity Officers

Limits the disclosure of investigation-related documents by state entities' equal employment opportunity officers.

By law, each state agency, department, board, or commission must designate an equal employment opportunity officer. Among other things, they are responsible for investigating discrimination complaints made against the applicable entity with certain exceptions.

The Act prohibits these officers from disclosing witness statements or documents received or compiled in conjunction with such an investigation until the investigation concludes, except for disclosures to personnel charged with investigating or adjudicating the complaint or CHRO.

§6 – Complaint Filing Deadline

Gives a claimant more time to file a complaint with CHRO alleging employment discrimination or various types of discrimination by state agencies.

Under previous law, a discriminatory practice complaint with CHRO may be filed within (1) 180 days of the alleged discrimination or (2) 30 days for complaints alleging discrimination based on denial of state employment or occupational licensure due to criminal history.

The Act extends to 300 days the time for filing complaints alleging discrimination that allegedly occurred on or after October 1, 2019, in any of the following areas:

1. employment (including sexual harassment);
2. equal employment in state agencies and the Judicial Branch;
3. state agency practices (including permitting certain types of discrimination, such as in housing or public accommodations);
4. state agency job placement services or state licensing;
5. state agency educational and vocational guidance and apprenticeship programs;
6. allocation of state benefits;
7. state agency cooperation with CHRO;
8. required state agency annual reporting to the governor on nondiscrimination efforts; and
9. denial of state employment or occupational licensure due to criminal history.

P.A. 19-16: An Act Combatting Sexual Assault and Sexual Harassment

~Page 4~

Other sections of this Act are briefly described below.

§7 – Remedies for Discriminatory Employment Practices

Requires the CHRO presiding officer, among other things, to issue an order that makes the complainant whole and award attorney's fees after finding a discriminatory employment practice.

§8 – Document Inspection and Consequences of Noncompliance

Allows the presiding officer at CHRO administrative hearings to impose nonmonetary penalties on parties that do not comply with orders to produce relevant and material documents.

§9 – Penalty for Failure to Post Certain Notices

Increases the maximum fine for employers and certain others for failing to post notices about nondiscrimination laws from \$250 to \$1,000.

§10 – Punitive Damages in Court after Release from CHRO Jurisdiction

Allows courts to award punitive damages in discrimination cases after release from CHRO jurisdiction.

§11 – CHRO Civil Actions in The Public Interest

Allows CHRO's executive director, within available appropriations, to assign CHRO legal counsel to bring a civil action, instead of an administrative hearing, in certain cases when doing so would be in the public interest and the parties agree to the case proceeding to court.

§12 – Evidence in Civil Sexual Misconduct Cases

Limits when evidence of the victim's sexual history may be admitted in civil proceedings involving alleged sexual assault or sexual harassment.

§13 – Civil Statute of Limitations for Victims Under Age 21

Extends the time to file a civil case related to sexual abuse or related conduct for victims under age 21.

Under previous law, if a victim was under age 18 when sexual assault, sexual abuse, or sexual exploitation occurred, the victim has until his or her 48th birthday to file a personal injury lawsuit for damages, including emotional distress, caused by the conduct. The Act extends this provision. First, it applies it to victims who were under age 21, rather than 18, at the time of the conduct. Second, it allows any such victim to file the lawsuit at any time before his or her 51st birthday.

§14 – Civil Statute of Limitations Task Force

Establishes a task force to study whether to amend the civil statute of limitations for sexual abuse.

§§15, 16 & 18 – Sexual Assault of an Incapacitated Person

Increases the penalty for subjecting someone to sexual contact if the victim is mentally incapacitated and cannot consent.

P.A. 19-16: An Act Combatting Sexual Assault and Sexual Harassment

~Page 5~

§§17 & 19-23 – Statute of Limitations for Sexual Assault and Related Crimes

Eliminates or extends the statute of limitations for various sexual assault and related crimes, sex, sexual exploitation, or sexual assault of a minor, including risk of injury to a minor involving intimate contact with a victim under age 16.

The Act makes the following changes to the statute of limitations for sexual assault crimes.

Victims Who Are Minors

The Act eliminates the statute of limitations for any offense involving sexual abuse.

Victims Age 18, 19, or 20

For any offense involving sexual abuse, sexual exploitation, or sexual assault of a person age 18, 19, or 20, the Act extends the statute of limitations until the victim's 51st birthday, unless there would be no statute of limitations (e.g., the crime is a class A felony).

Policy Implications

This new legislation impacts policy #4118.112/4218.112, "Sexual Harassment" and its accompanying administrative regulation and forms. This is a recommended policy for placement in a district's policy manual. The current samples of these materials have been removed from CABE's resource file and replaced by the new samples which follow for your consideration.

A recommended policy to consider. Policy #4000.1/5145.44 "Title IX" contains specific federal guidance which must be followed pertaining to claims of sex discrimination and sexual harassment based on Title IX.

Personnel -- Certified/Non-Certified

Sex Discrimination and Sexual Harassment in the Workplace

The _____ Board of Education (Board) is committed to safeguarding the right of all employees within the school district to a work environment that is free from all forms of sexual discrimination or harassment. Therefore, the Board condemns and prohibits all unwelcome behavior of a sexual nature which is either designed to extort sexual favors from an employee as a term or condition of employment, or which has the purpose or effect of creating an intimidating, hostile, or offensive working environment unreasonably interfering with the employee's work performance or adversely affecting the employee's employment opportunities. The Board also strongly opposes any retaliatory behavior against complainants or any witnesses.

Definitions

Sex discrimination is defined as when an employer refuses to hire, disciplines or discharges any individual, or otherwise discriminates against an individual with respect to his or her compensation, terms, conditions, or privileges of employment on the basis of the individual's sex. Sex discrimination is also defined as when a person, because of his or her sex, is denied participation in, or the benefits of, a program that receives federal financial assistance.

Sexual harassment, a form of sex discrimination, means any unwelcome sexual advances or requests for sexual favors or any conduct of a sexual nature when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or (3) such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment.

Employee means all personnel hired by the Board of Education.

Although not an exhaustive list, the following are examples of the type of conduct prohibited by the policy against sexual harassment:

1. Unwelcome sexual advances from a co-worker or supervisor, such as unwanted hugs, touches, or kisses;
2. Unwelcome attention of a sexual nature, such as degrading, suggestive or lewd remarks or noises;
3. Dirty jokes, derogatory or pornographic posters, cartoons or drawings;
4. The threat or suggestion that continued employment advancement, assignment or earnings depend on whether or not the employee will submit to or tolerate harassment;
5. Circulating, showing, or exchanging emails, text messages, digital images or websites of a sexual nature;
6. Using computer systems, including email, instant messaging, text messaging, blogging or the use of social networking websites, or other forms of electronic communications, to engage in any conduct prohibited by this policy.

Personnel – Certified/Non-Certified

Sex Discrimination and Sexual Harassment in the Workplace (continued)

Harassment

Any infraction of this policy by supervisors or co-workers should be reported immediately to the Title IX Coordinator, the Superintendent, or his/her designee so that appropriate corrective action may be taken at once. In the absence of a victim's complaint, the Board, upon learning of, or having reason to suspect, the occurrence of any sexual misconduct, will ensure that an investigation is promptly commenced by appropriate individuals.

Retaliation against any employee for complaining about sex discrimination or sexual harassment is prohibited under this policy and illegal under state and federal law. Violations of this policy will not be permitted and may result in discipline up to and including discharge from employment. Individuals who engage in acts of sex discrimination or sexual harassment may also be subject to civil and criminal penalties.

Notification Requirements

The Board shall, in each school, post in a prominent and accessible location information concerning the illegality of sexual harassment and remedies available to victims of sexual harassment.

