



PORTLAND PUBLIC SCHOOLS OFFICE OF GENERAL COUNSEL

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Date: May 18, 2020
To: School Board
From: Mary Kane, Legal Counsel
Subject: 5.10.060-P Workplace Harassment Policy

BACKGROUND

The 2019 Oregon Legislature made a number of revisions to statutes related to employment. The amendments were enrolled in SB 479 and SB 726. The focus of the bills is to address unlawful conduct in the workplace and to provide protections against workplace harassment of employees. The bills contain staggered start dates with some elements beginning January 1, 2020, and others by October 1, 2020. The General Counsel's office has reviewed the bills and the existing policy with Human Resources.

RELATED POLICIES/BEST PRACTICES

It is best practice to conform existing policies to current law.

ANALYSIS OF SITUATION

SB 479 and SB 726 address workplace discrimination and harassment, including sexual assault. The bills require employers to provide information to employees who complain of workplace discrimination and harassment, including the District's policy, supports and resources, and legal remedies that may be available to them. SB 726 also provides that employers may not include nondisclosure/nondisparagement/no-rehire provisions in settlement agreements for employees who have made a complaint of workplace discrimination or harassment unless agreed upon by the employee.

The District already had a Sexual Harassment Policy (5.10.060-P) addressing sexual harassment in the workplace. Rather than create a separate Workplace Harassment Policy, which would include sexual harassment under the statute, we incorporated the new state requirements into our existing policy.

FISCAL IMPACT

It is unclear whether the amendments will lead to an increase in investigations (and therefore more FTE), which may lead to capacity issues for the Human Resources Department. The General Counsel's office has been working with HR to make operational changes to relevant processes.

COMMUNITY ENGAGEMENT

Because these changes are driven by legislative directives, there was limited stakeholder engagement. The General Counsel's office worked closely with the Department of Human Resources to review the new statutory guidelines. Additionally, after this policy was reviewed and considered by the Board Policy Committee, it was provided to PAT for review.

STAFF RECOMMENDATION

Staff recommends that the Board approve the amendments to the policy.

As a member of the PPS Executive Leadership Team, I have reviewed this staff report.

LL (Initials)

ATTACHMENTS

- A. Redline copy of the Workplace Harassment Policy
- B. Clean copy of the Workplace Harassment Policy



Workplace Harassment

- (1) All District work environments should be free from any form of harassment, including sexual harassment. All District employees, school board members, volunteers, and contractors, must avoid any conduct or action that could be characterized as harassment of another employee, whether that occurs in the workplace or off District premises.
- (2) Workplace harassment means conduct that constitutes discrimination based on race, color, religion, sex, sexual orientation, national origin, marital status, age, disability, expunged juvenile record, and any other discrimination prohibited by law and includes sexual assault.
- (3) Sexual assault means unwanted conduct of a sexual nature that is inflicted upon a person or compelled through the use of physical force, manipulation, threat, or intimidation and includes any unwelcome sexual advances, requests for sexual favors, physical contact, or any other unwelcome conduct, verbal or nonverbal, of a sexual nature when:
 - (a) The employee's submission to, or rejection of, the conduct is made either an implicit or explicit term or condition of employment (including wages, evaluation, advancement, retention, assigned duties, or other employment-related matters);
 - (b) The conduct by supervisors or other District employees, school board members, contractors, and volunteers, that has the purpose or effect of substantially interfering with an individual's work performance; or
 - (c) The conduct by supervisors or other District employees, school board members, contractors, and volunteers, that has the effect of creating an intimidating, hostile, or offensive working environment.
 - (A) **Verbal conduct** includes sexual innuendos, suggestive comments, jokes of a sexual nature, sexual propositions, and threats.
 - (B) **Nonverbal conduct** includes sexually suggestive objects or pictures, graphic commentaries, suggestive or insulting noises, obscene gestures, whistling, and leering.
 - (C) **Physical conduct** includes unwanted physical contact such as touching, pinching, brushing the body, coerced sexual intercourse, or assault.
- (4) No District employee, school board member, contractor, or volunteer may use the authority of their position to subject any employee to sexual harassment, as described above, or to coerce, encourage, or force another into a romantic relationship.
- (5) When it is brought to their attention, administrators and supervisors must take affirmative steps to stop workplace harassment, including sexual harassment of subordinates or non-employees, including warning, discipline, and recommending possible dismissal of the offending staff.
- (6) Any District employee who believes they have been subject to workplace harassment may file a report with
 - (a) their supervisor,



