

SENSITIVE ISSUES AND THE LAW

SUBJECT: CODE OF ETHICS FOR ALL DISTRICT PERSONNEL**General Provisions**

Pursuant to the provisions of Section 806 of the General Municipal Law, the Board of Education of the Oyster Bay-East Norwich Central School District recognizes that there are rules of ethical conduct for members of the Board and employees of the District that must be observed if a high degree of moral conduct is to be obtained in our unit of local government. It is the purpose of this resolution to promulgate these rules of ethical conduct for the Board members and employees of the District. These rules shall serve as a guide for official conduct of the Board members and employees of the District. The rules of ethical conduct of this resolution, as adopted, shall not conflict with, but shall be in addition to any prohibition of Article Eighteen of the General Municipal Law or any other general or special law relating to ethical conduct and interest in contracts of Board members and employees.

Standards of Conduct

Every Board member or employee of the Oyster Bay-East Norwich Central School District shall be subject to and abide by the following standards of conduct:

Gifts

Pursuant to Section 805-a of the General Municipal Law, he/she shall not, directly or indirectly, solicit any gift or accept or receive any gift having a value of seventy-five dollars (\$75) 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 reasonably be inferred that the gift was intended or expected to influence him/her in the performance of official duties or was intended as a reward for any official action on his/her part.

Confidential Information

He/she shall not disclose confidential information acquired by him/her in the course of his/her official duties or use such information to further his/her personal interest.

Disclosure of Interest in Contracts

Any District officer or employee, as well as his/her spouse, who has, will have, or later acquires an interest in any actual or proposed contract, purchase agreement, lease agreement or other agreement, including oral agreements, with the District shall publicly disclose the nature and extent of such interest in writing to his/her immediate supervisor and to the Board of Education as soon as he/she has knowledge of such actual or prospective interest. Such written disclosure shall be made part of and set forth in the Board minutes.

(Continued)

Personnel

SUBJECT: CODE OF ETHICS FOR ALL DISTRICT PERSONNEL (Cont'd.)Conflicts of Interest

Except as permitted by law, no person may have an interest in any contract with the District when he/she, individually, or as a member of the Board, has the power or duty to: negotiate, prepare, authorize, or approve the contract or authorize or approve payment under the contract; audit bills or claims under the contract; or appoint an officer or employee who has any of these powers or duties.

Likewise, unless permitted by law, no chief fiscal officer, treasurer, or his/her deputy or employee, may have an interest in a bank or trust company designated as a depository, paying agent, registration agent, or for investment of funds of the District.

"Interest," as used in this policy, means a direct or indirect pecuniary or material benefit accruing to a District officer or employee as the result of a contract with the District. A District officer or employee will be considered to have an interest in the contract of: his/her spouse, minor children and dependents, except a contract of employment with the District; a firm, partnership or association of which he/she is a member or employee; a corporation of which he/she is an officer, director or employee; and a corporation any stock of which is owned or controlled directly or indirectly by him/her.

The provisions of the preceding three paragraphs should not be construed to preclude the payment of lawful compensation and necessary expenses of any District officer or employee in one or more positions of public employment, the holding of which is not prohibited by law.

Representing Others in Matters Before the District

No person may receive, or enter into any agreement, express or implied, for compensation for services rendered in relation to any matter before the District. Likewise, no one may receive, or enter into any agreement, express or implied, for compensation for services rendered in relation to any matter before the District, where the individual's compensation is contingent upon any action by the District with respect to the matter.

Disclosure of interest in resolution

To the extent that he/she knows thereof, a member of the Board of Education or employee of the Oyster Bay-East Norwich Central School District, whether paid or unpaid, who participates in the discussion or gives official opinion to the Board of Education on any resolution before the Board of Education shall publicly disclose on the official record the nature and extent of any direct or indirect financial or other private interest he/she has in such resolution.

Investments in conflict with official duties

He/she shall not invest or hold any investment directly or indirectly in any financial, business, commercial, or other private transaction, that creates a conflict with his/her official duties.

(Continued)

SUBJECT: CODE OF ETHICS FOR ALL DISTRICT PERSONNEL (Cont'd.)Private employment

He/she shall not engage in, solicit, negotiate for or promise to accept private employment or render services for private interests when such employment or service creates a conflict with or impairs the proper discharge of his/her official duties.

Future employment

He/she shall not, after the termination of service or employment with the School District, appear before any board or agency of the Oyster Bay-East Norwich Central School District in relation to any case, proceeding, or application in which he/she personally participated during the period of his/her service or employment or which was under his/her active consideration.

Legal RemediesDistrict Officers

In accordance with the Penal Law 60.27(5), if a District officer is convicted of a violation against the District under Penal Law Article 155 relating to larceny, the courts may require an amount of restitution up to the full amount of the offense or reparation up to the full amount of the actual out-of-pocket loss suffered by the District.

Board Members and Employees

Nothing herein shall be deemed to bar or prevent the timely filing by a present or former Board member or employee of any claim, account, demand or suit against the Oyster Bay-East Norwich Central School District, or any agency thereof on behalf of himself/herself or any member of his/her family arising out of any personal injury or property damage or for any lawful benefit authorized or permitted by law.

Distribution/Posting of Code of Ethics

The Superintendent of the Oyster Bay-East Norwich Central School District shall cause a copy of this code of ethics to be distributed to every Board member and employee of the School District within thirty (30) days after the effective date of this resolution. Each Board member and employee elected or appointed thereafter shall be furnished a copy before entering upon the duties of his/her office or employment. The Superintendent shall also cause a copy of Article 18 of the General Municipal Law to be kept posted in each building in the District in a place conspicuous to its Board members and employees. Failure to distribute any such copy of this code of ethics or failure of any Board member or employee to receive such copy, as well as failure to post any such copy of General Municipal Law, Article 18, shall have no effect on the duty of compliance with such code or Article 18, nor with the enforcement of provisions thereof.

Students

SUBJECT: CHILD ABUSE AND MALTREATMENT

The Oyster Bay-East Norwich Central School District take seriously the obligations of its officers and employees to report cases of child abuse or maltreatment. To this end, regulations shall be developed, maintained and disseminated by administration regarding the:

- a) Mandatory reporting of suspected child abuse or neglect/maltreatment;
- b) Reporting procedures and obligations of persons required to report;
- c) Provisions for taking a child into protective custody;
- d) Mandatory reporting of deaths;
- e) Immunity from liability and penalties for failure to report;
- f) Obligations for provision of services and procedures necessary to safeguard the life of a child; and
- g) Provision of information in recognizing signs of unlawful methamphetamine laboratories for all current and new school officials who, as part of their usual responsibilities, visit children's homes.

Additionally, an ongoing training program for all current and new school officials shall be established and implemented to enable such staff to carry out their reporting responsibilities.

Persons Required to Report

Persons required to report cases of child abuse or maltreatment to the State Central Register (SCR) pursuant to Social Services Law Section 413(1) include, but are not limited to, school teachers, school guidance counselors, school psychologists, school social workers, school nurses, school administrators or other school personnel required to hold a teaching or administrative license or certificate, and full or par-time compensated school employees required to hold a temporary coaching certificate.

All mandated reporters shall make the report themselves and then immediately notify the Building Principal or his/her designee. The Building Principal or his/her designee shall be responsible for all subsequent administration necessitated by the report.

Any report shall include the name, title and contact information for every staff member who is believed to have direct knowledge of the allegations in the report.

