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*Rescinds Policy Number: GAMAAB**Issued: 06/20/1994, 04/19/2004*

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*Premise*

The Orange County Board of Education believes that all employees and students are entitled to work and learn in school related environments that are free from sexual harassment. Therefore, the policy of the Orange County Board of Education forbids discrimination against any employee or applicant for employment on the basis of sex, prohibits employees from engaging in sexual harassment and advises employees that such conduct, where established by evidence, will result in appropriate disciplinary action, up to and including dismissal.

**GENERAL PROHIBITIONS****A. Unwelcome conduct of a sexual nature.**

1. Conduct of a sexual nature may include verbal or physical sexual advances including subtle pressure for sexual activity; touching, pinching, patting or brushing against; comments regarding physical or personal characteristics of a sexually oriented kidding, teasing, double entendres, innuendo and jokes.
2. Verbal or physical conduct of a sexual nature may constitute sexual harassment when the allegedly harassed employee has indicated by his or her conduct, that it is unwelcome. Visual conduct of a sexual nature such as the display of derogatory or sexually oriented cartoons, photographs, videos or drawings may constitute sexual harassment.
3. Any employee who has initially welcomed such conduct by active participation must give specific notice to the alleged harasser that such conduct is no longer welcome in order for any such subsequent conduct to be deemed unwelcome.
4. Sexual harassment is prohibited against members of the same sex as well as against members of the opposite sex.

**B. Sexual Harassment**

1. For purposes of this policy, unwelcome sexual advances, request for sexual favors, and other verbal or physical conduct of a sexual nature may constitute sexual harassment if:
  - a. Submission to the conduct is made either an explicit or implicit condition of employment; or
  - b. Submission to or rejection of the conduct is used as a basis for an employment decision affecting the harassed employee; or
  - c. The conduct has the same purpose or effect of interfering with an employee's work performance, or creates an intimidating, hostile, or offensive work environment; or in the case of sexual harassment of a student, submission to or rejection of such conduct, is used in evaluating the individual's performance within a course of study or other school related activity; or
  - d. Such conduct has the purpose or effect of unreasonably interfering with a student's educational performance or creating an intimidating, hostile, or offensive environment within which a student has to learn.

**SPECIFIC PROHIBITIONS****A. Prohibited supervisory or managerial behavior:**

1. No supervisor, director or manager may condition any employment, employee benefit or continued employment in the Orange County School System based upon an applicant's or employee's consent to any of the sexual behavior defined above.
2. No supervisor, director or manager may retaliate against any applicant or employee because that applicant or employee has opposed a practice prohibited by Title VII or the Civil Rights Act of 1964 or any other applicable law or regulation, or has filed a complaint, testified, assisted or participated in any manner in an investigation, proceeding or hearing conducted by any authorized investigative agency.
3. No supervisor, director or manager shall destroy any evidence relevant to any investigation of a charge or allegation of sexual discrimination.

**B. Behavior Prohibited by All Employees**

1. No supervisor, director or manager or any other employee of this district shall create a hostile or offensive work environment for any other employee or student by engaging in any sexual harassment or by tolerating it on the part of any supervisee.
2. No supervisor, director or manager or any other employee of the district shall assist any individual in doing any act which constitutes sexual discrimination against or sexual harassment of any employee of the district.

**OBLIGATIONS OF SUPERVISORS, DIRECTORS AND MANAGERS****A. Preventive action**

1. A copy of this policy shall be distributed to all employees.
2. All supervisors, directors or managers shall give a copy of this policy to any new employee within one week of their employment.
3. At the beginning of each school year, each supervisor, director and manager shall review with all employees the procedures for registering a complaint about sexual harassment and shall review the redress, which is available. This shall include information about assistance with claims of sexual harassment offered by the Equal Employment Opportunity Commission or appropriate agency.
4. Information from the Equal Employment Opportunity Commission and any other appropriate agency regarding the filing of any claim of sexual harassment with these entities or agencies shall be made available by the Superintendent or his designee.