In addition, the Board shall provide, not later than three months after an employee's start date with the District, a copy of the information concerning the illegality of sexual harassment and remedies available to victims of sexual harassment to each employee by electronic mail with a subject line that includes the words "Sexual Harassment Policy" or similar, if the District has provided an e-mail account to the employee, or if the employee has provided the District with an e-mail address. The Board will also post the information on the District's website. (Note: *The Board can also fulfill this requirement by providing a link to its employees by e-mail, text message or in writing, of the information posted by The Connecticut Commission on Human Rights and Opportunities (CHRO) on its website.*) (Also refer to Policy 4000.1/5145.44 federal Title IX notification requirements.)

Training Requirements

All District employees shall be provided two hours of training and education within one year of October 1, 2019, unless such training was previously provided to any such employee after October 1, 2018. Such training and education shall also take place not later than six months after the date of a new employee's hire. (Note: *The use of the free, online training and education video or other interactive method developed by CHRO fulfills the statutory requirement.*)

In addition to the required training listed above, the Board shall also provide supplementary training at least every ten (10) years on the content of the training and education.

Personnel – Certified/Non-Certified

Sex Discrimination and Sexual Harassment in the Workplace

Training Requirements (continued)

NOTE: Title IX contains specific training requirements for individuals serving as investigators or “decision-makers.”

The Board acknowledges that it is subject to a financial penalty if it fails to provide the training and education as required. In addition, such inaction to provide the training is considered, under P.A. 19-16, as a discriminatory practice.

The Superintendent of Schools is directed to develop and implement specific procedures on reporting, investigating and remediating allegations of sexual discrimination and/or sexual harassment.

A copy of this policy and its accompanying regulation are to be distributed to all personnel and posted in appropriate places.

(cf. 4000.1/5145.44 – Title IX)

Legal References: United States Constitution, Article XIV
Civil Rights Act of 1964, Title VII, 42 U.S.C. §2000-e2(a).
Equal Employment Opportunity Commission Policy Guidance (N-915.035) on Current Issues of Sexual Harassment, Effective 10/15/88.
Title IX of the Education Amendments of 1972, 20 USCS §1681, *et seq.*
Title IX of the Education Amendments of 1972, 34 CFR §106, *et seq.*
Title IX Final Rule, May 6, 2020
Mentor Savings Bank, FSB v. Vinson 477 US.57 (1986)
Faragher v. City of Boca Raton, No. 97-282 (U.S. Supreme Court, June 26,1998)
Burlington Industries, Inc. v. Ellerth, No. 97-569, (U.S. Supreme Court, June 26,1998)
Gebbs v. Lago Vista Indiana School District, No. 99-1866, (U.S. Supreme Court, June 26,1998)
Connecticut General Statutes
46a-60 Discriminatory employment practices prohibited.
Conn. Agencies Regs. §46a-54-200 through §46a-54-207
Constitution of the State of Connecticut, Article I, Section 20.
P.A. 19-16 An Act Combatting Sexual Assault and Sexual Harassment

Policy adopted:
rev 6/20

A sample regulation to consider.

Personnel -- Certified/Non-Certified

Sex Discrimination and Sexual Harassment in the Workplace

The following procedures shall be followed pursuant to the Board of Education policy prohibiting sex discrimination and sexual harassment in the workplace.

Definitions

Sex discrimination is defined as when an employer refuses to hire, disciplines or discharges any individual, or otherwise discriminates against an individual with respect to his or her compensation, terms, conditions, or privileges of employment on the basis of the individual's sex. Sex discrimination is also defined as when a person, because of his or her sex, is denied participation in, or the benefits of, a program that receives federal financial assistance.

Sexual harassment, a form of sex discrimination, means any unwelcome sexual advances or requests for sexual favors or any conduct of a sexual nature when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment.

Employee means all personnel hired by the Board of Education.

Immediate supervisor means the person to whom the employee is directly responsible. (e.g., Department Head, Building Principal)

Policy Awareness

- A. Each school shall post in a prominent and accessible location information concerning the illegality of sexual harassment and remedies available to victims of sexual harassment.
- B. Each employee shall be provided, not later than three months after the employee's start date with the District, a copy of the information concerning the illegality of sexual harassment and remedies available to victims of sexual harassment to each employee by electronic mail with a subject line that includes the words "Sexual Harassment Policy" or similar, if the District has provided an e-mail account to the employee, or if the employee has provided the District with an e-mail address.
- C. The Board will also post the information on the District's website. (Note: *The Board can also fulfill this requirement by providing a link to its employees by e-mail, text message or in writing, of the information posted by The Connecticut Commission on Human Rights and Opportunities (CHRO) on its website.*)

Personnel -- Certified/Non-Certified

Sex Discrimination and Sexual Harassment in the Workplace

Policy Awareness (continued)

- D. The Board of Education policy, “**Sex Discrimination and Sexual Harassment in the Workplace**” shall be distributed to all employees annually at the start of the school year by each building Principal. Principals shall provide written assurance to the Superintendent that such policy and implementing procedures have been distributed and explained to staff.
- E. In addition to the above, items A through D, training shall be provided for those individuals serving as Title IX Coordinators, investigators of Title IX claims and decision makers of Title IX claims. (Such training requirements contained in Policy 4000.1, Title IX)

Staff Training

- A. Staff training in the prevention of sexual discrimination and sexual harassment in the work place shall be conducted annually as part of the District’s continuing staff development program.
- B. All District employees shall be provided two hours of training and education within one year of October 1, 2019, as required by P.A. 19-16, unless such training was previously provided to any such employee after October 1, 2018.
- C. Training and education shall also take place not later than six months after the date of a new employee’s hire.
- D. Supplementary training shall also be provided to all staff every ten years on the content of the training and education.

Note: *The use of the free, online training and education video or other interactive method developed by CHRO fulfills the above statutory requirements.*

Procedures

- A. The Superintendent of Schools will appoint a District Title IX Coordinator and announce the identity of this person annually at the beginning of the school year.
- B. Employees who believe they have been subjected to sexual harassment or sexual discrimination are to report the incident promptly to the Title IX Coordinator [and to their immediate supervisor]. Should the Title IX Coordinator be the subject of the complaint, the complaint shall be made to the Superintendent, who shall investigate or appoint a designee to do so. Incidents of sexual harassment may be reported informally or through the filing of a formal complaint.
- C. All reports of sexual harassment will be held in confidence subject to all state and federal applicable laws.

Personnel -- Certified/Non-Certified

Sex Discrimination and Sexual Harassment in the Workplace

Procedures (continued)

- D. Consistent with federal and state law, the following procedures shall be employed in handling any report, investigation and remedial action concerning allegations of sex discrimination or sexual harassment.

Informal Complaints

Employees who believe they have been subjected to sex discrimination or sexual harassment may request that an informal meeting be held between themselves and the appropriate supervisor. The purpose of such a meeting will be to discuss the allegations and remedial steps available. The supervisor will then promptly discuss the complaint with the alleged perpetrator. Should the harasser admit the allegations, the supervisor is to obtain a written assurance that the unwelcome behavior will stop. Depending on the severity of the charges, the supervisor may recommend that further disciplinary action be taken. Thereafter, the written report of the incident is to be prepared and the complainant informed of the resolution. The complainant is to indicate on report whether or not he/she is satisfied with the resolution.

If the complainant is satisfied with the resolution, the incident will be deemed closed. However, the complaint may be reopened for investigation if a recurrence of sexual discrimination or harassment is reported. The supervisor is to inform the complainant to report any recurrence of the harassment or any retaliatory action that might occur.

If during the informal attempt to resolve the complaint, the alleged harasser admits the allegations but refuses to give assurance that he/she will refrain from the unwelcome behavior, the supervisor is to file a report with the Title IX Coordinator. The report is to indicate the nature of the complaint, a description of what occurred when the supervisor informed the alleged harasser of the allegations against him/her, the harasser's response to the allegations, and a recommendation that stronger corrective measures be taken. This report should be accompanied by a formal complaint.

Should the alleged harasser deny the allegations, the supervisor is to inform the complainant of the denial and state that a formal written complaint will be required for further formal investigation. The supervisor will file a report with the Title IX Coordinator on what has transpired to date. If the complainant submits a formal complaint, a copy of it should accompany the supervisor's report with a recommendation for further action.