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Students

SUBJECT: CHILD ABUSE AND MALTREATMENT (Cont'd.)**Child Abuse in an Educational Setting**

The School District is committed to the protection of students in educational settings from abuse and maltreatment by employees or volunteers as enumerated in law.

"Child abuse" shall mean any of the following acts committed in an educational setting by an employee or volunteer against a child:

- a) Intentionally or recklessly inflicting physical injury, serious physical injury or death; or
- b) Intentionally or recklessly engaging in conduct which creates a substantial risk of such physical injury, serious physical injury or death; or
- c) Any child sexual abuse, defined as conduct prohibited by Article 130 or 263 of the Penal Law; or
- d) The commission or attempted commission against a child of the crime of disseminating indecent materials to minors pursuant to Article 235 of the Penal Law.

"Educational setting" shall mean the building(s) and grounds of the School District; the vehicles provided by the School District for the transportation of students to and from school buildings, field trips, co-curricular and extracurricular activities both on and off School District grounds; all co-curricular and extracurricular activity sites; and any other location where direct contact between an employee or volunteer and a child has allegedly occurred.

In any case where an oral or written allegation is made to a teacher, school nurse, school guidance counselor, school psychologist, school social worker, school administrator, School Board member, or other school personnel required to hold a teaching or administrative license or certificate, that a child (defined in the law as a person under the age of twenty-one (21) years enrolled in a school district in this state) has been subjected to child abuse by an employee or volunteer in an educational setting, that person shall upon receipt of such allegation:

- a) Promptly complete a written report of such allegation including the full name of the child alleged to be abused; the name of the child's parent; the identity of the person making the allegation and their relationship to the alleged child victim; the name of the employee or volunteer against whom the allegation was made; and a listing of the specific allegations of child abuse in an educational setting. Such written report shall be completed on a form as prescribed by the Commissioner of Education.
- b) Except where the school administrator is the person receiving such an oral or written allegation, the employee completing the written report must promptly *personally deliver* a copy of that written report to the school administrator of the school in which the child abuse allegedly occurred (subject to the following paragraph).

(Continued)

SUBJECT: CHILD ABUSE AND MALTREATMENT (Cont'd.)

In any case where it is alleged the child was abused by an employee or volunteer of a school other than a school within the school district of the child's attendance, the report of such allegations shall be promptly forwarded to the Superintendent of Schools of the school district of the child's attendance and the school district where the abuse allegedly occurred.

Any employee or volunteer who reasonably and in good faith makes a report of allegations of child abuse in an educational setting in accordance with the reporting requirements of the law shall have immunity from civil liability which might otherwise result by reason of such actions.

Upon receipt of a written report alleging child abuse in an educational setting, the school administrator or Superintendent must then determine whether there is "reasonable suspicion" to believe that such an act of child abuse has occurred. Where there has been a determination as to the existence of such reasonable suspicion, the school administrator or Superintendent must follow the notification/reporting procedures mandated in law and further enumerated in administrative regulations including parental notification. When the school administrator receives a written report, he/she shall promptly provide a copy of such report to the Superintendent.

Where the school administrator or Superintendent has forwarded a written report of child abuse in an educational setting to law enforcement authorities, the Superintendent shall also refer such report to the Commissioner of Education where the employee or volunteer alleged to have committed such an act of child abuse holds a certification or license issued by the State Education Department.

Any school administrator or Superintendent who reasonably and in good faith makes a report of allegations of child abuse in an educational setting, or reasonably and in good faith transmits such a report to a person or agency as required by law, shall have immunity from civil liability which might otherwise result by reason of such actions.

Reports and other written material submitted pursuant to law with regard to allegations of child abuse in an educational setting, and photographs taken concerning such reports that are in the possession of any person legally authorized to receive such information, *shall be confidential and shall not be redisclosed except* to law enforcement authorities involved in an investigation of child abuse in an educational setting or as expressly authorized by law or pursuant to a court-ordered subpoena. School administrators and the Superintendent shall exercise reasonable care in preventing such unauthorized disclosure.

Additionally, teachers and all other school officials shall be provided an annual written explanation concerning the reporting of child abuse in an educational setting, including the immunity provisions as enumerated in law. Further, the Commissioner of Education shall furnish the District with required information, including rules and regulations for training necessary to implement District/staff responsibilities under the law.

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SUBJECT: CHILD ABUSE AND MALTREATMENT (Cont'd.)

Prohibition of Retaliatory Personnel Action

Social Services Law Section 413(1) also prohibits a school from taking any retaliatory personnel action against an employee because such employee believes that he/she has reasonable cause to suspect that a child is an abused or maltreated child and that employee makes a report to SCR pursuant to Social Services Law. Further, no school or school official shall impose any conditions, including prior approval or prior notification, upon any staff member specifically designated a mandated reporter.

Pursuant to Labor Law Section 740(1)(e), "retaliatory personnel action" means the discharge, suspension or demotion of an employee, or other adverse employment action taken against an employee in the terms and conditions of employment.

Report Form

The "**Report of Suspected Child Abuse or Maltreatment**" Form LDSS-2221A may be accessed at the website of the New York State Office of Children and Family Services

Education Law Section 3209-a
Family Court Act Section 1012
Labor Law Section 740(1)(e)
Social Services Law Sections 411-428

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Revised: 2/26/08
Revised: 1/20/15

SUBJECT: NON-DISCRIMINATION AND ANTI-HARASSMENT IN THE SCHOOL DISTRICT

The Board of Education affirms its commitment to nondiscrimination and recognizes its responsibility to provide an environment that is free of harassment and intimidation. Harassment is a violation of law and stands in direct opposition to District policy. Therefore, the Board prohibits and condemns all forms of harassment on the basis of race, color, creed, religion, national origin, political affiliation, sex, sexual orientation, age, marital status, military status, veteran status, disability or use of a recognized guide dog, hearing dog or service dog employees, school volunteers, students, and non-employees such as contractors and vendors as well as any third parties who are participating in, observing, or otherwise engaging in activities subject to the supervision and control of the District.

Sexual orientation is defined as heterosexuality, homosexuality, bisexuality, or asexuality, whether actual or perceived.

The Board also prohibits harassment based on an individual's opposition to discrimination or participation in a related investigation or complaint proceeding under the anti-discrimination statutes. This policy of nondiscrimination and anti-harassment will be enforced on School District premises and in school buildings; and at all school-sponsored events, programs and activities, including those that take place at locations off school premises.

It is intended that this policy apply to the dealings between or among employees with employees; employees with students; students with students; employees/students with vendors/contractors and others who do business with the School District, as well as school volunteers, visitors, guests and other third parties. All of these persons are hereinafter referred to collectively as "the named group."

For purposes of this policy, harassment shall mean communication (verbal, written or graphic) and/or physical conduct based on an individual's actual or perceived race, color, creed, religion, national origin, political affiliation, sex, sexual orientation, age, marital status, military status, veteran status, disability, or use of a recognized guide dog, hearing dog or service dog that:

- a) Has the purpose or effect of substantially or unreasonably interfering with an individual's work performance or is used as a basis for employment decisions (including terms and conditions of employment) affecting such individual; and/or creates an intimidating, hostile or offensive work environment;
- b) Has the purpose or effect of substantially or unreasonably interfering with a student's academic performance or participation in an educational or extracurricular activity, or creates an intimidating, hostile or offensive learning environment; and/or effectively bars the student's access to an educational opportunity or benefit;
- c) Otherwise adversely affects the employment and/or educational opportunities and benefits provided by the District.

(Continued)

SUBJECT: NON-DISCRIMINATION AND ANTI-HARASSMENT IN THE SCHOOL DISTRICT (Cont'd.)

