

FIT Academy

413 Harassment and Violence Prohibition Policy

I. PURPOSE

The purpose of this policy is to maintain a positive, safe learning and working environment for students and staff of FIT Academy that is free from harassment and violence based upon their actual or perceived sex/gender, sexual orientation, race, color, creed, national origin, religion, disability, receipt of public assistance, or marital status and age.

II. GENERAL STATEMENT OF POLICY

It will be a violation of this policy for any student or school employee to harass a student or school employee through conduct (e.g., physical, verbal, graphic or written) that is based upon that student or employee's actual or perceived race, color, creed, national origin, religion, sex/gender, sexual orientation, disability, public assistance, or marital status or age [protected class] as defined by this policy. For purposes of this policy, a school employee includes school board members, school employees, agents, volunteers, contractors, or persons subject to the supervision and control of the school.

It will be a violation of this policy for any student or school employee to inflict, threaten to inflict, or attempt to inflict violence based upon a student or school employee's actual or perceived protected class as defined by this policy.

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III. DEFINITIONS

The following definitions, which have been modified for purposes of this policy, are found in the Minnesota Human Rights Act. Please note that there is not a definition for every protected class.

- A. Disability. "Disability" means any condition or characteristic that renders a person a disabled person. A disabled person is any person who (1) has a physical, sensory, or mental impairment which materially limits one or more major life activities; (2) has a record of such an impairment; or (3) is regarded as having such an impairment."¹

¹ This includes students with an IFSP, IEP, and students who qualify for special education and related aids and services under Section 504 of the Rehabilitation Act.

- B. Discriminate.** “The term "discriminate" includes segregate or separate and, for purposes of discrimination based on sex, it includes sexual harassment.”
- C. Educational institution.** “Educational institution" means a public or private institution and includes an academy, college, elementary or secondary school, extension course, kindergarten, nursery, school system and a business, nursing, professional, secretarial, technical, vocational school, and includes an agent of an educational institution.”
- D. National origin.** “"National origin" means the place of birth of an individual or of any of the individual's lineal ancestors.”²
- E. Sexual harassment.** “Sexual harassment” includes unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact or other verbal or physical conduct or communication of a sexual nature when:
 1. submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining employment, ... [or] education...;
 2. submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's employment, ...[or] education...; or
 3. that conduct or communication has the purpose or effect of substantially interfering with an individual's employment, ...[or] education..., or creating an intimidating, hostile, or offensive employment, ...[or] educational... environment.”
- F. Sexual orientation.** "Sexual orientation" means having or being perceived as having an emotional, physical, or sexual attachment to another person without regard to the sex of that person or having or being perceived as having an orientation for such attachment, or having or being perceived as having a self-image or identity not traditionally associated with one's biological maleness or femaleness.

IV. HARASSMENT AND VIOLENCE GENERAL APPLICABILITY

- A.** The antidiscrimination laws apply to all of the academic and nonacademic (e.g. athletic, and extracurricular) programs of FIT ACADEMY, whether conducted in FIT ACADEMY facilities or elsewhere.
- B.** For purposes of this policy, any student who is harassed or discriminated against, including subject to violence, by peers or FIT ACADEMY employees based upon that student’s actual or perceived sex/gender, sexual orientation, race, color, creed, national origin, religion, disability, receipt of public assistance, or marital status and age [protected class] may file a complaint as described more fully in section V below.
- C.** For purposes of this policy, any FIT ACADEMY employee who is harassed or discriminated against, including violence, by students or other FIT ACADEMY employees based upon that employee’s actual or perceived sex/gender, sexual orientation,

² This includes harassment of students born in the United States who have relatives that are from other countries.

race, color, creed, national origin, religion, disability, receipt of public assistance, or marital status and age may file a complaint as described more fully in section V below.

- D. The alleged harassment/violence consists of harassing conduct (e.g. physical, verbal, graphic, or written verbal or physical) based upon that student's actual or perceived protected class that interferes or limits the ability of that student to participate in, enjoy, or benefit from the education program, including athletics and extracurricular activities.
- E. The alleged harassment/violence may not be directed at a particular person, but may instead consist of harassing conduct (e.g. physical, verbal, graphic, or written) that creates a hostile environment for students based upon actual or perceived protected class that interferes with or limits the student's ability to participate in, enjoy, or benefit from the academic and nonacademic programs, including athletics and extracurricular activities.