Personnel -- Certified/Non-Certified

Sex Discrimination and Sexual Harassment in the Workplace

Formal Complaints

Formal complaints may be submitted either to initially report any incidence of sexual discrimination or harassment, or as a follow-up to an unsatisfactory resolution of an informal attempt to resolve a complaint. The formal written complaint will consist of any appropriate forms and a copy of any applicable supervisor reports. The appropriate forms solicit the specifics of the complaint, e.g. date and place of incident, description of sexual misconduct, names of any witnesses, and any previous action taken to resolve the matter.

Any employee who believes that he or she has been discriminated against or sexually harassed in the workplace in violation of this policy may also file a complaint with the [_____] Region Office of the Connecticut Commission on Human Rights and Opportunities, [address], [phone number]. (Your regional CHRO office can be found by accessing <https://www.ct.gov/chro/cwp/view.asp?a=2523&Q=315790>) and/or the Equal Employment Opportunity Commission, Boston Area Office, 475 Government Center, Boston, MA 02203 (Telephone Number 617-565-3200). Connecticut law requires that a formal written complaint be filed with the Commission on Human Rights and Opportunities within 180 days of the date when the alleged discrimination/harassment occurred. Remedies for sex discrimination and sexual harassment include cease and desist orders, back pay, compensatory damages, hiring, promotion or reinstatement.

Investigating a Complaint

Complaints will be investigated promptly. The District's Grievance/Investigative Process pertaining to Policy 4000.1, Title IX, shall be utilized. Corrective action will be taken when allegations are verified. Confidentiality will be maintained by all persons involved in the investigation to the extent possible and reprisals or retaliation that occur as a result of the good faith reporting of charges of sex discrimination or sexual harassment will result in disciplinary action against the retaliator.

Remedial Action

If the investigation reveals that sexual discrimination or harassment has occurred, appropriate sanctions will be imposed in a manner consistent with any applicable law. Depending on the gravity of the misconduct, these may range from a reprimand up to and including dismissal from employment.

Anyone subjecting complainants or witnesses to any form of retaliation will also be subject to disciplinary action in the manner prescribed by law.

Personnel -- Certified/Non-Certified

Sex Discrimination and Sexual Harassment in the Workplace

Remedial Action (continued)

If the investigation reveals that no sexual harassment has occurred, or if the complainant is not satisfied with the remedial action taken after a finding of sexual harassment, the complainant may appeal to the Superintendent or the Board of Education. The appeal must include a copy of the original complaint, all relevant reports, the specific action being appealed, and an explanation of why the complainant is appealing.

Post Remedial Action

Following a finding of sexual discrimination or harassment, victims will be periodically interviewed by the appropriate supervisory personnel to ensure that the harassment has not resumed and that no retaliatory action has occurred. These follow-up interviews will continue for an appropriate period of time. A report will be made of any victim's response.

Title IX Coordinator

The Title IX Coordinator for the _____ Board of Education is _____.

Complaint Records

Complainants should receive a copy of any resolution reports filed by the supervisor concerning his/her complaint. Copies should also be filed with the employment records of both the complainant and the alleged harasser.

Investigation in the Absence of a Complaint

The Board, in the absence of a victim's complaint, must ensure that an investigation is commenced by the appropriate individuals, upon learning of, or having reason to suspect, the occurrence of any sexual misconduct.

Role of the District Title IX Coordinator

The District Title IX Coordinator shall immediately institute an inquiry into allegations which shall include, but not limited, to:

1. Advising the Superintendent of Schools that a complaint of alleged sexual harassment has been filed.

Personnel -- Certified/Non-Certified

Sex Discrimination and Sexual Harassment in the Workplace

Role of the District Title IX Coordinator (continued)

2. Interviewing the complaining adult or student in a confidential setting and notifying such individual(s) of the grievance/investigatory process which will be utilized. In the case of a student, the parent/guardian shall be notified (unless the parent/guardian is the subject of the allegations) and invited to be present for the interview.
 - a. All parties named as perpetrators of and witnesses to the alleged sexual harassment. Will be interviewed by the Title IX trained individual serving as the investigator.
 - b. The Trained Title IX individual serving as the decision-maker in the formal complaint process shall file a report of findings with the Superintendent of Schools. If the findings result in reasonable cause to suspect or believe that any child under the age of eighteen has been abused, the District Title IX Compliance Officer shall also file a report with the State of Connecticut Commissioner of Children and Youth Services. Nothing contained herein shall abrogate the reporting requirements of school personnel pursuant to Connecticut General Statute 17a-101 in cases of suspected child abuse.

Legal References: United States Constitution, Article XIV
Civil Rights Act of 1964, Title VII, 42 U.S.C. S2000-e2(a).
Equal Employment Opportunity Commission Policy Guidance (N-915.035) on Current Issues of Sexual Harassment, Effective 10/15/88.
Title IX of the Education Amendments of 1972, 20 USCS §1681, *et seq.*
Title IX of the Education Amendments of 1972, 34 CFR §106, *et seq.*
Title IX Final Rule, May 6, 2020
Mentor Savings Bank, FSB v. Vinson 477 US.57 (1986)
Faragher v. City of Boca Raton, No. 97-282 (U.S. Supreme Court, June 26,1998)
Burlington Industries, Inc. v. Ellerth, No. 97-569, (U.S. Supreme Court, June 26,1998)
Gebbs v. Lago Vista Indiana School District, No. 99-1866, (U.S. Supreme Court, June 26,1998)
Connecticut General Statutes
46a-60 Discriminatory employment practices prohibited.
Conn. Agencies Regs. §46a-54-200 through §46a-54-207
Constitution of the State of Connecticut, Article I, Section 20.
P.A. 19-16 An Act Combatting Sexual Assault and Sexual Harassment

Regulation approved:

cps 10/19
rev 6/20

_____ PUBLIC SCHOOLS

**COMPLAINT FORM REGARDING SEX DISCRIMINATION AND
SEXUAL HARASSMENT (PERSONNEL)**

Name of the complainant: _____

Date of the complaint: _____

Date of the alleged discrimination/harassment: _____

Name or names of the discriminator(s) or harasser(s): _____

Location where such discrimination/harassment occurred: _____

Name(s) of any witness(es) to the discrimination/harassment: _____

Detailed statement of the circumstances constituting the alleged discrimination or harassment:

Signature of Complainant

Date

_____ PUBLIC SCHOOLS

**APPEAL FORM REGARDING SEX DISCRIMINATION AND SEXUAL
HARASSMENT COMPLAINT (PERSONNEL)**

Name and position of complaint: _____

Date of appeal: _____

Date of the original complaint: _____

Have there been any prior appeals: Yes No

To whom: _____

Description of decision being appealed: _____

Why is the decision being appealed?: _____

Signature of Complainant

Date

To be posted in a conspicuous place readily available for viewing by employees

PUBLIC SCHOOLS

**SEXUAL HARASSMENT IS ILLEGAL
AND IS PROHIBITED
BY
THE CONNECTICUT DISCRIMINATORY EMPLOYMENT PRACTICES ACT
(Section 46a-60 of the Connecticut General Statutes)
AND
TITLE VII OF THE CIVIL RIGHTS ACT OF 1964
(42 United States Code Section 2000e et seq.)**

SEXUAL HARASSMENT MEANS ANY UNWELCOME SEXUAL ADVANCES OR REQUESTS FOR SEXUAL FAVORS OR ANY CONDUCT OF A SEXUAL NATURE WHEN:

1. SUBMISSION TO SUCH CONDUCT IS MADE EITHER EXPLICITLY OR IMPLICITLY A TERM OR CONDITION OF AN INDIVIDUAL'S EMPLOYMENT;
2. SUBMISSION TO OR REJECTION OF SUCH CONDUCT BY AN INDIVIDUAL IS USED AS THE BASIS FOR EMPLOYMENT DECISIONS AFFECTING SUCH INDIVIDUAL; OR
3. SUCH CONDUCT HAS THE PURPOSE OR EFFECT OF SUBSTANTIALLY INTERFERING WITH AN INDIVIDUAL'S WORK PERFORMANCE OR CREATING AN INTIMIDATING, HOSTILE, OR OFFENSIVE WORKING ENVIRONMENT.