Complaints and Grievances by Employees (*Moved from Policy #6122*)

In accordance with the provisions of General Municipal Law and the collective bargaining agreements, all District personnel shall have the opportunity to present their complaints or grievances free from interference, coercion, restraint, discrimination or reprisal.

Complaints or grievances not covered under employee contracts shall be handled and resolved, whenever possible, as close to their origin as possible. The Superintendent is responsible for implementing regulations for the redress of complaints or grievances through proper administrative channels.

Complaints and Grievances by Students (*Moved from Policy #7550*)

While students have the responsibility to abide by the policies and regulations of the District, they shall also be afforded opportunity to present complaints and grievances free from interference, coercion, restraint, discrimination or reprisal.

Administration shall be responsible for establishing rules and regulations for the redress of complaints or grievances through proper administration channels. In addition, the administration shall be responsible for developing an appeals process, ensuring that students have full understanding and access to these regulations and procedure, and providing prompt, thorough and equitable consideration and determination of student complaints and grievances.

Investigation of Complaints and Grievances

The School District will act to promptly investigate all complaints, either verbal or written, formal or informal, of allegations of harassment based on any of the characteristics described above; and will promptly take appropriate action to protect individuals from further harassment. The District will designate, at a minimum, two (2) complaint officers, one of each gender.

In order for the Board to enforce this policy, and to take corrective measures as may be necessary, it is essential that any employee, student, or other member of the above named group who believes he/she has been a victim of harassment in the school environment and/or at programs, activities and events under the control and supervision of the District, as well as any individual who is aware of and/or who has knowledge of, or witnesses any possible occurrence of harassment, immediately report such alleged harassment; such report shall be directed to or forwarded to the District's designated complaint officer(s) through informal and/or formal complaint procedures as developed by the District. Such complaints are recommended to be in writing, although verbal complaints of alleged harassment will also be promptly investigated in accordance with the terms of this policy. In the event that the complaint officer is the alleged offender, the report will be directed to the next level of supervisory authority.

Upon receipt of an informal/formal complaint, the District will conduct a thorough investigation of the charges. However, even in the absence of an informal/formal complaint, if the District has knowledge of any occurrence of harassment, the District will investigate such conduct promptly and thoroughly. To the extent possible, within legal constraints, all complaints will be treated as confidentially and privately as possible. However, disclosure may be necessary to complete a thorough investigation of the charges and/or to notify law enforcement officials as warranted, and any disclosure will be provided on a "need to know" basis.

(Continued)

SUBJECT: NON-DISCRIMINATION AND ANTI-HARASSMENT IN THE SCHOOL DISTRICT (Cont'd.)

As part of the investigation, the District has the right to search all school property and equipment including District computers. Rooms, desks, cabinets, lockers, computers, etc. are provided by the District for the use of staff and students, but the users do not have exclusive use of these locations or equipment and should not expect that materials stored therein will be private.

Based upon the results of this investigation, if the District determines that an employee and/or student has violated the terms of this policy and/or accompanying regulations, immediate corrective action will be taken as warranted. Should the offending individual be a student, appropriate disciplinary measures will be applied, up to and including suspension, in accordance with applicable laws and/or regulations, District policy and regulation, and the District Code of Conduct. Should the offending individual be a school employee, appropriate disciplinary measures will be applied, up to and including termination of the offender's employment, in accordance with legal guidelines, District policy and regulation, and the applicable collective bargaining agreement(s). Third parties (such as school volunteers, vendors, etc.) who are found to have violated this policy and/or accompanying regulations and/or the Code of Conduct, will be subject to appropriate sanctions as warranted and in compliance with law. The application of such disciplinary measures by the District does not preclude the filing of civil and/or criminal charges as may be warranted.

Prohibition of Retaliatory Behavior (Commonly Known as “Whistle Blower” Protection)

The Board prohibits any retaliatory behavior directed against complainants, victims, witnesses, and/or any other individuals who participated in the investigation of a complaint of harassment. Follow-up inquiries shall be made to ensure that harassment has not resumed and that all those involved in the investigation of the harassment complaint have not suffered retaliation.

Finding That Harassment Did Not Occur

At any level/stage of investigation of alleged harassment, if a determination is made that harassment did not occur, the Complaint Officer will so notify the complainant, the alleged offender and the Superintendent of this determination. Such a finding does not preclude the complainant from filing an appeal pursuant to District policy or regulation and/or pursuing other legal avenues of recourse.

However, even if a determination is made that harassment did not occur, the Superintendent/designee reserves the right to initiate staff awareness and training, as applicable, to help ensure that the school community is not conducive to fostering harassment in the workplace.

In all cases, the Superintendent will inform the Board of Education of the results of each investigation involving a finding that harassment did not occur.

Knowingly Makes False Accusations

Employees and/or students who knowingly make false accusations against another individual as to allegations of harassment may also face appropriate disciplinary action.

(Continued)

SUBJECT: NON-DISCRIMINATION AND ANTI-HARASSMENT IN THE SCHOOL DISTRICT (Cont'd)**Privacy Rights**

As part of any investigation, the District has the right to search all school property and equipment including District computers. Rooms, desks, cabinets, lockers, computers, etc. are provided by the District for the use of staff and students, but the users do not have exclusive use of these locations or equipment and should not expect that materials stored therein will be private.

Complaints and Grievances Coordinator

The Board shall ensure compliance with Title IX of the Educational Amendments of 1972, Section 504 of the Rehabilitation Act of 1973 and the Americans With Disabilities Act (ADA). The Superintendent shall designate a District employee as the Title IX/Section 504/ADA Coordinator; and regulations and procedures shall be implemented to resolve complaints of discrimination based on sex or disability.

Prior to the beginning of each school year, the District shall issue an appropriate public announcement which advises students, parents/guardian, employees and the general public of the District's established grievance procedures for resolving complaints of discrimination based on sex or disability. Included in such announcement will be the name, address and telephone number of the Title IX/Section 504/ADA Coordinator.

The Title IX/Section 504/ADA Coordinator shall also be responsible for handling complaints and grievances regarding discrimination based on race, color, creed, religion, national origin, political affiliation, sexual orientation, age, military status, veteran status, or marital status.

Development and Dissemination of the Administrative Regulations

Regulations will be developed for reporting, investigating, and remedying allegations of harassment based on the characteristics described above. An appeal procedure will also be provided to address any unresolved complaints and/or unsatisfactory prior determinations by the applicable complaint officer(s). Such regulations will be developed in accordance with federal and state law as well as any applicable collective bargaining agreement(s).

The Superintendent/designee(s) will affirmatively discuss the topic of harassment with all employees and students, express the District's condemnation of such conduct, and explain the sanctions for such harassment. Appropriate training and/or "awareness" programs will be established for staff and students to help ensure knowledge of and familiarity with the issues pertaining to harassment in the schools, and to disseminate preventative measures to help reduce such incidents of prohibited conduct.

Furthermore, special training will be provided for designated supervisors and managerial employees, as may be necessary, for the investigation of harassment complaints.

A copy of this policy and its accompanying regulations will be available upon request and may be posted at various locations in each school building. The District's policy and regulations on anti-harassment will be published in appropriate school publications such as teacher/employee handbooks, student handbooks, and/or school calendars.