V. DESCRIPTION OF HARASSMENT BASED UPON A PERSON'S PERCEIVED OR ACTUAL PROTECTED CLASS

- A. Harassment is unwelcome conduct that is based upon actual or perceived sex/gender, sexual orientation, race, color, creed, national origin, religion, disability, receipt of public assistance, or marital status and age.
 - 1. Harassing conduct may take many forms, including verbal acts and name-calling, as well as nonverbal behavior, such as graphic and written statements, or conduct that is physically threatening, harmful, or humiliating.
 - 2. It is unwelcome if the student or employee did not request or invite it and considered the conduct to be undesirable or offensive.
 - 3. The conduct is considered harassment if it creates a hostile environment by interfering with or denying a student's participation in or receipt of benefits, services, or opportunities in FIT ACADEMY's programs.
- B. Sexual harassment based upon sex/gender and/or sexual orientation.
 - 1. Sexual conduct that is unwelcome.
 - a. It is unwelcome if the student or employee did not request or invite it and considered the conduct undesirable or offensive.
 - b. A student's submission or failure to complain does not mean that the conduct was welcome – look at circumstances.
- C. Sexual violence: Sexual violence is a physical act of aggression or force or the threat thereof which involves the touching of another's intimate parts, or forcing a person to touch any person's intimate parts. Intimate parts, as defined in Minnesota Statute, includes the primary genital area, groin, inner thigh, buttocks or breast, as well as the clothing covering these areas.

1. Sexual violence includes rape, sexual assault, and dating violence. This includes coerced sexual intercourse or other sexual acts. The physical act is considered nonconsensual if a person is incapable of giving consent due to alcohol or drug use or due to an intellectual or other disability.
2. Sexual violence includes touching, patting, grabbing, or pinching another student's or employee's intimate parts of the clothing covering the intimate parts.
3. Sexual violence includes coercing or forcing or attempting to coerce or force a student or employee to touch anyone's intimate parts.
4. A police report does not relieve the school of its responsibilities under Title IX.

D. Assault: Assault, as defined in state statute is:

1. an act done with intent to cause fear in another of immediate bodily harm or death; or
2. the intentional infliction of or attempt to inflict bodily harm upon another.

E. Racial, color, creed or national origin harassment/violence.

1. Intimidation or abusive behavior toward a student, based on perceived or actual race, color, creed or national origin, that creates a hostile environment by interfering with or denying a student's participation in or receipt of benefits, services, or opportunities in FIT ACADEMY's programs.
2. Racial violence: Racial violence is a physical act of aggression or force, or the threat thereof, which is directed toward a student or employee based upon their perceived or actual race, color, creed, or national origin.

F. Religious harassment/violence.

1. Intimidation or abusive behavior toward a student based on perceived or actual religious beliefs that create a hostile environment by interfering with or denying a student's participation in or receipt of benefits, services, or opportunities in FIT ACADEMY's programs.
2. Religious violence is the threat of or an actual physical act of aggression or force which is directed toward a student or employee based upon their perceived or actual religion.

G. Disability harassment.

1. Intimidation or abusive behavior toward a student based on disability that creates a hostile environment by interfering with or denying a student's participation in or receipt of benefits, services, or opportunities in FIT ACADEMY's programs.
2. Disability harassment also may deny a student with a disability a free and appropriate public education (FAPE). Harassment of a student based on disability may decrease the student's ability to benefit from his or her education and amount to a denial of FAPE.