Examples of SEXUAL HARASSMENT include:

- UNWELCOME SEXUAL ADVANCES
- SUGGESTIVE OR LEWD REMARKS
- UNWANTED HUGS, TOUCHES, KISSES
- REQUESTS FOR SEXUAL FAVORS
- DEROGATORY OR PORNOGRAPHIC POSTERS, CARTOONS, OR DRAWINGS

Remedies for SEXUAL HARASSMENT may include:

- CEASE AND DESIST ORDERS
- BACK PAY
- COMPENSATORY DAMAGES
- HIRING, PROMOTION, OR REINSTATEMENT

RETALIATION AGAINST ANY EMPLOYEE FOR COMPLAINING ABOUT SEXUAL HARASSMENT IS PROHIBITED UNDER THIS POLICY AND ILLEGAL.

VIOLATION OF THIS POLICY IS GROUNDS FOR DISCIPLINE, INCLUDING DISCHARGE.

INDIVIDUALS WHO ENGAGE IN ACTS OF SEXUAL HARASSMENT MAY ALSO BE SUBJECT TO CIVIL AND CRIMINAL PENALTIES.

AN INFRACTION OF THIS POLICY BY SUPERVISORS OR CO-WORKERS SHOULD BE REPORTED IMMEDIATELY TO _____ [TITLE IX COORDINATOR, OR SUPERINTENDENT IF THE TITLE IX COORDINATOR IS THE SUBJECT OF THE COMPLAINT]. CONFIDENTIALITY WILL BE MAINTAINED TO THE EXTENT POSSIBLE.

ANY EMPLOYEE WHO BELIEVES THAT HE OR SHE HAS BEEN HARASSED OR DISCRIMINATED AGAINST IN THE WORKPLACE IN VIOLATION OF THIS POLICY MAY ALSO CONTACT:

THE CONNECTICUT COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES [_____] REGION OFFICE [REGIONAL OFFICES AND THEIR ADDRESSES CAN BE FOUND ON THE CHRO WEBSITE, [HTTP://WWW.STATE.CT.US/CHRO/](http://www.state.ct.us/chro/)] [ADDRESS] [PHONE NUMBER]

AND/OR:

THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
BOSTON AREA OFFICE
475 GOVERNMENT CENTER
BOSTON, MA 02203
PHONE (617) 565-3200
(800) 669-4000

CONNECTICUT LAW REQUIRES THAT A FORMAL WRITTEN COMPLAINT BE FILED WITH THE COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES WITHIN THREE HUNDRED (300) DAYS OF THE DATE WHEN THE ALLEGED HARASSMENT/DISCRIMINATION OCCURRED.

Most school districts have adopted some form of anti-harassment policy to provide students and staff with a safe and secure school environment. Anti-harassment policies protect school districts as well, by minimizing exposure to liability from harassment suits from students and employees.

The recent decision of the Third Circuit Court of Appeals in *Saxe v. State College Area School District*, 240 F3d 200 illustrates how the laudable objectives in an anti-harassment policy do not save it from being unconstitutionally overbroad. The Court ruled that the district's anti-harassment policy violated the First Amendment's guarantee of freedom of speech.

The Third Circuit covers only Delaware, New Jersey, Pennsylvania and the Virgin Islands. However, this decision is relevant beyond these areas because it involves the issue of students' First Amendment rights versus the school's authority and responsibility to maintain discipline and promote a positive learning environment.

The parent in the Saxe complaint claimed that his children's right to free speech was abridged by the anti-harassment policy because it prevented them from stating publicly in school their religious belief that homosexuality is a sin. The Court approached the case as a First Amendment issue rather than a harassment issue.

The school district in this decision had an extensive anti-harassment policy to prevent student-to-student harassment. The Court seemed particularly concerned with the very broad definition of the term "harassment" within the anti-harassment policy. The Court found the following section of the policy troubling in light of its interpretation of First Amendment jurisprudence:

"Other harassment on the basis of such things as clothing, physical appearance, social skill, peer group, income, intellect, educational program, hobbies or values, etc. may also cause or effect substantial interfering with a student's educational performance or creating an intimidating, hostile or offensive environment."

HARASSMENT AND SEXUAL HARASSMENT: THE SAXE DECISION

Update Mailing No. 1

November 18, 2001

The Court concluded the policy prohibited student speech and conduct that would not necessarily constitute harassment under federal law. Titles VI and IX prohibit harassment based upon sex, race, color, national origin, age and disability. The Court believed the district's policy went beyond these areas and included a catch-all category of other personal characteristics. The Court remarked "no court or legislature has ever suggested that unwelcome speech directed at another's values may be prohibited under the rubric of anti-discrimination."

The Court tested the anti-harassment policy under the previous *Tinker*, *Fraser* and *Hazelwood* Supreme Court decisions and found that the policy prohibited a substantial amount of non-violent, non-school-sponsored student speech. The prohibited harassment as defined by the policy did not rise to the level of substantial disruption under *Tinker*. The part of the policy prohibiting speech that "creates a intimidating, hostile or offensive environment" required no threshold showing of severity or perverseness. The Court recognized that this prohibition included any speech about some enumerated personal characteristics, political or religious speech, and speech about contentious issues. It stated that "Such speech, when it does not pose a realistic threat of substantial disruption, is within a student's First Amendment rights." Mere discomfort or uneasiness about speech is insufficient.

The difficulty is how to reconcile the mixed messages of the courts sent to schools regarding the responsibility to stop harassment while not restricting freedom of speech. There have been other decisions contrary to the Saxe decision.

CABE's current policy, # 4118.113/4218.113, "Harassment" is applicable to students and staff. It has been reviewed in light of this Court decision and modified. It follows for your consideration.

In addition, it has been given a dual codification to reflect its applicability to students as well as to staff.

An optional revised sample policy to consider. A related version of this policy should also be placed in the 5000 series – Students.

Personnel -- Certified/Non-Certified

Harassment

The Board strives to provide a safe, positive working climate for its employees. Therefore, harassment, in any form, will not be tolerated in this District. This policy applies to all students, staff members, Board members, parents, vendors, contracted individuals, volunteers, other employees and other visitors -- who are on District grounds or property or on property within the jurisdiction of the District; on buses operated by or for the District; while attending or engaged in District activities; and while away from District grounds if the misconduct directly affects the good order, efficient management, and welfare of the District.

Employees, students, and others are expected to adhere to a standard of conduct that is respectful and courteous to all. The principle of freedom of expression that might otherwise protect the most offensive public speech does not protect or encompass a right to threaten the dignity and privacy of an individual. Such personally directed behavior will not be tolerated. It is contrary to academic values, debilitates its victims, compromises the offenders, and undermines the District's fundamental commitment to individual freedom and respect for all its members. Furthermore, acts of intolerance may destroy the very atmosphere in which freedom of expression is otherwise tolerated and cherished.

For purposes of this policy, **harassment** consists of verbal, written, graphic, or physical conduct relating to an individual's race, color, religion, sex, national origin/ethnicity, physical attributes or disability, parental or marital status, sexual orientation, (including gender identity/expression) or age when such conduct/harassment:

1. is sufficiently severe, persistent or pervasive that it affects an individual's ability to participate in or benefit from an educational program or activity or creates an intimidating, threatening or abuse education environment;
2. has the purpose or effect of substantially or unreasonably interfering with an individual's work performance;
3. otherwise adversely affects an individual's employment opportunities;

Harassment as set forth above may include, but is not limited to:

- verbal, physical, or written intimidation or abuse;
- repeated remarks of a demeaning or condescending nature;
- repeated demeaning jokes, stories, or activities directed at the individual;

Personnel -- Certified/Non-Certified

Harassment (continued)

For purposes of this policy, **sexual harassment** shall consist of unwelcome sexual advances; requests for sexual favors; and other inappropriate verbal, written, graphic or physical conduct of a sexual nature when:

1. acceptance of such conduct is made, either explicitly or implicitly, a term or condition of an individual's continued employment;
2. submission to or rejection of such conduct by an individual is used as the basis for decisions affecting the individual; and
3. such conduct is sufficiently severe, persistent or pervasive that it has the purpose or effect of substantially interfering with the employee's job performance or creating an intimidating, hostile or offensive working environment.

