

WHITEHALL CENTRAL SCHOOL
Whitehall, New York 12887
BOARD OF EDUCATION POLICY
Harassment Policy
Amended June 21,2013

Section 1: Purpose

A. It is the policy of the Whitehall Central School District that harassment of employees⁶, applicants for employment, or students in any form is unacceptable conduct. The purpose of this policy is to clearly state the District's position on this issue; to notify all employees⁶ and students of the kinds of activities which constitute improper harassment; and to provide a procedure whereby any victim of harassment can submit a complaint which will be investigated by the District.

B. This policy shall also constitute the Grievance Procedure required by Title IX of the Education Amendments of 1972 for complaints of gender⁷ discrimination⁵ within educational institutions receiving federal financial assistance.

Section 2: Definition

- A. Sexual Harassment in the Workplace. Harassment on the basis of sex is a violation of State and Federal law. Unwelcome sexual advances, requests for sexual favors, and/or other verbal or physical conduct of a sexual nature constitutes sexual harassment when: (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Sexually harassing conduct in the work place, whether committed by supervisors or non-supervisory personnel, is prohibited. Such prohibited conduct includes but is not limited to:

- (1) unwelcome sexual flirtations, advances, or propositions;
- (2) verbal or written abuse of a sexual nature;
- (3) graphic verbal comments about an individual's body;
- (4) sexually degrading words used to describe an individual;
- (5) the display in the workplace of sexually suggestive objects or pictures;
- (6) subtle pressure for sexual activity;
- (7) inappropriate patting or pinching;
- (8) intentional brushing against an employee's⁶ body;
- (9) demanding sexual favors accompanied by implied or overt threats concerning an individual's employment status;
- (10) demanding sexual favors accompanied by implied or overt promises of preferential treatment with regard to an individual's employment status; or,
- (11) any sexually motivated unwelcome touching.

B. Harassment of and/or Between Students. Sexual harassment of students consists of verbal or physical conduct of a sexual nature, by an employee⁶, agent, or another student of the District that denies, limits, or conditions the provision of aid, benefits, services, or treatment protected under Title IX of the Education Amendments of 1972 on the basis of sex. Unwelcome sexual advances, requests for sexual favors, and/or other verbal or physical conduct of a sexual nature constitutes sexual harassment when: (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's education; or (2) such conduct has the purpose or effect of unreasonably interfering with the individual's education or creating an intimidating, hostile, or offensive environment. Such actions include, but are not limited to the following conduct directed at students:

- (1) unwelcome sexual flirtations, advances, or propositions;
- (2) verbal or written abuse of a sexual nature;
- (3) graphic verbal comments about the student's body;
- (4) sexually degrading words used to describe a student;
- (5) unwelcome and non-consensual physical touching of a sexual nature;
- (6) subtle pressure for sexual activity;
- (7) inappropriate patting or pinching;
- (8) intentional brushing against a student's body;
- (9) demanding sexual favors accompanied by implied or overt threats concerning a student's educational status;
- (10) demanding sexual favors accompanied by implied or overt promises of preferential treatment with regard to a student's educational status; or,
- (11) any sexually motivated unwelcome touching.
- (12) "sexting" others by sending, receiving or forwarding sexually suggestive nude or nearly nude photos through text messages or email.

Given the special nature of the relationship between students and employees⁶ of the District, extreme caution should be exercised by employees⁶ of the District to avoid any situation involving comments of a sexual nature, particularly in the presence of students. It is recognized that discussions involving sexual relations and the human body are part of mandated curriculum in certain areas (e.g., health education) and are, therefore, not restricted by this policy. Nonetheless, there is no conflict between this policy and the mandates of the district's curriculum. Thus, the teaching of the District's curriculum will not necessarily constitute a defense to a charged violation of this-policy.

Section 3: Policy

A. The Whitehall Central School District regards sexual harassment as a very serious matter. Accordingly, sexual harassment by any employee⁶ or agent of the District of any employee⁶ or agent of the District, or applicant for employment is hereby prohibited.

B. It is the policy of the Whitehall Central School District that all students be free from sexual harassment in the classroom and school environment. Therefore, sexual harassment of any student is expressly prohibited. This policy also applies to conduct between students.

Section 4: Sexual Harassment Policy Enforcement

A. Procedure for Employees⁶.

Each supervisor has an affirmative duty to maintain his or her work place free from sexual harassment. Each supervisor shall discuss this policy with all employees⁶ and assure them that they are not required to endure insulting, degrading, or exploitative conduct of a sexual nature.

1. Informal Procedure. The District encourages employees⁶ who believe they are being harassed to clearly and promptly notify the offender that his or her behavior is unwelcome. If for any reason an individual does not wish to confront the offender directly or if such a confrontation does not successfully end the harassment, the individual should notify his or her supervisor, a school Principal, or the Superintendent of Schools. The names, addresses, telephone numbers and office and/or available hours of individuals in these positions are located in the offices of the Building Principal and Superintendent. If notification is made to anyone other than the Superintendent of Schools, the recipient of said notification shall immediately inform the Superintendent of Schools of the allegation of sexual harassment (unless the allegation of sexual harassment is made against the Superintendent, in which case the recipient of said notification shall immediately inform the President of the Board of Education).