**REPORTING, INVESTIGATION AND SANCTIONS**

- A. It is the express policy of the Orange County Board of Education to encourage victims of sexual harassment to come forward with such claims and for the appropriate staff to make a thorough investigation of any allegation of sexual harassment and take appropriate disciplinary action if such allegations are found to be true.
- B. All complaints of sexual harassment shall be confidential. Information shall be given only to those individuals who need to have access to it in order to appropriately investigate and address the complaint.
- C. Any student who believes that he or she has suffered sexual harassment shall follow the procedures set forth hereinafter in the specific provisions set forth for Sexual Harassment of Students.
- D. Any employee who believes that he or she has suffered sexual harassment may report the matter to the assistant superintendent for human resources who will investigate the allegations. However, any school employee who occupies an organizationally superior position relative to an employee who receives from such employee a report of alleged sexual harassment shall promptly report the same to the assistant superintendent for human resources for investigation. Failure by such employee to do so may subject the employee to disciplinary action. If the assistant superintendent for human resources is the alleged offender, such report shall be made directly to the superintendent.
- E. Claims of sexual harassment shall be promptly and thoroughly investigated and appropriate action shall be taken. Violations shall be deemed to be serious disciplinary infractions.
- F. Upon recommendation by the superintendent, the Board of Education shall approve the appointment of a member of the Central Office Staff to coordinate compliance with Title IX of the Education Amendments of 1972 and this policy. Any one who has brought a complaint under this policy and is not satisfied with the results of the investigation may file a formal grievance with the Title IX coordinator. In the event that the individual who has brought the complaint under this policy is then not satisfied with the results of the review by the Title IX coordinator, such individual shall have the right to appeal to the Orange County Board of Education for hearing.
- G. Upon receiving a complaint, the investigator shall confer with the complainant to obtain an understanding and a statement of the facts. It shall be the responsibility of the investigator to promptly and reasonably investigate the claims of the harassment and to pass the findings on to the superintendent who shall complete such further investigation as deemed necessary and such final action as deemed appropriate. Information regarding an investigation of harassment shall be confidential to the fullest extent possible, and those individuals who are involved in the investigation shall not discuss information regarding the complaint outside the investigation process except as required by law. In the event of a breach of confidentiality the individual responsible for such breach shall be subject to appropriate disciplinary action.
- H. No individual shall retaliate against an employee or student because they have filed a harassment complaint, assisted in or participated in a harassment investigation, proceeding or hearing regarding a harassment charge or because they have opposed language or conduct that violates this policy.
- I. The investigator shall follow the hereinafter set forth criteria in the course of his or her investigation of the allegation of sexual harassment:
  - 1. Evidence resulting from the investigation is confidential. Any breach of confidentiality shall subject the individual responsible for such breach to appropriate disciplinary action.
  - 2. Complaints must be taken seriously and investigated.

3. No retaliation will be taken against any individual involved in the investigation process.
4. Retaliation by any individual shall subject that individual to disciplinary action up to and including discharge.
5. Criminal prosecution may be pursued if the complaint involves a minor or a student or a violation of any state or federal criminal law.

**SEXUAL HARASSMENT OF STUDENTS****A. Definition of sexual harassment of students**

Sexual harassment means and includes any unwelcome sexual advances, request for sexual favors, and any other non-consensual and/or offensive verbal or physical contact of a sexual nature between an employee and a student or between students and includes misconduct by males against females, females against males and between students of the same gender during the school day, on school premises or school related activities. Orange County Schools expect all individuals to treat each other with respect at all times. Sexual harassment is further defined to include two different levels or degrees of misconduct. These may include, but are not limited to, any of the following:

1. **Physical.** This form of sexual harassment includes touching, fondling, grabbing and/or stalking a student in a sexual way without that student's consent or when the student finds such behavior offensive; and
2. **Verbal.** This form of sexual harassment includes, but is not limited to, joking and/or making lewd remarks of a sexual nature to a student without that student's consent or when the other student finds such behavior offensive, continued or repeated offensive sexual flirtations, advances or propositions; continued or repeated verbal remarks about an individual's body or habits; sexually degrading words used toward an individual or to describe an individual; the display on school property of sexually suggestive objects, pictures or videos or the use or display in a sexually suggestive manner of objects not inherently sexually suggestive. The fact that words or actions may be couched in what appears to be, or is intended as, humor does not make in any less offensive. Sexual harassment does not include personal compliments welcomed by the recipient.