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Community Relations

SUBJECT: NON-DISCRIMINATION AND ANTI-HARASSMENT IN THE SCHOOL DISTRICT (Cont'd)

This policy should not be read to abrogate other District policies and/or regulations or the District Code of Conduct prohibiting other forms of unlawful discrimination, inappropriate behavior, and/or hate crimes within this District. It is the intent of the District that all such policies and/or regulations be read consistently to provide the highest level of protection from unlawful discrimination in the provision of employment/educational services and opportunities. However, different treatment of any member of the above named group which has a legitimate, legal and nondiscriminatory reason shall not be considered a violation of District policy.

Age Discrimination in Employment Act, 29 United States Code (USC) Section 621

Americans With Disabilities Act, 42 United States Code (USC) Section 12101 et seq.

Prohibits discrimination on the basis of disability.

Section 504 of the Rehabilitation Act of 1973, 29 United States Code (USC) Section 794 et seq.

Prohibits discrimination on the basis of disability.

Title VI of the Civil Rights Act of 1964, 42 United States Code (USC) Section 2000d et seq.

Prohibits discrimination on the basis of race, color or national origin.

Title VII of the Civil Rights Act of 1964, 42 United States Code (USC) Section 2000e et seq.

Prohibits discrimination on the basis of race, color, religion, sex or national origin.

Title IX of the Education Amendments of 1972, 20 United States Code (USC) Section 1681 et seq.

Prohibits discrimination on the basis of sex.

Civil Rights Law Section 40-c

Prohibits discrimination on the basis of race, creed, color, national origin, sex, sexual orientation, marital status or disability.

Education Law Section 2801(1)

Executive Law Section 290 et seq.

Prohibits discrimination on the basis of age, race, creed, color, national origin, sex, sexual orientation, disability, military status, marital status, or use of a recognized guide dog, hearing dog or service dog.

Military Law Sections 242 and 243

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Protecting Students from Harassment

It's the Law—and Then Some

Shawn, age 17, has a severe case of acne. He's popular, but his friends and other students often call him "pop-corn," a name that angers and hurts him. Tim, age 9, has never been good at sports. When he fails to catch a ball during a softball game, another student taunts: "Hey, faggot, open your eyes!"

Carol, age 13, confides to a friend that she's not feeling well—it's "her time of the month," and she has menstrual cramps. When she later enters the classroom, a loud voice calls from the back, "Look out, we've got a red river flowing today!" Feeling a bit uncomfortable? Imagine what these students experience. These typical examples of harassment are endured by far too many students in schools every day, experts say. What's more, far too many educators have been willing to dismiss such incidents as just part of an unpleasant rite of passage into young adulthood.

A Pervasive Problem

To browbeat and bully, tease and taunt—these behaviors "may be so much a part of the culture that they may not be recognized as harassment," says Mary Lundeborg, professor of teacher education at the University of Wisconsin—River Falls. Indeed, it was once thought that only those in positions of power could harass others, she notes. Student behavior, therefore, no matter how hurtful to others, could not be considered harassment.

However, "we have expanded our understanding of the term, especially with regard to school." Today, Lundeborg states, any behavior by students and staff that "makes for an uncomfortable learning environment for students" may be seen as harassment.

"The behavior doesn't have to be illegal to be harassment," concurs Allen Mendler, psychologist and coauthor of the ASCD books *Discipline with Dignity* and *As Tough as Necessary*. Mendler defines harassment as "the purposeful intent to intimidate, exploit, or hurt another." Those who harass others do so "to try and meet some physical or psychological needs," he explains, pointing out that such behavior has always been "part of the human condition" and certainly always a part of the school culture. Still, Mendler adds, even if the problem of peer harassment in schools is not necessarily greater now than in the past, "the consequences today can be deadly."

Lundeborg agrees. "In some of the schools in this area, students have pulled guns and shot other students because they had been called names," she states. And she cautions against the temptation to downplay the less publicly violent, but equally devastating, reactions to peer harassment. "Whether the person being bullied pulls a

gun, or commits suicide, or just drops out of school, the effects of name calling, bullying, and other kinds of harassment are quite severe." It has to stop, Lundeborg asserts, and it's up to teachers and other adults in schools to stop it.

Establish a Policy

Most educators want "to do the right thing" and stop hurtful behavior, says Arthur Coleman, deputy assistant secretary in the U.S. Department of Education's Office for Civil Rights (OCR). Coleman was part of a team that created *Protecting Students from Harassment and Hate Crime: A Guide for Schools*. The guide, a joint effort between the Education Department and the National Association of Attorneys General, is designed to help educators prevent and respond to harassment, Coleman states. It emphasizes that schools need to take a comprehensive approach, and it outlines what steps schools should take, such as developing written policies that prohibit harassment and instituting a formal complaint process (see box, p. 3).

Above all, says Coleman, the guide urges educators to be vigilant in addressing all incidents of harassment. "Educators have an obligation to respond," he asserts. School leaders may not be able "to predict when Johnny will mistreat Jane, but once they do know that Johnny has mistreated Jane, they have to take action."

And if schools don't take action, the Office of Civil Rights will. "We have about 700 staff in 12 different states handling about 5,000 discrimination complaints every year," and many of those complaints involve peer harassment, Coleman states. "If administrators know about such a situation and do nothing to intervene—that's when we come in. We ensure that school officials do respond." (And so will the U.S. Supreme Court. The Court has ruled that school districts can be held financially responsible if they are "deliberately indifferent" to harassment among students [see box, p. 3].)

Still, by creating and distributing *Protecting Students from Harassment and Hate Crime* to every school district in the United States, the OCR hopes to help educators avoid such drastic federal involvement. "We want to help school leaders treat a problem of harassment at its earliest emergence, to prevent the situation from getting to the point where it becomes a crime," says Barbara Wolkowitz, senior staff attorney at the OCR.

Coleman agrees. "We want to help educators look for ways to be proactive and strategic on the front end to avoid the heartbreak on the back end."

Create a Culture

Part of being strategic is creating a school culture that simply doesn't tolerate harassing behavior, experts say. Indeed, "written anti-harassment policies and complaint procedures will not stop or prevent harassment," write the authors of *Protecting Students from Harassment and Hate Crime*.

In and of themselves, policies and procedures, rules and regulations "often serve as substitutes for values—they hang on the wall and not in people's heads and hearts," says Terrence Deal, Irving R. Melbo Professor of Education, University of Southern California. What schools need, he states, "is that shared sense of 'this is the way we do things here.'"



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Providing Support for Students

"The more you have a culture that focuses on kids treating others with respect, the less you'll need rules for behavior," agrees Kent Peterson, professor of education at the University of Wisconsin-Madison. "And once that culture becomes established, the school environment can become wonderful," he says. School becomes a place where students don't let "one student 'dis' another."

But to create such a place, to build a "shared sense" isn't easy, Deal warns. It requires that students and staff take time to discuss whether the school community is living up to cultural norms. "I can imagine some pretty vital community meetings in high school," he says, brushing off the complaint that there simply isn't enough time to meet regularly. "We stuff school full of so much mechanical stuff that we leave no room for the stuff that makes us alive," he argues. "We have too many programs and not enough people ready to get down to brass-tack issues. It's like people who buy the diet books but don't do what it takes to lose the weight."

Educators need to remember what it was like to be harassed so they are "sensitive to it and able to recognize it when it occurs," Mendler advises. Once educators "articulate to [themselves] what hurtful behavior is," he notes, they can then better help students define harassment.

Lundeberg agrees and recommends that teachers hold open meetings with their students to discuss topics like harassment. These open meetings require students to define a topic, personalize it, and then, with the teacher, identify solutions, she explains.