Examples of conduct that may constitute sexual harassment include, but are not limited to sexual flirtations, advances, touching or propositions; verbal abuse of a sexual nature; graphic or suggestive comments about an individual's dress or body; sexually degrading words to describe an individual; jokes; pin-ups; calendars; objects; graffiti; vulgar statements; abusive language; innuendos; references to sexual activities; overt sexual conduct; or any conduct that has the effect of unreasonably interfering with an employee's ability to work or creates an intimidating, hostile or offensive working environment.

Each staff member shall be responsible to maintain an educational environment free from all forms of unlawful harassment.

Should harassment be alleged, it is the policy of this Board that it shall be thoroughly investigated, that there shall be no retaliation against the victim of the alleged harassment, and that the problem/concern shall be appropriately addressed.

In order to maintain a work environment that discourages and prohibits unlawful harassment, the Board designate the

- { } Superintendent
- { } Assistant Superintendent
- { } Business Manager
- { } Personnel Director
- { } Director of Special Education/Services

as the District's Compliance Officer.

Personnel -- Certified/Non-Certified

Harassment (continued)

The Compliance Officer shall publish and disseminate this policy and the complaint procedure annually to students, parents, employees, independent contractors, vendors and the public. The publication shall include the position, office address and telephone number of the District's Compliance Officer.

The Board directs that complaints of harassment shall be investigated promptly and corrective action be taken when allegations are substantiated. Confidentiality of all parties shall be maintained consistent with the District's legal and investigative obligations.

The Building Principal or his/her designee shall be responsible to complete the following duties when receiving a complaint of unlawful harassment:

1. Inform the employee or third party of the right to file a complaint and the complaint procedure.
2. Notify the complainant and the accused of the progress at appropriate stages of the procedure.
3. Refer the complainant to the Compliance Officer if the Building Principal is the subject of the complaint.

(cf. 5145.52 – Harassment)

Legal Reference: Title VII, Civil Rights Act, 42 U.S.C. 2000e, et seq.

29 CFR 1604.11, EEOC Guidelines on Sex Discrimination.

Title IX of the Educational Amendments of 1972, 20 U.S.C. 1681 et seq.

34 CFR Section 106.8(b), OCR Guidelines for Title IX.

Definitions, OCR Guidelines on Sexual Harassment, Fed. Reg. Vol 62, #49, 29 CFR Sec. 1606.8 (a) 62 Fed. Reg. 12033 (March 13, 1977) and 66 Fed. Reg. 5512 (January 19, 2001)

Meritor Savings Bank. FSB v. Vinson, 477 U.S. 57 (1986)

Faragher v. City of Boca Raton, No. 97-282 (U.S. Supreme Court, June 26, 1998)

Personnel -- Certified/Non-Certified

Harassment (continued)

Legal References: (continued)

Burlington Industries, Inc. v. Ellerth, No. 97-569, (U.S. Supreme Court, June 26, 1998)

Gebbs v. Lago Vista Indiana School District, No. 99-1866, (U.S. Supreme Court, June 26, 1998)

Davis v. Monroe County Board of Education, No. 97-843, (U.S. Supreme Court, May 24, 1999.)

Connecticut General Statutes

46a-60 Discriminatory employment practices prohibited.

10-15c Discrimination in public schools prohibited. School attendance by five-year olds. (Amended by P.A. 97-247 to include "sexual orientation")

10-153 Discrimination on account of marital status.

17a-101 Protection of children from abuse.

Policy adopted:

rev. 11/01

rev. 4/02

rev 11/10

Sample regulation to consider which contains the required complaint procedure.

Personnel -- Certified/Non-Certified

Harassment

Harassment Complaint Procedure

If an individual believes that he/she is being or has been harassed, that person should immediately inform the harasser that his/her behavior is unwelcome, offensive, in poor taste, unprofessional, or highly inappropriate.

If the offensive behavior **is repeated** following a request to the harasser that it cease, the employee shall have the option of pursuing either an **informal** complaint procedure designed to educate the harasser and to eliminate the problem, or a formal complaint procedure that is defined below.

Any employee who makes an **informal** oral complaint of harassment to his or her supervisor, site administrator, or the Assistant Superintendent (*or Superintendent's designee in the absence of an Assistant Superintendent*), or Compliance Officer will be provided a copy of these regulations and will be encouraged to pursue the **formal** procedure should the **informal** investigation and intervention, if required, prove unsuccessful in eliminating the objectionable behavior. **HOWEVER, IT IS NOT NECESSARY FOR THE PERSON BEING HARASSED TO WAIT UNTIL THE OFFENSIVE BEHAVIOR IS REPEATED BEFORE FILING A COMPLAINT. OFFENSIVE BEHAVIOR OF AN EGREGIOUS NATURE WOULD WARRANT AN IMMEDIATE AND FORMAL COMPLAINT BE FILED.**

If, following requests to cease objectionable, harassing behavior, said behavior continues, and if the **informal** procedure has also proven unsatisfactory, or unacceptable, the employee may pursue the **formal** complaint procedure which involves submitting a written complaint to his or her supervisor, site administrator, or the Assistant Superintendent (*or Superintendent's designee in the absence of an Assistant Superintendent*) or Compliance Officer. The complaint should list the name of the complainant, the date of the complaint, the date of the alleged harassment, the name(s) of the harasser(s), where such harassment occurred, and a detailed statement of the circumstances constituting the alleged harassment.

All formal complaints and informal complaints involving staff are to be forwarded immediately to the Assistant Superintendent (*or the Superintendent's designee in the absence of an Assistant Superintendent*) unless that individual is the subject of the complaint, in which case the complaint should be forwarded directly to the Superintendent.

Upon receiving a formal complaint, the building level administrator in concert with the Assistant Superintendent (*or the Superintendent's designee in the absence of an Assistant Superintendent*), or Compliance Officer will, as soon as possible, commence an effective, thorough, objective and complete investigation of the complaint. The investigator shall consult with all individuals reasonably believed to have relevant information, including the complainant and the alleged harasser, any witnesses to the conduct, and victims of similar conduct that the investigator reasonably believes may exist.

Personnel -- Certified/Non-Certified

Harassment

Harassment Complaint Procedure (continued)

The investigation shall be free of stereotypical assumptions about either party. The investigation shall be carried on discreetly, maintaining confidentiality insofar as possible while still conducting an effective and thorough investigation. Throughout the entire investigative process, the due process rights of the alleged harasser will be upheld. The investigator shall make a written report summarizing the results of the investigation and proposed disposition of the matter, and shall provide copies to the complainant, the alleged harasser, and, as appropriate, to all others directly concerned.

If the complainant is dissatisfied with the result of the investigation, he or she may file a written appeal to the Superintendent, who shall review the investigator's written report, the information collected by the investigator together with the recommended disposition of the complaint to determine whether the alleged conduct constitutes harassment. The Superintendent may also conduct a reasonable investigation, including interviewing the complainant and alleged harasser and any witnesses with relevant information. After completing this review, the Superintendent shall respond to the complainant, in writing, as soon as possible.

If after a thorough investigation, there is reasonable cause to believe that harassment has occurred, the district shall take all reasonable actions to ensure that the harassment ceases and will not recur. Actions taken in response to situations of harassment may include reprimand, reassignment, transfer, suspension, expulsion, disciplinary action, or discharge from employment.

The harasser and any other involved individuals, if appropriate, will be informed that appropriate action shall be taken if further acts of harassment or retaliation occur. If further acts of harassment or retaliation do occur, appropriate action shall be taken.

All employees, and supervisors shall be provided copies of the Board of Education policy concerning harassment and the policy will be reproduced in all employee and student handbooks.