**B. Procedures for reporting and investigating sexual harassment:**

1. Any student who believes that he or she has been sexually harassed by a school employee shall report such behavior immediately to a counselor, faculty member or principal who will act as the student's advocate. If, for any reason, the person to whom such alleged conduct is reported feels they cannot effectively act as advocate for the student, then and in said event, the person to whom such alleged conduct is reported shall seek another counsel, faculty member or principal who is acceptable to the reporting student to act as advocate for the student. In the event that the principal is the school employee that the student believes has sexually harassed him or her, then the student and/or his or her advocate shall immediately report such behavior to the assistant superintendent for human resources. In the event that a student makes an allegation of sexual harassment by an employee, whether physical or verbal, to a school employee other than the principal, the school employee being notified shall immediately notify the principal or the school. If the principal is the person accused of sexual harassment, the assistant superintendent for human resources shall be notified.
2. Upon notification of an allegation of sexual harassment of a student by an employee, the principal shall immediately notify the assistant superintendent for human resources unless the assistant superintendent for human resources is the person alleged to have committed the acts constituting harassment, in which case the principal shall notify the superintendent.

3. If a student believes that he or she has been sexually harassed by another student then the student believing that he or she has been sexually harassed shall immediately report this to a counselor, faculty member or the principal of the school. In the event of such allegation of sexual harassment, the school official so notified, if not the principal, shall immediately notify the principal who shall promptly investigate the alleged misconduct.

### C. Penalties

#### 1. Employee Violation

- a. The penalty for violation of this policy by an employee shall include appropriate disciplinary action up to and including dismissal.

#### 2. Student Violation

- a. The penalty for violation by a student shall include appropriate disciplinary action. Disciplinary action includes implementation of the following steps:
  - i. Counseling: An immediate counseling session will be held with the accused, the administrator originally involved or their designee, and a counselor;
  - ii. Mediation/Intervention: Involved parties will be given the opportunity to justify his or her actions. This meeting will involve the accused, the administrator originally involved, or his or her designee, and a counselor. It will be left to the accuser's discretion as to whether or not he or she will attend the mediation sessions;
  - iii. Disciplinary Action: Disciplinary action shall be the responsibility of the principal or his or her designee. The severity and nature of any disciplinary action imposed shall depend, in the discretion of the principal or his or her designee, on the severity of the offense. All disciplinary action shall be subject to the procedural and due process rights of the accused.

### D. Implementation of this policy

The Superintendent, or his or her designee, shall prepare procedures regarding the implementation of this policy to include sanctions, protection of individual's rights to confidentiality and due process and notification procedures, not inconsistent with this policy. The Superintendent shall insure that all staff and students (in means and terms that are age-appropriate) be thoroughly informed of this policy and its procedures on an annual basis. The Superintendent shall also insure that staff and students participate in educational programs on an ongoing and annual basis relating to this policy and shall insure the maintenance of an educational environment that is characterized by mutual respect, safety and personal security, individuals and groups shall be treated with equity and fairness without regard to gender. The Superintendent shall insure that the Student Handbook distributed to students each year contains age-appropriate language informing students of this policy and their rights and responsibilities as set forth herein.

### E. Due Process

The employee or other student accused of sexual harassment shall be afforded due process as set forth in this and any other applicable policy of the Orange County Board of Education and as prescribed by state law as is appropriate to their status and the severity of the disciplinary action recommended.

Legal References: Title IX of the Education Amendments of 1972; Section 703 of the Civil Rights Act of 1964; Title VII of the United States Code.