Such open meetings help create a shared culture because they focus on communication and consensus building, Lundeberg notes. The meetings require that students listen to a variety of perspectives and consider many options. Students can't jump to one quick solution, she says. "A lot

A key ingredient of an effective anti-harassment program is the ease with which students and parents can let officials know of their concerns. Students who encounter harassment often feel confused and helpless. Students need to feel comfortable approaching adults in the school about harassment and confident that action will be taken in response.

When students express concerns about possible harassment, staff should be prepared to counsel them about their options and to identify the employees designated to accept and act on reports of harassment. The complaint should be treated seriously without casting doubt on the complainant's motives. ●

From Protecting Students from Harassment and Hate Crime: A Guide for Schools. The full text of the guide is available online at <<http://www.ed.gov/pubs/t/harassment/>>.

of time is spent in sharing personal experiences, and that gives students a stake in the resolution, in coming up with lots of strategies."

And if students have a stake in the resolution, they're more likely to uphold it, say experts. That's especially important when dealing with harassment, adds Mendler, because consistency is a key to stopping it.

"Adults have to model zero tolerance" for harassment, he says. That becomes difficult when "the more 'high status' kids are the victimizers." Often, Mendler observes, teachers, like their students, are in awe of the academic stars and the athletes and "are sometimes unwilling to directly show their displeasure" when they

see these star students harass others. Nothing, he asserts, "angers 'nonstatus' kids more than when they see unequal treatment."

Adults also have to ensure that all members of the school community—students, staff, and parents—feel comfortable reporting harassment when they see it, adds Peterson. He recalls that at his son's school, one student with a skin problem was tormented by others. "This student's parents talked to the other students' parents first, who were in denial that their children would harass another. Then the student's parents went to the school leaders who, in turn, went straight to the kids who were doing the harassing and said, 'That's not how we do things at our school.'"

That's a powerful example of what can happen if everyone in the school is recognized "as a potential leader, as a culture builder," Peterson explains. Everyone in the school community then becomes determined to uphold the values they share.

"We know what needs to be done" to stop harassment in schools," Mendler concludes. "We have developed effective tools and curriculums. Now we need to make it a priority." ●

—KATHY CHECKLEY

SCHOOLS HELD LIABLE FOR SEXUAL HARASSMENT

In late May, the Supreme Court found that school districts could be held financially responsible if they are "deliberately indifferent" when they learn of "severe, pervasive, and objectively offensive" harassment among students.

The Court made its ruling after hearing *Davis v. Monroe County Board of Education*, a case brought by LaShonda Davis, who alleged she had been sexually harassed when she was a 5th grade student in Monroe County, Ga. Davis claimed that a male classmate had rubbed his body against her in a sexually suggestive manner and had tried repeatedly to touch her breasts and vagina. School officials reportedly did nothing when Davis complained. (The boy would later plead guilty to sexual battery stemming from one of the incidents of harassment reported by Davis.)

In an editorial written for her local newspaper, Charol Shakeshaft, a professor at Hofstra University in New York, stated that she was pleased with the Supreme Court ruling,

although she fears that the Court requires too much of the victim in proving his or her case.

Shakeshaft, who has studied peer harassment in schools for more than 10 years, also dismissed concerns that the ruling would, in effect, establish a code to regulate behavior that is part of adolescence. Adolescents do experiment with "just how far they can go with the other sex in matters of ridicule, flirtation, and forced physical attention," she wrote. But, she added, "much of what passed for youthful immaturity or childish behavior 30 years ago is very different from what we see today in schools."

Sexual harassment, Shakeshaft asserted, "is one of the many ways that students alienate, hurt, and isolate [other students]. The Supreme Court ruling, which holds educators responsible for stopping sexual harassment, is only one incentive for the development of more effective, respectful, and caring adolescent school cultures." ●

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POLICY

2005

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Students

SUBJECT: SEXUAL HARASSMENT OF STUDENTS

The Board of Education affirms its commitment to non-discrimination and recognizes its responsibility to provide for all District students an environment that is free of sexual harassment and intimidation. Sexual harassment is a violation of law and stands in direct opposition to District policy. Therefore, the Board prohibits and condemns all forms of sexual harassment by employees, school volunteers, students, and non-employees such as contractors and vendors which occur on school grounds and at all school-sponsored events, programs and activities including those that take place at locations off school premises. Generally, sexual harassment is defined as unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct or communication of a sexual nature when:

- a) Submission to or rejection of such sexually harassing conduct and/or communication by a student affects decisions regarding any aspect of the student's education, including participation in school-sponsored activities;
- b) Conditions exist within the school environment that allow or foster obscene pictures, lewd jokes, sexual advances, requests for sexual favors or other harassing activities of a sexual nature; and
- c) Such conduct and/or communication has the purpose or effect of substantially or unreasonably interfering with a student's academic performance or participation in an educational or extracurricular activity, or creating an intimidating, hostile or offensive learning environment; and/or effectively bars the student's access to an educational opportunity or benefit.

Sexual Violence

Sexual violence is defined by New York Penal Law as physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent. Sexual violence includes but is not limited to acts such as:

- a) Rape;
- b) Sexual assault;
- c) Sexual battery;
- d) Sexual coercion.

A person may be unable to consent to a sexual act due to his/her age, use of drugs or alcohol or due to intellectual or other disability. In order to encourage victims of sexual violence to come forward, a District must inform students that the District's primary concern is with their safety. The school should assure victims that any broken rules or violations made by them will be addressed separately from the sexual harassment allegation. For example, victims need to know that their use of alcohol or drugs never makes them at fault for sexual violence.

(Continued)

SUBJECT: SEXUAL HARASSMENT OF STUDENTS (Cont'd.)

The Board acknowledges that in determining whether sexual harassment has occurred the totality of the circumstances, expectations, and relationships should be evaluated including, but not limited to, the ages of the harasser and the victim; the number of individuals involved; and the type, frequency and duration of the conduct. The Board recognizes that sexual harassment can originate from a person of either sex against a person of the opposite or same sex, and from a third party such as a school visitor, volunteer, or vendor, or any other individual associated with the School District. Sexual harassment may occur from student-to-student, from staff-to-student, from student-to-staff, as well as staff-to-staff. The District will designate, at a minimum, two complaint officers, one of each gender.

In order for the Board to enforce this policy, and to take corrective measures as may be necessary, it is essential that any student who believes he/she has been a victim of sexual harassment in the school environment, as well as any other person who is aware of and/or who has knowledge of or witnesses any possible occurrence of sexual harassment, immediately report such alleged harassment; such report shall be directed to or forwarded to the District's designated complaint officer(s) through informal and/or formal complaint procedures as developed by the District. Such complaints are recommended to be in writing, although verbal complaints of alleged sexual harassment will also be promptly investigated in accordance with the terms of this policy. In the event that the complaint officer is the alleged offender, the report will be directed to the next level of supervisory authority.

Upon receipt of an informal/formal complaint (even an anonymous complaint), the District will conduct a prompt, equitable, and thorough investigation of the charges. However, even in the absence of a complaint, if the District has knowledge of or has reason to know of or suspect any occurrence of sexual harassment, the District will investigate such conduct promptly, equitably, and thoroughly. To the extent possible, within legal constraints, all complaints will be treated as confidentially and privately as possible. However, disclosure may be necessary to complete a thorough investigation of the charges, and any disclosure will be provided on a "need to know" basis. The Superintendent will inform the Board of Education of investigations involving findings of harassment. As part of the investigation, the District has the right to search all school property and equipment including District computers. Rooms, desks, cabinets, lockers, computers, etc. are provided by the District for the use of staff and students, but the users do not have exclusive use of these locations or equipment and should not expect that materials stored therein will be private.