Regulation approved:

cps 11/01
rev. 4/02

Another version of this regulation to consider which contains the required complaint procedure.

Personnel -- Certified/Non-Certified

Harassment

Harassment Complaint Procedure

Step 1 – Reporting

An employee or third party who believes he/she has been subject to conduct that constitutes a violation of this policy is encouraged to immediately report the incident to the Building Principal. If the Building Principal is the subject of the complaint, the incident shall be reported directly to the District's Compliance Officer.

The complainant is encouraged to use the report form available from the Building Principal, but oral reports are acceptable.

Step 2 – Investigation

Upon receiving a complaint of unlawful harassment, the Building Principal shall immediately notify the Compliance Officer, who shall then authorize the Building Principal to investigate the complaint, unless the Building Principal is the subject of the complaint or is unable to conduct the investigation.

The investigation may consist of individual interviews with the complainant, the accused and others with knowledge relative to the incident. Other information and materials relevant to the investigation may also be evaluated.

The obligation to conduct this investigation shall not be negated by the fact that a criminal investigation is pending or has been concluded.

Step 3 – Investigative Report

The District shall take prompt, corrective action to ensure that such conduct ceases and will not reoccur if the investigation results in a finding that the complaint is factual and is a violation of Board policy.

Disciplinary actions shall be consistent with Board policies and district procedures, applicable bargaining unit agreements and applicable state and federal laws.

Employees knowingly making a false complaint under this policy shall be subject to disciplinary action, including termination.

Personnel -- Certified/Non-Certified

Harassment

Harassment Complaint Procedure (continued)

Step 4 – Appeal Procedure

1. The complainant, if not satisfied with a finding of no violation of the policy or with the corrective action, may submit a written appeal to the Compliance Officer within fifteen (15) days.
2. The Compliance Officer shall review the investigation and the investigative report and may also conduct an investigation.
3. The Compliance Officer shall prepare a written response to the appeal within fifteen (15) days. Copies of the response shall be provided to the complainant, the accused and the Building Principal who conducted the initial investigation.

Regulation approved:

cps 4/02

REPORT FORM FOR COMPLAINTS OF DISCRIMINATION

Complainant: _____
Home Address: _____
Home Phone: _____
School building: _____
Date of Alleged Incident(s): _____

Alleged harassment was based on: (Check all that apply.)

- | | | | |
|-----------------------------------|-------------------------------------|---|--|
| <input type="checkbox"/> Race | <input type="checkbox"/> Color | <input type="checkbox"/> National Origin | <input type="checkbox"/> Gender Identity or Expression |
| <input type="checkbox"/> Gender | <input type="checkbox"/> Disability | <input type="checkbox"/> Religion | |
| <input type="checkbox"/> Ancestry | <input type="checkbox"/> Age | <input type="checkbox"/> Sexual Orientation | |

Name of person you believe violated the District's nondiscrimination policy:

If the alleged discrimination was directed against another person, identify the other person:

Describe the incident as clearly as possible, including any verbal statements (i.e., threats, derogatory remarks, demands, etc.) and any actions or activities. Attach additional pages if necessary:

When and where incident occurred: _____

List any witnesses who were present: _____

This complaint is based on my honest belief that _____ has discriminated against me or another person. I certify that the information provided in this complaint is true, correct and complete to the best of my knowledge.

Complainant's Signature

Date

Received By

Date

HARASSMENT IN THE WORK PLACE

Sexual Harassment

Harassment of an employee by a supervisor or co-worker on the basis of sex creates a harmful working environment. It is the policy of the Board of Education to maintain a working environment free from harassment, insults, or intimidation on the basis of an employee's sex. Verbal or physical conduct of a sexual nature by a supervisor or co-worker that has the effect of:

- creating an intimidating, hostile, or offensive work environment,
- unreasonably interfering with the employee's work performance, or
- adversely affecting the employee's employment opportunities is prohibited.

While it is difficult to define sexual harassment precisely, it does include any unwelcome sexual advances, request for sexual favors, and other verbal or physical conduct of a sexual nature when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

Although not an exhaustive list, the following are examples of the type of conduct prohibited by the policy against sexual harassment:

1. Unwelcome sexual relations with a co-worker or supervisor;
2. Unwelcome attention of a sexual nature, such as degrading comments, propositions, jokes, tricks, or noises; or
3. The threat or suggestion that continued employment advancement, assignment, or earnings depend on whether or not the employee will submit to or tolerate harassment.

Staff members who believe they have been subjected to sexual harassment by either a supervisor or co-worker are encouraged to make it clear to the offender, if possible, that such behavior is offensive to them. If such behavior persists or is severe, they should immediately bring the matter to the attention of their building principal or the Title IX Coordinator (Assistant Superintendent of Schools).

If reported to the principal, the principal is responsible for informing the Title IX Coordinator of the matter. The coordinator is responsible for investigating all cases of sexual harassment in a timely manner and for reporting the findings of the investigation to the superintendent of schools and the pertinent building principal for further action if necessary.

Other Harassment

The work environment shall also be free from harassment, insults, or intimidation on the basis of an employee's race, color, religion, national origin, age, sexual orientation, ancestry, disability, or mental status.

Staff members who believe they have been subjected to other harassment by either a supervisor or other staff member should report the behavior to their building principal or the Assistant Superintendent of Schools. If reported to the principal, the principal is responsible for informing the Assistant Superintendent of Schools of the matter. The assistant superintendent is responsible for investigating all cases of other harassment in a timely manner and for reporting the findings of the investigation to the Superintendent of Schools and the pertinent building principal for further action if necessary.

Confidentiality at the time of reporting any case of harassment is assured. Retaliation against any employee for complaining about harassment is prohibited. Violations of the "harassment in the workplace" policy will not be tolerated.

Notice to Employees

A copy of this policy will be furnished to all present employees. New employees will each be furnished a copy of this policy when hired.

Adopted 3/12/96

EMPLOYEE FREEDOM OF SPEECH

(BACKGROUND INFORMATION FOR POLICY COMMITTEE)

School leaders are aware of the legal principle that students do not shed their constitutional rights at the schoolhouse gate. However, many are unaware that the same principle applies to teachers (*Tinker v. Des Moines Independent School District*, 1969). The familiar Tinker standard of materially and substantially disruptive speech that collides with the rights of others has been applied to teacher speech and expression. Teacher expression cannot be squelched merely because it addresses a controversial topic. Teacher speech, in the school setting, however, can be constrained when it constitutes a disruption of the school environment, frustrates the school's legitimate and compelling educational interests, or violates an existing school policy or other law. The courts have held that the rights of public school employees are not coextensive with the rights of adults in other settings (*Daugherty v. Vanguard Charter School Academy*, 2000). In short, the right of free speech for public school employees is not unlimited.

Frequently the courts have been called upon to balance the rights of the individual public school employee against the rights of the employer, the students, the parents or the general public. It is necessary to promote a productive learning environment and a harassment-free work environment in which educators face a captive, young and impressionable student audience. Moreover, certain actions by public employees can convey the imprimatur of state action.

Various federal court decisions have addressed the rights and limitations of public school employees to engage in traditional First Amendment-protected activities while in the scope of their employment. This has become more difficult due to employee social media issues.

The U.S. Supreme Court in *Pickering v. Board of Education*, 391 U.S. 563 (1968) provides some historical guidance. This case involved a public school teacher who was fired after sending a letter to the local newspaper criticizing the school board's handling of past efforts to raise revenue. The teacher was reinstated. The Court held that statements on matters of public concern made by public employees could not be the basis of discharge unless those statements were knowingly or recklessly false or substantially interfered with the employee's ability to do his or her job.

This case demonstrates that the initial analysis in all such free speech cases is whether the speech itself can be characterized as touching on a matter of public concern. It is possible that speech on a matter of public concern is nevertheless so disruptive to the work environment or so impedes the employee's effectiveness to carry out his or her duties that the public employer is legally justified in disciplining such speech.