Workplace Harassment

- (b) the Human Resources Department Complaint hotline,.
 - (c) the Oregon Bureau of Labor and Industries' (BOLI) complaint resolution process
 - (d) or through other avenues available under civil or criminal law.
 - (e) Any person who believes they have been subject to workplace harassment should also make a report of sexual harassment to the Title IX Director for the District.
- (7) All incidents of behavior that may violate this policy shall be promptly investigated. The District will make every reasonable effort to safeguard employee privacy and preserve confidentiality to the extent the investigative process allows.
- (8) The District will not tolerate retaliation by any District employee, school board member, contractor, or volunteer, against any person who in good faith reports conduct believed to constitute workplace harassment. The District may discipline employees who retaliate in violation of this policy, provide false information, or make a complaint in bad faith. The District may take any other action it deems necessary in response to similar conduct from a contractor or volunteer.
- (9) The District may not require or coerce an employee who makes an allegation of workplace harassment to enter into a nondisclosure or nondisparagement agreement unless it complies with ORS 659A.
- (10) District employees who makes a report of workplace harassment shall be provided all information required by law, including, timelines for relief for administrative or judicial remedies. available
- (11) All complaints of harassment directed toward non-employees should be addressed under the District's Nondiscrimination/Anti-Harassment Policy, 1.80.020-P.

Legal References: ORS 659A.001 et seq. ORS 342.700 to 342.708; ORS 342.865
Title VI of the Civil Rights Act of 1964,
Title VII of the Civil Rights Act of 1964,
Title IX of the Education Amendments of 1972, 20 U.S.C.A., 1681-1683 (2018)
Americans with Disabilities Act of 1990, 42 U.S.C. Section 12101 et seq. 29 CFR Part 1630

History: Adpt. 9/25/97; Amd. 2/99, 5/20

[INSERT Link to AD]

5.10.060-P—~~Sexual~~ Workplace Harassment

- (1) ~~It is the policy of the Portland school district to maintain a~~ All District work environment ~~that is~~ environments should be free from any form of harassment, including sexual harassment. All District employees, school board members, volunteers, and contractors, must avoid any conduct or action that could be characterized as ~~sexual~~ harassment ~~of another employee, whether that occurs in the workplace or off District premises.~~
- (2) ~~Sexual~~ Workplace harassment means conduct that constitutes discrimination based on race, color, religion, sex, sexual orientation, national origin, marital status, age, disability, expunged juvenile record, and any other discrimination prohibited by law and includes sexual assault.
- (2)(3) Sexual assault means unwanted conduct of a sexual nature that is inflicted upon a person or compelled through the use of physical force, manipulation, threat, or intimidation and includes any unwelcome sexual advances, ~~unwelcome~~ requests for sexual favors, ~~unwelcome~~ physical contact, or any other unwelcome conduct, verbal or nonverbal, of a sexual nature when:
- (a) The employee's submission to, or rejection of, the conduct is made either an implicit or explicit term or condition of employment (including ~~but not limited to~~ wages, evaluation, advancement, retention, assigned duties, or other employment-related matters);
 - ~~(b) The employee's submission to, or rejection of, the conduct is the basis for decisions affecting employment;~~
 - ~~work performance; or~~
 - ~~(e)(b)~~ (b) The conduct by supervisors, or other District employees ~~or non-employees, school board members, contractors, and volunteers,~~ that has the purpose or effect of substantially interfering with an individual's work performance; or
 - ~~(e)(c)~~ (c) The conduct by supervisors, or other employees ~~or non-employees~~ District employees, school board members, contractors, and volunteers, that has the effect of creating an intimidating, hostile, or offensive working environment.
 - (A) **Verbal conduct** includes sexual ~~innuendoes~~ innuendos, suggestive comments, jokes of a sexual nature, sexual propositions, and threats.
 - (B) **Nonverbal conduct** includes sexually suggestive objects or pictures, graphic commentaries, suggestive or insulting noises, obscene gestures, whistling, and leering.