The informal procedure should be flexible and the best course of action in any case will depend on various factors. However, an individual reporting sexual harassment should be aware that the District may decide it is necessary to take action to address the harassment beyond an informal discussion.

2. Formal Procedure. The following steps should be followed to make a formal complaint about sexual harassment.

(a) Notification. An individual who believes he or she has been subjected to sexual harassment should report the incident to his or her supervisor, a school Principal, or the Superintendent of Schools. The names, addresses, telephone numbers and office and/or available hours of individuals in these positions are located in the offices of the Building Principal and Superintendent. The complaint should be in writing. In the case of a report made to anyone other than the Superintendent of Schools, the recipient of the complaint shall file the complaint with the Superintendent of Schools immediately (unless the allegation of sexual harassment is made against the Superintendent, in which case the recipient of said notification shall immediately inform the President of the Board of Education).

(b) Description of Misconduct. An accurate record of allegedly objectionable behavior is necessary to resolve a complaint of sexual harassment. All verbal allegations of sexual harassment must be reduced to writing by either the complainant or the recipient of the complaint.

(c) Time for Reporting a Complaint. Prompt reporting of complaints is strongly encouraged. While no time limits for filing complaints are contained in this policy, the accurate resolution of sexual harassment complaints will be expedited by the timely filing of claims. Further, a complainant should be aware that applicable statutes of limitations do constrain the time for instituting outside legal action.

(d) Protection Against Retaliation. The District will not retaliate against any individual who files a sexual harassment complaint in good faith. Retaliation is a very serious violation of this policy and should be reported immediately. Any employee⁶ or agent of the District found to have retaliated against an individual for good faith reporting of sexual harassment will be subject to appropriate disciplinary action up to and including discharge from employment.

3. The District will promptly investigate all allegations of sexual harassment in as confidential and sensitive a manner as possible.

4. The individual submitting a complaint of sexual harassment and the alleged harasser shall be notified of the results of the investigation.

5. Any supervisor, agent, or other employee⁶ who is found, after appropriate investigation, to have engaged in sexual harassment, will be subject to disciplinary action the school District deems necessary and appropriate. Such disciplinary action may include warning, reprimand, suspension, or discharge to end sexual harassment and prevent its recurrence.

B. Procedure for Students

1. Informal Procedure. The District encourages students who believe they are being harassed to clearly and promptly notify the offender that his or her behavior is unwelcome. If for any reason a student does not wish to confront the offender directly, or if such confrontation does not successfully end the harassment, the student should notify his or her School Counselor or Building Principal. Any student who is uncomfortable for any reason in bringing the matter to the attention of his or her School Counselor or Building Principal should report the matter to the Superintendent of Schools. The names, addresses, telephone numbers and office and/or available hours of individuals in these positions are located in the offices of the Building Principal and Superintendent of Schools. If the notification is made to anyone other than the Superintendent of Schools, then the recipient of said notification shall immediately inform the Superintendent of Schools of the allegation of sexual harassment (unless the allegation of sexual harassment is made against the Superintendent of Schools, in which case the recipient of said notification shall immediately inform the President of the Board of Education).

The informal procedure should be flexible and the best course of action in any case will depend on various factors. However, a student reporting sexual-harassment should be aware that the District may decide it is necessary to take action to address the harassment beyond an informal discussion.

2. Formal Procedure. The following steps should be followed to make a formal complaint about sexual harassment.

(a) Notification. A student who believes he or she has been subjected to sexual harassment by any employee⁶, agent or other student of the Whitehall Central School District should report the incident to his or her Building Principal. Any student who is uncomfortable for any reason in bringing the matter to the attention of his or her Building Principal should report the matter to the Superintendent of Schools. The names, addresses, telephone numbers and office and/or available hours of individuals in these positions are located in the offices of the Building Principal and the Superintendent of Schools. In the case of a report made to anyone other than the Superintendent of Schools, the recipient of the complaint shall give notice of the complaint to the Superintendent of Schools immediately (unless the allegation of sexual harassment is made against the Superintendent of Schools, in which case the recipient of said notification shall immediately inform the President of the Board of Education). Students are permitted to be accompanied by a friend, teacher, relative, guardian, or parent when making a claim of sexual harassment. If a parent of a student of the District believes that his/her son/daughter has been subjected to sexual harassment, then (s)he should follow the above referenced reporting procedure.

(b) Description of Misconduct. An accurate record of allegedly objectionable behavior is necessary to resolve a complaint of sexual harassment. All allegations of sexual harassment must be reduced to writing by either the complainant or the recipient of the complaint.

(c) Time for Reporting a Complaint. Prompt reporting of complaints is strongly encouraged. While no time limits for filing complaints are contained in this policy, the accurate resolution of sexual harassment complaints will be expedited by the timely filing of claims. Further, a complainant should be aware that applicable statutes of limitations do constrain the time for instituting outside legal action.