By contrast, in *Connick v. Myers* 461 U.S. 138 (1983), the U.S. Supreme Court held that the employee was not speaking on a matter of public concern but rather on a matter of personal grievance, and her actions were not protected by the First Amendment.

Numerous court rulings over the years have provided guiding principles on when speech by public employees will be protected. First, the speech, as stated above, must relate to a matter of public concern. Statements on purely private concerns are not protected by the First Amendment. However, it is difficult to know what speech will be considered a matter of public concern and what speech will relate to a private matter and will be unprotected.

EMPLOYEE FREEDOM OF SPEECH

(BACKGROUND INFORMATION FOR POLICY COMMITTEE) *(continued)*

Increasingly, efforts to regulate employee comments on social media, even when made off the school district site, has become more difficult. Efforts to regulate social media could be considered interference with protected statutory right.

Protected concerted activity may include communications about wages, hours and work conditions. Employers, per the National Labor Relations Act, the Teacher Negotiation Act and MERA are prohibited from taking any adverse actions against employees who are engaged in protected concerted activity. This impacts employees use of social media and the employers' reactions to such use and social media policies and language in employee social media policies must not be overbroad.

Second, speech expressed as part of one's job duties is not protected by the First Amendment. Recently, the U.S. Supreme Court in *Garcetti v. Ceballos*, 547 U.S. 126 S.Ct. 1951 (2006) further clarified what can and can not be regarded as protected speech in the context of a public employee. The Court held that "when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline." This ruling removes a whole category of speech from potential First Amendment claims.

Third, based upon the *Pickering* ruling, it is not permissible to discipline an employee simply because a statement made is false. However inaccurate statements by public employees can be cause for discipline when they are made with the knowledge that they are false or are made with reckless disregard for the truth or when they are otherwise unprotected speech.

Fourth, if a teacher speaks on a matter of public concern in a private setting, he/she has protection under the First Amendment.

Lastly, even if a statement would otherwise be protected, the free speech interests of public employees must be balanced against the legitimate interest of the public agency to operate efficiently. If the speech is a serious disruption, the employer can prohibit it and/or take disciplinary action against the employee. The courts have identified the following factors in determining whether the speech by a public employee is protected:

- The need for harmony in the workplace;
- Whether there is a need for a close working relationship between the speaker and the persons who would be affected by the speech;
- The context in which the dispute arose;
- The time, manner and place of the speech;
- The degree of public interest in the speech; and
- Whether the speech impeded the ability of other employees to perform their duties.

The lesson for public school employees is to carefully weigh the very nature of the speech at issue. Is the speech a matter of public concern or private speech/private grievance? Does the speech relate to the specific details of one's job or professional responsibilities or does it address more general matters of public importance? Even if the speech touches upon matters of public concern, does it nevertheless disrupt the workplace, impede one's ability to do his or her job effectively, or obstruct the educational mission of the school.

EMPLOYEE FREEDOM OF SPEECH

(BACKGROUND INFORMATION FOR POLICY COMMITTEE) *(continued)*

Different factors apply to administrators. Administrators have policy-making responsibilities and work closely with the superintendent and the board of education. Therefore, when they speak out against the superintendent or the board, even on a matter of public concern, their speech may not be protected.

However, in 2015 the Connecticut Supreme Court muddied the water by ruling that the Garcetti rule, described above, does not apply to free speech claims made under the Connecticut Constitution. (Article first, Sec. 4). The court ruled that “Employee speech pursuant to official job duties on certain matters of significant public interest is protected from employee discipline in a public workplace.” However, even if a statement would otherwise be protected, speech damaging to the operation of the public enterprise is not protected from regulation.

In *Connick*, the Court ruled that free speech of public employees must be balanced against the legitimate interest of public agencies to operate efficiently. If the speech is a serious disruption, the employer can prohibit it and/or take some disciplinary action against the employee.

In conclusion, public school employees do have individual rights protected by the First Amendment. Such rights can be superseded by the government’s interest in promoting a public school environment that is free of influences that would substantially disrupt the educational process. Balancing the rights of the individual against the rights of a group or another individual has always been a delicate endeavor. Balancing the rights of a public school employee against the rights of the employer, the students, the parents and the general public often requires walking the constitutional tightrope.

Source: The above represents excerpts from material found in [A Practical Guide to Connecticut School Law](#) by Thomas B. Mooney; “A Legal Memorandum: Principals and Teachers as Public Figures: Where Duty End and Rights Begin,” by B. Kallio and R. Geisel, NASSP, Winter 2007; and “Licensed to Speak or Just Teach,” by K. Taylor in *Principal Leadership*, January 2007, and “Update on Employee Social Media Issues,” by Anne H. Littlefield, Thomas B. Mooney.

Conclusion/Policy Implications:

Given that the right of free speech is enshrined in the First Amendment, it may appear redundant to adopt a policy to that effect. However, boards of education find themselves in disputes over what a teacher can and cannot say as a district employee especially using social media, about district policies, personnel issues and school operations. Cases highlight the risks of overreacting to a school employee’s public remarks. Courts have ruled that teachers are citizens, as well as employees, and thus have the right to speak out, as mentioned previously, on issues of “public concern.” However, teachers do not have carte blanche to say anything they wish. Courts have ruled that employees are not necessarily protected when speaking about matters of personal interest, such as job evaluation, sharing confidential work information or making provocative or disruptive statements.

The dilemma for school boards and administrators is identifying the line between protected and unprotected speech, including when such speech is on social media outlets. Even internal administrative matters, such as a dispute between teachers and a principal over classroom assignments, could arguably fall under the umbrella of public concern under the right conditions.

EMPLOYEE FREEDOM OF SPEECH

(BACKGROUND INFORMATION) *(continued)*

There are things that are obvious examples of public concern that teachers have a right to speak about and there are things so petty or confidential that they're obviously not of public concern. Most speech falls somewhere in the middle, where it isn't terribly clear.

School boards stand on firmer ground when the issue involves restricting teacher speech in the classroom. The courts have consistently backed the right of school boards to set the curriculum. A teacher may speak out about his or her objections to the curriculum. However, teachers do not have the authority to vary from that curriculum.

A formal policy on free speech is not necessarily the best strategy. At best, the board could adopt a generic policy that articulates the district's commitment to respect and protect teachers' rights when they speak out on matters of public concern. That's in compliance with the law. However, the question is: "What is a public concern?" It is not possible to have a policy that definitively explains it. It has to be done on a case-by-case basis.

A more practical strategy might be an internal complaint procedure that allows teachers to safely and effectively bring issues of concern to the school board and central administration. If employees feel they can be heard without retaliation, they might be less likely to turn to the public, social media or press for redress. In addition, the district should also look at the collective bargaining agreement to see if it addresses the manner in which employees can make views known. If the agreement is silent, keep in mind that in matters of employee speech, the U.S. Supreme Court rulings provide guidance.

School boards also might consider setting up a procedure to help administrators avoid violating a teacher's free speech rights. For example, principals could be required to contact a specified central administrator or the board attorney when a teacher's remarks come into question.

An optional policy to consider, #4118.12/4218.12, "Freedom of Speech" pertains to this topic.

An optional policy to consider.

Personnel – Certified/Non-Certified

Freedom of Speech

Personnel employed by this school system are expected to exercise their constitutionally guaranteed right to freedom of expression. Teacher expression cannot be squelched merely because it addresses a controversial topic. Teacher speech in the school setting, however, can be constrained when it constitutes a disruption of the school environment, frustrates the schools' legitimate and compelling educational interests or violates an existing school policy or other law. The Board of Education recognizes that no freedom is absolute, and that in this case restrictions come from at least three sources, as listed below.

1. Legal

Governing bodies can, within frequently defined limits, restrict freedom of speech, as for example within the "clear and present danger" doctrine of the United States Supreme Court.

Moreover, the initial analysis in all free speech cases must be whether the speech itself can be characterized as touching on a matter of public concern. However, it is recognized that it is possible that speech on a matter of public concern can be so disruptive to the work environment or so impedes the employee's effectiveness to carry out his/her duties that the District is legally justified in disciplining such speech. Statements on purely private concerns or expressed as part of one's job duties are not protected by the First Amendment.