(C) **Physical conduct** includes unwanted physical contact such as touching, pinching, brushing the body, coerced sexual intercourse, or assault.

~~(3)~~(4) No District employee, school board member, contractor, or volunteer may use the authority ~~of his or her~~of their position to subject any ~~other~~ employee to sexual harassment, as described above, or to coerce, encourage, or force another into a romantic relationship.

~~(4)~~(5) When it is brought to their attention, administrators and supervisors must take affirmative steps to stop workplace harassment, including sexual harassment ~~by~~of subordinates or non-employees, including warning, discipline, and recommending possible dismissal of the offending ~~employee~~staff.

~~(5) The superintendent will establish regulations for reporting, investigating, and taking appropriately corrective action in response to a sexual~~

5.10.060-P Sexual Harassment

harassment

(6) Any District employee who believes they have been subject to workplace harassment may file a report with

(a) their supervisor,

(b) the Human Resources Department Complaint hotline,

(c) the Oregon Bureau of Labor and Industries' (BOLI) complaint.
~~Employees who experience, resolution process~~

(d) or through other avenues available under civil or criminal law.

(e) Any person who ~~are aware of sexual~~ believes they have been subject to workplace harassment should ~~inform the Executive~~ also make a report of sexual harassment to the Title IX Director ~~of Human Resources or designee. The district~~ for the District.

(7) All incidents of behavior that may violate this policy shall be promptly investigated. The District will make every reasonable effort to safeguard employee privacy and preserve confidentiality to the extent the investigative process allows.

(6)(8) ~~There~~ The District will ~~be not tolerate~~ retaliation by any ~~district official or District~~ employee, school board member, contractor, or volunteer, against any person who in good faith reports conduct believed to constitute ~~sexual~~ workplace harassment. The ~~district reserves the right to~~ District may discipline employees who ~~retaliate in violation of this policy,~~ provide false information, or make a complaint in bad faith. The District may take any other action it deems necessary in response to similar conduct from a contractor or volunteer.

● (9) The District may not require or coerce an employee who makes an allegation of workplace harassment to enter into a nondisclosure or nondisparagement agreement unless it complies with ORS 659A.

● (10) District employees who makes a report of workplace harassment shall be provided all information required by law, including, timelines for relief for available administrative or judicial remedies.

(11) All complaints of harassment directed toward non-employees should be addressed under the District's Nondiscrimination/Anti-Harassment Policy, 1.80.020-P.

~~659.020; OAR 584-020-0041; ORS 342.704; ORS 659.029; ORS to 342.708; ORS 659.030; ORS 342.850; ORS 659.040; ORS 342.865; ORS 659.150; Title VI of the Civil Rights Act of 1964, Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C.A., Section 2000(e) et seq. (West 1985); Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C.A., Section 621 (West 1985); Age Discrimination Act of 1975, as amended, 42 U.S.C.A., Section 6101 (West 1985); Equal Pay Act of 1963, as amended, 29 U.S.C.A., Section 206(d) (West 1985); Title IX of the Education Amendments of 1972, 20 U.S.C.A., Sections 1681, 1682 and 1683 (West 1985); Rehabilitation Act of 1973, 29 U.S.C.A. Sections 504, 791, 793 and 794 (West 1985); Americans with Disabilities Act of 1990, 42 U.S.C. Section 12101 et seq. 29 CFR Part 1630~~

History: Adpt. 9/25/97; Amd. 2/99, 5/20

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