(d) Protection Against Retaliation. The District will not retaliate against any student who files a sexual harassment complaint in good faith. Retaliation is a very serious violation of this policy and should be reported immediately. Any employee⁶, agent or student of the District found to have retaliated against a student for good faith reporting of sexual harassment will be subject to appropriate disciplinary action, up to and including discharge from employment for employees⁶ and agents, and up to and including suspension for students in accordance with New York State Education Law.

3. The School District will promptly investigate all allegations of sexual harassment in as confidential and sensitive a manner as possible.

4. The student submitting a complaint of sexual harassment and the alleged harasser shall be notified of the results of the investigation.

5. Any supervisor, administrator, teacher, employee⁶, agent or student of the District found to have engaged in sexual harassment of any student shall be subject to appropriate disciplinary action, up to and including discharge from employment for employees⁶ and agents, and up to and including suspension from school for students in accordance with New York State Education Law.

C. Appeal.

Any employee⁶ or student who wishes to appeal investigation results that there is or is not sexual harassment may do so within ten (10) school days of receipt of those results. Such appeal must be made in writing to the Board of Education or its designee. The employee⁶ or student shall be entitled to present evidence as to why the investigation results are incorrect. Following a review of that evidence, as well as the information obtained in the investigation process and conclusions derived therefrom, the Board of Education or its designee shall render a decision. This decision shall be final and binding.

D. Right to Alternative Complaint Procedures.

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

Section 5: Questions

Any questions by employees⁶ or students of the District about this policy or potential sexual harassment should be brought to the attention of the Superintendent of Schools, or other persons listed above. The names, addresses, telephone numbers and office and/or available hours of individuals in these positions are located in the offices of the Building Principal and Superintendent of Schools.

Any questions regarding sexual harassment and compliance with Title IX of the Education Amendments of 1972 may also be brought to the attention of the Office of Civil Rights, Department of Education, Washington, D.C. 20202.

Section 6: Harassment/Bullying

“Harassment/bullying” means the creation of a hostile environment by conduct or by threats, intimidation or abuse, including cyberbullying⁹ as defined in Education Law §11(8), that either: (a) has or would have the effect of unreasonably and substantially interfering with an employee⁶ or student’s educational performance, opportunities or benefits, or mental, emotional and/or physical well-being, including conduct, threats, intimidation or abuse that reasonably causes or would reasonably be expected to cause emotional harm; or (b) reasonably causes or would reasonably be expected to cause physical injury to an employee⁶ or student or to cause a either to fear for his or her physical safety. (c) Such definition shall include acts of harassment or bullying that occur: on school property¹, at a school function³, or off school property¹ where such acts create or would foreseeably create a risk of substantial disruption within the school environment, where it is foreseeable that the conduct, threats, intimidation or abuse might reach school property¹.

For purposes of this definition, the term “threats, intimidation or abuse” shall include verbal and non-verbal actions. (Education Law §11[7])

This conduct will not be tolerated in the Whitehall Central School District. The District will promptly investigate any and all allegations of bullying and harassment. Consequences may include any or all of the following; in accordance with the District code of conduct.

- Verbal and/or written warning or reprimand.
- Principal detention.

- Referral to police.
- Suspension out of school.

Section 7: Definitions

1. “School Property” means in or within any building, structure, athletic playing field, playground, parking lot, or land contained within the real property boundary line of a public elementary or secondary school; or in or on a school bus² (Education Law §11[1]).
2. “School Bus” means every motor vehicle owned by a public or governmental agency or private school and operated for the transportation of pupils, children of pupils, teachers and other persons acting in a supervisory capacity, to or from school or school activities, or, privately owned and operated for compensation for the transportation of pupils, children of pupils, teachers and other persons acting in a supervisory capacity to or from school or school activities (Education Law §11[1] and Vehicle and Traffic Law §142).
3. “School Function” means a school-sponsored extra-curricular event or activity (Education §11[2]).
4. “Disability” means (a) a physical, mental or medical impairment resulting from anatomical, physiological, genetic or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques or (b) a record of such an impairment or (c) a condition regarded by others as such an impairment, provided, however, that in all provisions of this article dealing with employment, the term must be limited to disabilities which, upon the provision of reasonable accommodations, do not prevent the complainant from performing in a reasonable manner the activities involved in the job or occupation sought or held (Education Law §11[4] and Executive Law §292[21]).
5. “Discrimination” means discrimination against any student by a student or students and/or employee⁶ or employees⁶ on school property¹ or at a school function³ including, but not limited to, discrimination based on a person’s actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability⁴, sexual orientation⁸, gender⁷ or sex.
6. “Employee” means any person receiving compensation from a school district or employee of a contracted service provider or worker placed within the school under a public assistance employment program, pursuant to title 9-B of article 5 of the Social Services Law, and consistent with the provisions of such title for the provision of services to such district, its students or employees, directly or through contract, whereby such services performed by such person involve direct student contact (Education Law §§11[4] and 1125[3]).
7. “Gender” means a person’s actual or perceived sex and includes a person’s gender identity or expression (Education Law §11[6]).
8. “Sexual Orientation” means actual or perceived heterosexuality, homosexuality, or bisexuality (Education Law §11[5]).
9. “Cyberbullying” means harassment/bullying, as defined above, through any form of electronic communication.