Based upon the results of the investigation, if the District determines that an employee and/or student has violated the terms of this policy and/or accompanying regulations, immediate corrective action will be taken as warranted. Should the offending individual be a student, appropriate disciplinary measures will be applied, up to and including suspension, in accordance with District policy and regulation, the Code of Conduct, and applicable laws and/or regulations. Should the offending individual be a school employee, appropriate disciplinary measures will be applied, up to and including termination of the offender's employment, in accordance with legal guidelines, District policy and regulation, the Code of Conduct and the applicable collective bargaining agreement(s). Third parties (such as school volunteers, vendors, etc.) who are found to have violated this policy and/or accompanying regulations will be subject to appropriate sanctions as warranted and in compliance with law.

(Continued)

Students

SUBJECT: SEXUAL HARASSMENT OF STUDENTS (Cont'd.)**Prohibition of Retaliatory Behavior (Commonly Known as "Whistle-Blower" Protection)**

The Board prohibits any retaliatory behavior directed against complainants, victims, witnesses, and/or any other individuals who participated in the investigation of a complaint of sexual harassment. Follow-up inquiries shall be made to ensure that harassment has not resumed and that all those involved in the investigation of the sexual harassment complaint have not suffered retaliation.

Finding That Harassment Did Not Occur

At any level/stage of investigation of alleged harassment, if a determination is made that harassment did not occur, the Complaint Officer will so notify the complainant, the alleged offender and the Superintendent of this determination. Such a finding does not preclude the complainant from filing an appeal pursuant to District policy or regulation and/or pursuing other legal avenues of recourse.

However, even if a determination is made that harassment did not occur, the Superintendent/designee reserves the right to initiate staff awareness and training, as applicable, to help ensure that the school community is not conducive to fostering harassment in the workplace.

In all cases, the Superintendent will inform the Board of Education of the results of each investigation involving a finding that harassment did not occur

Knowingly Makes False Accusations

Employees and/or students who *knowingly* make false accusations against another individual as to allegations of harassment may also face appropriate disciplinary action

Development and Dissemination of Administrative Regulations

Regulations will be developed for reporting, investigating and remedying allegations of sexual harassment. An appeal procedure will also be provided to address any unresolved complaints and/or unsatisfactory prior determinations by the applicable complaint officer(s). Such regulations will be developed in accordance with federal and state law as well as any applicable collective bargaining agreement(s).

The Superintendent/designee(s) will affirmatively discuss the topic of sexual harassment with all employees and students, express the District's condemnation of such conduct, and explain the sanctions for such harassment. Appropriate training and/or "awareness" programs will be established for staff and students to help ensure knowledge of and familiarity with the issues pertaining to sexual harassment in the schools, and to disseminate preventative measures to help reduce such incidents of prohibited conduct. Furthermore, special training will be provided for designated supervisors and managerial employees, as may be necessary, for training in the investigation of sexual harassment complaints.

(Continued)

SUBJECT: SEXUAL HARASSMENT OF STUDENTS (Cont'd.)

A copy of this policy and its accompanying regulations will be available upon request and may be posted at various locations in each school building. The District's policy and regulations on sexual harassment will be published in appropriate school publications such as teacher/employee handbooks, student handbooks, and/or school calendars.

Title IX of the Education Amendments of 1972,
20 United States Code (USC) Section 1681 et seq.
34 Code of Federal Regulations (CFR)
Section 100 et seq.
Title VII of the Civil Rights Act of 1964,
42 United States Code (USC) Section 2000-e et seq.
The Civil Rights Act of 1991
42 United States Code (USC) Section 1981(a)
29 Code of Federal Regulations (CFR)
Section 1604.11(a)
Education Law Section 2801 (1)
Executive Law Sections 296 and 297

Adopted: 3/22/05
Revised: 1/23/07
Revised: 1/17/12

Personnel

SUBJECT: SEXUAL HARASSMENT OF DISTRICT PERSONNEL

The Board of Education affirms its commitment to non-discrimination and recognizes its responsibility to provide for all District employees an environment that is free of sexual harassment and intimidation. Sexual harassment is a violation of law and stands in direct opposition to District policy. Therefore, the Board prohibits and condemns all forms of sexual harassment by employees, school volunteers, students, and non-employees such as contractors and vendors which occur on school grounds and at all school-sponsored events, programs and activities including those that take place at locations off school premises. Generally, sexual harassment is defined as unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when:

- a) Submission of such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment;
- b) Submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individuals; and
- c) 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.

Sexual violence is defined as physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent. Sexual violence as defined by New York Penal Law includes but is not limited to acts such as:

- a) Rape;
- b) Sexual assault;
- c) Sexual battery;
- d) Sexual coercion.

The Board acknowledges that in determining whether sexual harassment has occurred the totality of the circumstances should be evaluated. The Board recognizes that sexual harassment can originate from a person of either sex against a person of the opposite or same sex, and from co-workers as well as supervisors, and from a third party such as a school visitor, volunteer, or vendor, or any other individual associated with the School District. The District will designate, at a minimum, two (2) complaint officers, one of each gender.

In order for the Board to enforce this policy, and to take corrective measures as may be necessary, it is essential that any employee who believes he/she has been a victim of sexual harassment in the work environment, as well as any other person who is aware of and/or who has knowledge of or witnesses any possible occurrence of sexual harassment, immediately report such alleged harassment to the District's designated complaint officer(s) through informal and/or formal complaint procedures as developed by the District. Such complaints are recommended to be in writing, although verbal complaints of alleged sexual harassment will also be promptly investigated in accordance with the terms of this policy. In the event that the complaint officer is the alleged offender, the employee should report his/her complaint to the next level of supervisory authority.

(Continued)

Personnel

SUBJECT: SEXUAL HARASSMENT OF DISTRICT PERSONNEL (Cont'd.)

Upon receipt of an informal/formal complaint, the District will conduct a thorough investigation of the charges. However, even in the absence of a complaint, if the District has knowledge of or has reason to know of or suspect any occurrence of sexual harassment, the District will investigate such conduct promptly and thoroughly. As part of the investigation, the District has the right to search all school property and equipment including District computers. Rooms, desks, cabinets, lockers, computers, etc. are provided by the District for the use of students and staff, but the users do not have exclusive use of these locations or equipment and should not expect that materials stored therein will be private.

To the extent possible, within legal constraints, all complaints will be treated as confidentially and privately as possible. However, disclosure may be necessary to complete a thorough investigation of the charges, and any disclosure will be provided on a "need to know" basis.

Based upon the results of the investigation, if the District determines that an employee has violated the terms of this policy and/or accompanying regulations, immediate corrective action will be taken, as warranted, up to and including termination of the offender's employment in accordance with legal guidelines, District policy and regulation, the District's Code of Conduct, and the applicable collective bargaining agreement(s). Third parties (such as school volunteers, vendors, etc.) who are found to have violated this policy and/or accompanying regulations will be subject to appropriate sanctions as warranted and in compliance with law.

Prohibition of Retaliatory Behavior (Commonly Known as "Whistle-Blower" Protection)

The Board prohibits any retaliatory behavior directed against complainants, victims, witnesses, and/or any other individuals who participated in the investigation of a complaint of sexual harassment. Follow-up inquiries shall be made to ensure that harassment has not resumed and that all those involved in the investigation of the sexual harassment complaint have not suffered retaliation.