VI. REPORTING PROCEDURES

- A.** The adoption and implementation of a proper reporting system can help FIT ACADEMY comply with the Minnesota Human Rights Act by allowing FIT ACADEMY to promptly address allegations of harassment and violence.
- B.** Pursuant to Title IX, each FIT ACADEMY must designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under the regulations, including Title IX complaint investigation (Title IX Coordinator). 34 C.F.R., section 106.8(a). FIT ACADEMY must also publish grievance procedures providing for prompt and equitable resolution of sex discrimination complaints, including complaints of sexual harassment. In addition, under Section 504 and Title II, FIT ACADEMYs are also required to have grievance procedures to address disability harassment.
- C.** Minnesota Statute requires that FIT ACADEMY have reporting procedures for sexual, religious, and racial harassment and/or violence complaints.
 - 1. For purposes of meeting the state reporting requirements, the following reporting procedure will be made available for students and staff who wish to report an incident or incidents that may involve harassment or violence based upon actual or perceived sex/gender, sexual orientation, race, color, creed, national origin, religion, disability, receipt of public assistance, or marital status and age.
 - 2. Designated FIT ACADEMY person to receive oral or written complaints/reports of actual or perceived sex/gender, sexual orientation, race, color, creed, national origin, religion, disability, receipt of public assistance, or marital status and age.
- D.** Human Rights Officer Designation.
 - 1. The school board hereby designates the Executive Director as FIT ACADEMY human rights officer(s) to receive reports or complaints of harassment or violence based upon actual or perceived sex/gender, sexual orientation, race, color, creed, national origin, religion, disability, receipt of public assistance, or marital status and age. If the complaint involves one of the designated human rights officers, the complaint will be filed directly with the board chair.
- E.** FIT ACADEMY will conspicuously post the name of the human rights officer and board chair including mailing addresses and telephone numbers.
 - 1. The Human Rights Officer is Claud Allaire, callaire@fitacademymn.org. Telephone: 952-847-3798
 - 2. The Board Chair is Jan Markison, jmarkison@fitacademymn.org, 612-240-5236.
- F.** These reporting procedures are not intended to prevent a person from reporting harassment or violence incident(s) to another school official.
 - 1. The school official must immediately notify the Executive Director, who is then responsible to submit the oral or written complaint/report to the human rights officer

- without screening or investigating the credibility of the report. If the school Executive Director is not available on the date of the report, then the school official must forward the oral or written report/complaint directly to the human rights officer.
2. If the report was given verbally, the Executive Director will personally reduce it to written form within 24 hours and forward it to the human rights officer.
 - a. If the school Executive Director fails to forward any harassment or violence report or complaint (written or verbal) to the human rights officer within 24 hours, the Executive Director will be subject to disciplinary action.
 3. If the complaint involves the Executive Director, the complaint will be made or filed directly with the school board chair by the school official or reporting party or complainant.

- G.** The human rights officer may request, but not insist, upon a written complaint. FIT ACADEMY encourages the reporting party to complete the complaint form for written complaints. It is available from the Executive Director or FIT ACADEMY office. Alternative means of filing a complaint, such as through a personal interview or by tape recording, will be made available upon request for qualified persons with a disability.
- H.** The complaint (verbal or written) should be reported to a school official immediately, or within 30 calendar days whenever possible, of the alleged violation. FIT ACADEMY will accept reports of alleged incidents that are older than 30 calendar days; however, delays between the date of the alleged incident and the reporting date may make investigations more difficult.

VII. INVESTIGATION

- A.** The human rights officer, upon receipt of a complaint alleging discrimination or harassment toward an employee or student, will promptly undertake an investigation if deemed appropriate. The Title IX coordinator may conduct the investigation complaints of sexual harassment, the 504 coordinator for complaints of disability harassment, or the human rights officer for other types of alleged harassment and violence covered by this policy. The Title IX coordinator/504 coordinator or human rights officer may designate a neutral third party to conduct the investigation. The investigation will be completed within 30 calendar days from receipt of the complaint, unless impracticable.
- B.** The investigation may consist of personal interviews with the complainant, the individual(s) against whom the complaint is filed, and others who may have knowledge of the alleged incident(s) or circumstances giving rise to the complaint. The investigation may also consist of any other methods and documents deemed pertinent by the investigator.
- C.** In determining whether alleged conduct constitutes a violation of this policy, FIT ACADEMY will consider the facts and the surrounding circumstances, such as the nature of the behavior, past incidents or continuing patterns of behavior, the relationships between the parties involved, and the context in which the alleged incident occurred.

- D.** FIT ACADEMY may take immediate steps to protect the parties involved in the complaint process, pending completion of an investigation of alleged unlawful discrimination or harassment of an employee or student.
1. Upon completion of the investigation, FIT ACADEMY or neutral third party designated investigator will make a written report to the human rights officer. If the complaint involves the human rights officer, the report must be filed directly with the superintendent. If the complaint involves the superintendent, the report must be filed directly with the school board. The report will include the facts, a determination of whether the allegations have been substantiated and whether a violation of this policy has occurred, as well as a description of any proposed resolution which may include alternate dispute resolution.
 2. Upon completion of the investigation, the human rights officer will inform the complainant/reporter of his or her right to review the written report at the school building where the complainant/reporter is employed or enrolled, in accordance with state and federal law regarding data or records privacy.
 3. If the complainant/reporter is a student, the human rights officer will inform the parent/guardian of his or her right to review the written report at the school building where the student reporter is enrolled, in accordance with state and federal law regarding data or records privacy.
 4. FIT ACADEMY must comply with federal and state law pertaining to retention of records.