The following factors shall be used in determining whether speech by a District employee is protected:

- The need for harmony in the workplace;
- Whether there is a need for a close working relationship between the speaker and the persons who would be affected by the speech;
- The context in which the dispute arose;
- The time, manner and place of the speech;
- The degree of public interest in the speech; and
- Whether the speech impeded the ability of other employees to perform their duties.

In compliance with the ruling expressed by the U. S. Supreme Court in *Garcetti v. Ceballos*, the Board recognizes that when District employees make statements pursuant to their official duties they are not speaking as citizens for First Amendment purposes and the employee communications may be subject to District discipline. However, the Connecticut Supreme Court in 2015 ruled that "Employee speech pursuant to official job duties on certain matters of significant public interest is protected from employer discipline in the public workplace." Yet, even if a statement would otherwise be protected the Board recognizes that speech damaging to the operation of the public enterprise is not protected from regulation. The District's legal counsel will be consulted prior to any District action related to employee speech.

The Board recognizes that differences of opinion on what constitutes acceptable restrictions of freedom of speech may find solution only by legal action.

Personnel – Certified/Non-Certified

Freedom of Speech (continued)

2. Societal

Communities vary in what they will tolerate in classroom discussion. Limits of such tolerance change with time and place. Differences of opinion between District staff and community feelings may not be so much a matter of court adjudication as for tolerance on the part of each contender for the other's position.

3. Professional

District staff and their organizations must themselves decide what effect insisting on exercising freedom of speech, or accepting some degree of regulation thereof, will have on their role in the District and on their ultimate effectiveness in the education process.

Staff members are encouraged to use the District's internal complaint procedure to safely and effectively bring issues of concern to the Board of Education and central administration. School administrators shall be required to contact the Superintendent of Schools or his/her designee (or the Board's attorney) when the comments of a staff member come into question.

The Board requests that any differences of opinion about exercise or abridgements of freedom of speech within or among members of the Board, staff, and especially certified personnel be reviewed by all parties concerned in light of the above factors.

(cf. 1311.1 – Political Activities/Functions of School Employees)
(cf. 1311.2 – Political Activities in the Schools/On School Board Property)
(cf. 4118.21 – Academic Freedom)
(cf. 4118.22 – Code of Ethics)
(cf. 4118.51/4218.51 – Social Media)
(cf. 4135.2 – Communications with the Board of Education)
(cf. 4135.4 – Grievances/Complaints)
(cf. 6144 – Controversial Issues)
(cf. 6144.3 – Controversial Speakers)
(cf. 9030 – Board/Staff Communications)

Legal Reference: Connecticut General Statutes

53a-193 through 53a-200

Keyishian v. Board of Regents, 395 U.S. 589, 603 (1967)

Perry v. Sindermann, 408 U.S. 593 (1972)

Personnel – Certified/Non-Certified

Freedom of Speech

Legal Reference: (continued)

Pickering v. Board of Education, 391 U.S. 563 (1968)

Connick v. Myers, 461 U.S. 138 (1983)

Garcetti v. Ceballos, 547 U.S. 126 S.Ct. 1951 (2006)

Sterzing v. Fort Bend Independent School District, 376F. Supp. 657 (S.D. Tex 1972)

Grayned v. City of Rockford, 408 U.S. 104 (1972)

Miller v. California, 413 U.S. 15 (1973)

Amendment to U.S. Constitution, Article I

Connecticut Constitution, ARTICLE FIRST, Declaration of Rights, Sections 4, 5

Academic Freedom Policy (adopted by Connecticut State Board of Education, 9/8/81)

Policy adopted:

cps 1/08

rev 4/16

A version from West Hartford to consider.

Personnel – Certified/Non-Certified

Freedom of Speech

Public Communications by Employees

The Board of Education recognizes and respects the First Amendment Rights of all of its employees to make public statements and to otherwise participate in the public discourse through any and all media, including social media. The Board of Education also recognizes that inappropriate content authored by educators that is made available for public consumption can interfere with educational effectiveness. Therefore, West Hartford Public School employees shall be expected to strike an appropriate balance between exercising their right to freedom of expression and maintaining their effectiveness and credibility as educators.

Legal Reference: Connecticut General Statutes
 53a-193 through 53a-200
Keyishian v. Board of Regents, 395 U.S. 589, 603 (1967)
Perry v. Sindermann, 408 U.S. 593 (1972)
Pickering v. Board of Education, 391 U.S. 563 (1968)
Connick v. Myers, 461 U.S. 138 (1983)
Garcetti v. Ceballos, 547 U.S. 126 S.Ct. 1951 (2006)
Sterzing v. Fort Bend Independent School District, 376F. Supp. 657 (S.D. Tex 1972)
Grayned v. City of Rockford, 408 U.S. 104 (1972)
Miller v. California, 413 U.S. 15 (1973)
Amendment to U.S. Constitution, Article I
Connecticut Constitution, ARTICLE FIRST, Declaration of Rights, Sections 4, 5
Academic Freedom Policy (adopted by Connecticut State Board of Education, 9/8/81)

Policy adopted:

cps 11/10
rev 4/16

WEST HARTFORD PUBLIC SCHOOLS
West Hartford, Connecticut

An optional policy to consider.

Personnel -- Certified/Non-Certified

Conflict of Interest

The Board of Education wishes to avoid any conflict of interest on the part of its employees regarding their personal interests and the interests of the school district in dealing with suppliers, contractors and all organizations or individuals doing or seeking to do business with the school district. For this reason, the Board of Education prohibits employees from directly or indirectly soliciting any gift; or accepting or receiving any gift having a value of twenty-five dollars (\$25) or more, whether in the form of money, services, loan, travel, entertainment, hospitality, thing or promise, or any other form, under circumstances in which it could be reasonably inferred that the gift was intended to influence the Board member or employee in the performance of his/her official duties or was intended as a reward for any official action on his/her part.

Legal Reference: Connecticut General Statutes

7-479 Conflicts of interest.

Policy adopted:

Another version to consider.

Personnel -- Certified/Non-Certified

Conflict of Interest

District employees will not engage in, or have a financial interest in, any activity that raises a reasonable question of conflict of interest with their duties and responsibilities as school staff members. This means that:

1. Employees will not participate for financial remuneration in outside activities for which their position on the staff is used to sell goods or services to students or their parents;
2. Any device, publication or any other item developed during the employee's paid time shall be district property;
3. Employees will not engage in any work where the source of information concerning customer, client or employer originates from information obtained throughout the school system.

The Board directs that no employee be assigned to a position whereby the employee would be under the direct supervision of a relative.

(cf. – 4134 Tutoring)

Legal Reference: Connecticut General Statutes

7-479 Conflicts of interest

Policy adopted:

cps 12/04

Shelton's version of this policy to consider.

Personnel -- Certified/Non-Certified

Conflict of Interest

Ideally, no member of the Board of Education, or officer, or employee shall have an interest in any contract with the school system with which the member, officer, or employee is affiliated unless such interest is specifically permitted by statute.

“Interest” shall mean pecuniary or material benefit accruing to a Board of Education member, officer or employee, or their relatives resulting from a contractual relationship with the school system.

“Relative” shall be defined as spouse, child, parent, mother-in-law, father-in-law, and grandparents of the employee. It shall also include any other relative living in the same household.

No member of the Board of Education may be employed for compensation by this school district.

Board members will refrain from voting or lobbying on any issue which involves an “interest” as defined above. They will be excused from all discussions involving potential conflict of interest.

In addition to complying with current state and city requirements regarding registration of conflicts of interest, each member, officer, and employee of the Board will place on file in the Board of Education Central Office a list of his or her potential conflicts of interest. The responsibility for keeping this list current rests with the Board member, officer, or employee.

Legal Reference: Connecticut General Statutes

10-232 Restriction on employment of members of the board of education.

7-479 Conflicts of interest

Policy adopted:
cps 5/16

SHELTON PUBLIC SCHOOLS
Shelton, Connecticut