Finding That Harassment Did Not Occur

At any level/stage of investigation of alleged harassment, if a determination is made that harassment did not occur, the Complaint Officer will so notify the complainant, the alleged offender and the Superintendent of this determination. Such a finding does not preclude the complainant from filing an appeal pursuant to District policy or regulation and/or pursuing other legal avenues of recourse.

However, even if a determination is made that harassment did not occur, the Superintendent/designee reserves the right to initiate staff awareness and training, as applicable, to help ensure that the school community is not conducive to fostering harassment in the workplace.

In all cases, the Superintendent will inform the Board of Education of the results of each investigation involving a finding that harassment did not occur.

(Continued)

SUBJECT: SEXUAL HARASSMENT OF DISTRICT PERSONNEL (Cont'd.)**Knowingly Makes False Accusations**

Employees and/or students who *knowingly* make false accusations against another individual as to allegations of harassment may also face appropriate disciplinary action.

Development and Dissemination of Administrative Regulations

Regulations will be developed for reporting, investigating and remedying allegations of sexual harassment. An appeal procedure will also be provided to address any unresolved complaints and/or unsatisfactory prior determinations by the applicable complaint officer(s).

Such regulations will be developed in accordance with federal and state law as well as any applicable collective bargaining agreement(s).

The Superintendent/designee(s) will affirmatively discuss the topic of sexual harassment with all employees, express the District's condemnation of such conduct, and explain the sanctions for harassment. Training programs will be established for employees to help ensure awareness of the issues pertaining to sexual harassment in the workplace, and to disseminate preventative measures to help reduce such incidents of prohibited conduct. Furthermore, special training will be provided for designated supervisors and managerial employees, as may be necessary, for training in the investigation of sexual harassment complaints.

A copy of this policy and its accompanying regulations will be available upon request and may be posted at various locations in each school building. The District's policy and regulations on sexual harassment will be published in appropriate school publications such as teacher/employee handbooks and/or school calendars.

Title VII of the Civil Rights Act of 1964,
42 United States Code (USC) Section 2000-e et seq.
The Civil Rights Act of 1991
42 United States Code (USC) Section 1981(a)
29 Code of Federal Regulations (CFR)
Section 1604.11(a)
Executive Law Sections 296 and 297

Adopted: 3/22/05
Revised: 1/23/07
Revised: 1/17/12

2005

5660

Non-Instructional/Business
Operations

SUBJECT: HUMAN IMMUNODEFICIENCY VIRUS (HIV) RELATED ILLNESSES

The Board of Education contends that a student shall not be denied the right to attend school or continue his/her education nor shall an employee be denied the right to continue his/her employment who has been diagnosed or identified as having a positive blood test for the antibodies to the Human Immunodeficiency Virus (HIV). The Board further contends that under current law and regulations, the disclosure of confidential HIV-related information shall be strictly limited.

Administrative regulations and procedures shall be developed and implemented by the administration based on recommendations from the New York State Education Department and from consultation with appropriate professional and medical staff in the District.

The Superintendent shall also establish protocols for routine sanitary procedures for dealing with the cleaning and handling of body fluids in school, with special emphasis placed on staff awareness.

Confidentiality: Public Health Law, Article 27-F

Adopted: 3/22/05

OYSTER BAY - EAST NORWICH CENTRAL SCHOOL DISTRICT
Oyster Bay, New York

Policy 5455-R
9555

STUDENTS WITH HIV-RELATED ILLNESS REGULATION

Confidentiality

A. Definitions

"HIV-related illness" means any clinical illness that may result from or be associated with HIV infection, including AIDS.

"Protected individual" shall mean a person who is the subject of an HIV-related test or who has been diagnosed as having HIV-related illness.

"Capacity to consent" means an individual's ability, determined without regard to such individual's age, to understand and appreciate the nature and consequences of a proposed health care service, treatment or procedure, and to make an informed decision concerning such service, treatment or procedure.

B. Confidentiality and Release of Information

School officials and employees shall keep HIV-related information confidential, however obtained. The information shall not be disclosed to any person, unless the protected individual (or a person with capacity to consent) has completed and signed the Health Department Authorization for Release form ("Authorization Form"), a court order granted under Public Health Law §2785 has been issued, or the person to whom the information has been furnished is authorized to receive such information under Public Health Law (PHL) §2792 without a release form. Persons authorized to receive HIV information without a release include physicians providing care, agencies monitoring such care, and insurance companies for payment purposes. Disclosure to school personnel staff requires a release or court order.

If disclosure occurs pursuant to a signed release or order, the information shall only be released to those listed on such form or order, for the time period specified and only for the purpose stated on the form or order.

Such form shall be signed by the protected individual or when the protected individual lacks capacity to consent.

person authorized pursuant by law to consent to health care for the individual. Questions in regard to such capacity shall be referred to the school attorney.

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9555

C. Testing

No HIV-related testing of any student shall take place without first receiving the written informed consent of the person to be tested on a form approved by the State Health Department. Such consent shall only be given by an individual with capacity to consent as defined above.

D. Penalties

Persons who disclose confidential HIV information to unauthorized parties or who fail to obtain informed consent for the HIV test may be subject to a \$3,000 penalty and a criminal misdemeanor charge.

E. Procedures

1. The procedure set forth here shall be followed in any instance where the school district receives confidential HIV-related information concerning a student from the student and/or person in parental relation to the student without benefit of an Authorization Form or court order.

a. The Superintendent or building administrator to whom the information has been given shall request a meeting with the person in parental relation and/or the student for the purpose of discussing the student's condition, concerns and, should the situation arise, educational alternatives. Such alternatives may include homebound instruction during periods of short-term illness as well as provision of educationally related support services. At this point, school or public health personnel may be consulted provided that the appropriate Authorization Form is obtained. The person in parental relation and/or the student should be apprised of this and asked to sign such release form for personnel whose consultation is needed for delivery of appropriate educational services.

b. If a school officer or employee who has not been made privy to confidential HIV-related information pursuant to an Authorization Form or court order reasonably believes that a student may present a clear and imminent danger to an individual whose life or health may unknowingly be at significant risk as a result of contact with the person, he/she should express these concerns to the Superintendent of Schools who may attempt to obtain an Authorization Form from the individual or someone else with the capacity to consent. Should this request be refused, the Superintendent may recommend to the school board that the district

to the school board that the district seek an order

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for disclosure of confidential HIV-related information, pursuant to Public Health Law §2785.

2. The procedures set forth here shall be followed in any instance where the school district receives confidential HIV-related information concerning a student through the Authorization Form or through a court order.

a. The Superintendent, or building administrator to whom the HIV-related information has been released, may request a meeting with the parent, or person in parental relationship, and the student for the purpose of discussing educational alternatives. Such alternatives may include homebound instruction during periods of short-term illness as well as provision of educationally related support services. The Superintendent or building administrator may enlist the expertise of the child's physician, or any school or public health personnel, provided that the appropriate release forms have been obtained. If a parent concurs in writing to the provision of educational alternatives, no referral to the Committee on Special Education (CSE) will be made.

b.(1). If a school officer or employee who has not been made privy to confidential HIV-related information pursuant to an Authorization Form or court order reasonably believes that a student may present a clear and imminent danger to an individual whose life or health may unknowingly be at significant risk as a result of contact with the person, he/she should express these concerns to the Superintendent of Schools. If the Superintendent has been given the authority, through the Authorization Form, to inform such person(s) who may be at significant risk, he/she should proceed to do so. If the Superintendent does not have this authority, he/she should attempt to obtain an Authorization Form from the individual or someone else with the capacity to consent. Should this request be refused, the Superintendent may recommend to the school board that the district seek an order for disclosure of confidential HIV-related information, pursuant to Public Health Law §2785.

b.(2). If a professional staff member of a school district who has been made privy to confidential HIV-related information pursuant to an Authorization Form or court order reasonably believes that a student may present a clear and imminent danger to an individual whose life or health may unknowingly be at significant risk as a result of contact with the person, he/she should make a referral of the student to the CSE, if appropriate. Staff are also expected to encourage students to seek

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9555

advice from their physician and AIDS counseling centers and to behave responsibly by contacting those persons with whom they have engaged in behavior of significant risk.