VIII. APPEAL

If the grievance has not been resolved to the satisfaction of the complainant/reporter, s/he may appeal to the human rights officer within ten (10) school days of receipt of the findings of FIT ACADEMY investigation. The FIT ACADEMY investigator will conduct a review of the appeal and, within ten (10) school days of receipt of the appeal, will affirm, reverse, or modify the findings of the report. The decision of FIT ACADEMY investigator is final, and action will occur as addressed in VIII below.

IX. FIT ACADEMY ACTION

- A.** Upon conclusion of the investigation and receipt of the findings, FIT ACADEMY will take appropriate and effective action. If the investigator determined that a violation of this policy has occurred, such action may include, but is not limited to, warning, suspension, exclusion, expulsion, transfer, remediation, termination or discharge. Actions may also include alternative dispute resolution, including restorative justice programs, school or school wide training, counseling, and class transfer. FIT ACADEMY action taken for violation of this policy will be consistent with the requirements of applicable collective bargaining agreements, state and federal law, and FIT ACADEMY policies.
- B.** The result of FIT ACADEMY's investigation of each complaint filed under these procedures will be reported in writing to the complainant by FIT ACADEMY in accordance with state and federal law regarding data or records privacy.

X. REPRISAL

FIT ACADEMY will take appropriate action against any student, teacher, administrator or other school personnel who retaliates against any person who reports alleged unlawful harassment toward an employee or student or any person who testifies, assists, participates in an investigation or hearing related to alleged unlawful harassment covered by this policy. Reprisal also includes retaliation against a student or school employee who associates with a person or group or persons who are disabled or who are of different race, color, creed, religion, sexual orientation, or national origin. Retaliation includes, but is not limited to, any form of intimidation or harassment. Reprisal is also prohibited based upon a request for a religious or disability accommodation.

XI. CONFLICT OF INTEREST

If there is a conflict of interest with respect to any party affected by this policy, appropriate accommodations will be made, such as, but not limited to, appointing or contracting with a neutral third party investigator to conduct the investigation, or recusal from the process by the person for whom a conflict or potential conflict of interest exists.

XII. HARASSMENT OR VIOLENCE AS ABUSE

- A.** Under certain circumstances, alleged harassment or violence may also be possible abuse under Minnesota law. If so, the duties of mandatory reporting under Minnesota Statutes may be applicable.
- B.** Nothing in this policy will prohibit FIT ACADEMY from taking immediate action to protect victims of alleged harassment, violence, or abuse.

XIII. DISSEMINATION OF POLICY AND TRAINING

- A.** This policy must be conspicuously posted throughout each school building in areas accessible to students and staff members.
- B.** This policy must be given to each FIT ACADEMY employee and independent contractor at the time of entering into the person's employment contract.
- C.** This policy must be included in each school's student handbook on school policies.
- D.** FIT ACADEMY has developed the following process for discussing the school's harassment and violence policy with students and FIT ACADEMY employees:
Presentation at August workshops.
- E.** The school board will review this policy annually for compliance with state and federal law.

- F. FIT ACADEMY will post this policy on its website and ensure that it is easily accessible to view and download.

XIV. 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 agencies below, filing a report with a law enforcement agency, or initiating action in state or federal court. For claims of unlawful discrimination/harassment:

Minnesota Department of Human Rights
Freeman Building
625 Robert Street North
St. Paul, MN 55155
toll free: 800.657.3704
tty: 651.296.1283
fax: 651.296.9042

<http://www.humanrights.state.mn.us>

U.S. Department of Education
Office for Civil rights, Region V
500 W. Madison Street- Suite 1475
Chicago IL 60661
Tel: 312.730.1560
TDD: 312.730.1609

Employment Discrimination/Harassment
Equal Employment Opportunity Commission (EEOC)
330 South 2nd Ave., Room 430
Minneapolis, MN 55401
(612) 335-4040
1-800-669-4000
Fax: (612) 335-4044
TTY: (612) 335-4045

www.eeoc.gov/minneapolis/index.html

Cross References: FIT 522 (Student Sex Nondiscrimination)