3. If a professional staff member of a school district suspects that a student may have a handicapping condition, whether or not the staff member has been made privy to confidential HIV-related information, the staff member shall refer such pupil in writing to the CSE, or to the building administrator of the school which the student attends, in accordance with Part 200.4 of the Commissioner's Regulations.

4. If a student has been referred to the CSE and the CSE reasonably believes either (a) that the student may present a clear and imminent danger to an individual whose life or health may unknowingly be at significant risk as a result of contact with the student, or (b) that the student has or is suspected of having a handicapping condition and that the condition may be due, in whole or in part, to HIV-related illness, the CSE shall inform the Superintendent, who shall attempt to obtain an Authorization Form from the student or someone else with the capacity to consent. Should this request be refused, the Superintendent may recommend to the school board that the district seek an order for disclosure of confidential HIV-related information, pursuant to Public Health Law §2785.

When seeking the confidential information through either said Form or court order, the Superintendent shall attempt to have the person or court agree to disclose such information to the CSE, and may attempt to have the person or court agree to disclose such information to the classroom teacher(s) and any other personnel the Superintendent and the school attorney believe are appropriate.

5. If no such consent or court order is obtained, the district shall take no further action in this matter and shall instruct the appropriate officers or employees not to disclose information in regard to the case.

6. If confidential HIV-related information is obtained, it shall be disclosed only to those individuals listed on the form or pursuant to the court order and only for the purposes specified, for the specified time period.

7. At such time as the CSE receives confidential HIV-related information, it shall, on a case-by-case basis, review all of the medical information pertinent to the individual situation and make a determination as to whether the current mode of instruction and classroom setting for the student meets his or her current and ongoing needs or if it is appropriate.

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In making its determination, the CSE shall consider the following factors: (1) the physical condition of the student and any behavior which might increase the risk of transmission of the virus; and (2) the expected type of interaction with others in the school setting.

The CSE may also consult with appropriate public health officials pursuant to article 27-F of the Public Health Law.

In all other respects, the CSE shall carry out its responsibilities and make recommendations based upon a written evaluation setting forth the reasons for the recommendations, to the student, parent or guardian of the student and Board of Education as it would with any other student who has or is suspected of having a handicapping condition.

Because of the provisions in article 27-F of the Public Health Law permitting physicians to disclose confidential HIV-related information under certain circumstances, the school physician will be required to attend all meetings of the CSE in regard to students suspected or diagnosed as having HIV-related illness.

The CSE shall also have the authority to invite the appropriate professionals familiar with HIV-related illness to any meeting concerning the educational program for any such student, providing however, that such professional is named on a completed and signed Authorization Form or a court order granted under Public Health Law §2785.

8. If the student had previously been evaluated and been recommended for placement by the CSE, and thereafter the student is deemed dangerous to himself or others, a short-term suspension (of five days or less) may be imposed, or other protective procedures may be invoked. However, where parents choose to exercise their due process rights under the appeal procedures set forth in state and federal law, a student must remain in the original placement until appeal procedures are completed, or parental consent or court order for alternative placement is obtained.

If the student had not been evaluated and recommended for placement by the CSE, section 8 (above) shall apply.

9. Pursuant to Public Health Law article 27-F, a physician may, upon the consent of a parent or guardian, disclose confidential HIV-related information to a State, county or local health officer for the purpose of reviewing the medical history of a child to determine the fitness of the child to attend school.

Additional Matters

In the event of the presence of any contagious or communicable disease (such as chicken pox or measles, etc.) in the school population, which may constitute a risk to an infected individual, the superintendent or school nurse with authorization to obtain the confidential HIV-related information shall inform the student, the student's parents or legal guardian about such risk. Any temporary decision or recommendation in such circumstances should be made by the individual's personal physician and the student's parents, in consultation with the superintendent, school physician and nurse.

ADOPTED 1/16/90

OYSTER BAY-EAST NORWICH CENTRAL SCHOOL DISTRICT
Office of the Superintendent

Policy #5456/
9556

EMPLOYEES WITH HIV-RELATED ILLNESS

The Board of Education recognizes the public concern over the health issues surrounding Acquired Immune Deficiency Syndrome (AIDS) and Human Immunodeficiency Virus Infection (HIV). The Board also recognizes, based upon the current state of medical knowledge, that there is no hard evidence that AIDS or the HIV virus can be transmitted by casual social contact in the open school setting.

The Board acknowledges the interests of employees diagnosed as having AIDS or HIV infection in continuing their employment, as well as the interests of all students and employees of the school district to learn and work without being subjected to significant risks to their health. The Board also takes notice that under current law and regulations the disclosure of confidential AIDS and/or HIV-related information must be strictly limited.

Accordingly, it is the policy of the Board of Education that no district employee shall be prevented from continuing his or her employment solely on the basis of such information.

In accordance with current law and regulations, it is also the policy of the Board to prevent any employee from being subjected to adverse or discriminatory treatment or stigma solely because he or she has been diagnosed as having AIDS or being HIV-infected.

The Superintendent of Schools is hereby directed to develop administrative regulations in regard to avoiding employment discrimination against individuals diagnosed as having AIDS or being HIV-infected.

The Superintendent also shall implement, and all school personnel shall comply with, guidelines and routine sanitary hygiene procedures for dealing with all spills of blood and other body fluids in or on school premises and grounds. The Superintendent should consult public health officials, as appropriate, for the most current methods and information pertaining to such procedures.

In addition, the Superintendent shall develop and immediately implement inservice education and training for all school personnel concerning AIDS and HIV infection and the routine sanitary hygiene procedures to be followed in the case of all spills of blood and other body fluids.

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**EMPLOYEES WITH HIV-RELATED ILLNESS
REGULATION**

If information is received regarding an employee's HIV status, the Superintendent of Schools may consult with the school attorney on the appropriate course of action to take under all the circumstances, bearing in mind the district's potential liability for defamation, employment discrimination, breach of the confidentiality requirements of the New York Public Health Law, and other possible causes of action.

Confidentiality

Information obtained pursuant to a Health Department release form or court order is confidential and shall not be released to anyone, except: (1) persons listed on the said form; (2) persons listed on a court order pursuant to Public Health Law Section 2785; or (3) persons authorized to receive such information without a release or court order under Public Health Law Section 2782.

AIDS/HIV Testing

No school official shall require any employee to undergo an HIV Antibody test or other AIDS test. However, this policy shall not preclude school officials from ordering an employee to undergo an examination under Education Law Section 913, when other illness is suspected, as long as no involuntary HIV antibody test or other AIDS test is administered as a part of such examination.

Standards For Avoiding Employment Discrimination

No disciplinary action or other adverse personnel action shall be taken against an employee solely because he/she has AIDS or HIV infection. Action may be taken against an employee only if he/she is disabled and the disability interferes with his/her ability to perform in a reasonable manner the activities involved in the job or occupation.

The district shall make such reasonable accommodation to enable the employee to perform employment duties as may be required by federal or state law.

Adopted 3/16/93