

6.3 Student to Student Sexual Misconduct Policy

STUDENT TO STUDENT SEXUAL MISCONDUCT POLICY

Iowa School for the Deaf Iowa Braille and Sight Saving School

This policy governs the practices related to student to student sexual misconduct for Iowa Braille and Sight Saving School, Iowa School for the Deaf and special schools programs including the Statewide System for Vision Services. The schools and programs will be referred to as special schools throughout this document.

It is the goal of the special schools to maintain positive learning and care environments that are free from sexual misconduct, harassment, abuse, exploitation, intimidation and assault. No student shall engage in any activities of sexual misconduct, harassment, assault abuse, exploitation or intimidation of another student. Any student found in violation of this policy will be subject to disciplinary measures.

It is the purpose and intent of this policy and these procedures to create a uniform procedure for the reporting, investigation, and disposition of allegations of abuse of students directly resulting from the actions of another student. This policy shall not be construed to prevent a victim from seeking administrative or legal remedies under any applicable provision of law.

For the purpose of this policy the alleged act(s) of sexual misconduct which include(s) harassment, abuse, exploitation, intimidation and assault must be alleged to have occurred on school grounds, on school time, on a school-sponsored activity, or in a school-related context in order to be investigated by school personnel. Allegations of sexual misconduct occurring outside of the school jurisdiction may be referred to the appropriate legal authorities. If an investigation reveals that there is a reasonable suspicion that a criminal act of sexual misconduct occurred (e.g. A sexual assault that is punishable by law) a referral may be made by the school authorities to local legal authorities for their further investigation.

Student to student sexual misconduct applies to students of the special schools and minor age students associated with students from the programs. Allegations of sexual misconduct toward students by school employees and other adults are governed by Procedure for Reporting Suspected Child Abuse, Dependent Adult Abuse or Abuse of a Student by a School Employee. The scope of this Student Sexual Misconduct policy is limited to protecting children in prekindergarten and K-12 educational programs and associated programs of the special schools.

“Sexual abuse” means any sexual offense as defined by Iowa Code chapter 709 or Iowa Code section 728.12(1). The term encompasses acts of inappropriate intentional sexual behavior by another student toward a student. Student to student acts of sexual harassment are also governed by policy on Initiations, Hazing, Bullying or Harassment and the accompanying procedure.

Sexual activity with a minor or between minors, even if consensual, may be determined to be sexual assault or sexual misconduct. Sexual assault may have occurred if one of the parties used physical force to make the other have sexual contact with him/her. Sexual assault may have occurred if one threatened the other to have sexual contact with him/her. Although these actions are not all inclusive, these are actions that when alleged will lead to investigation. The requirements of this policy are not discriminatory regardless of race, color, national origin, religion, sex, sexual orientation, gender identity, age, marital status or disability.

The special schools prohibits retaliatory action against any person filing a complaint of student to student sexual misconduct or against any person cooperating in the investigation of any charge of student to student sexual misconduct. This includes any form of intimidation, threats or harassment. The special schools prohibits an individual from knowingly filing false charges of student to student sexual misconduct. Acts of retaliation and of knowingly filing false charges of student to student sexual misconduct constitute violations of the Student Code, of the Employee Handbook and of this policy and will result in disciplinary action.

Through the investigation process the special schools personnel will make all reasonable efforts to protect the confidentiality of the alleged victim and the alleged violator. The special school's ability to protect the confidentiality of the involved students will be determined by the degree of threat or of a clear and present danger to the victim or other members of the special school community posed by the accused. To the greatest extent possible, based on an analysis of safety risk, special schools shall adhere to the confidentiality requirements set forth through the Individuals with Disabilities Act and the Family Educational Rights and privacy Act (FERPA).

The Superintendent's office including the Superintendent or designee, the Regional Director or the Director of Student Life, will coordinate all student to student sexual misconduct allegation actions including coordination of contact information, communication, investigation and reporting.

Support for the Alleged Victim

Of primary concern is the support for the alleged victim of the sexual offense. When an offense is learned of or reported the student victim's parent or guardian will be contacted immediately. The alleged victim and parent(s) will be offered the support and assistance of a trained sexual assault advocate. The parents of the victim will be encouraged to report to law enforcement and will be informed of procedures for initiating civil action. The victim and parent(s) will be provided physical and emotional support through a trained advocate.

The alleged victim and parent will be informed of victim rights which include:

- Information on reporting to law enforcement that clearly informs the victim and parent(s) of this option, if the offense had not yet been reported by school personnel;

- An opportunity for the parent and student, when appropriate and at the parent discretion, to participate in campus disciplinary hearings;
- The right of the parent and student to be accompanied by an advisor during the investigation and hearing;
- The right of the parent or student victim to provide a victim's impact statement if the accused is found in violation; and
- To the extent allowed by confidentiality laws governing special education, the right of the parent and student victim to know the outcome of the hearing, including determination and sanction imposed.

It is critical to the investigation process that incidents of student to student sexual misconduct be reported immediately and certainly within twenty four hours of the incident. Recipients of the report must report immediately to the Superintendent. Reports beyond that time frame will be investigated but the ability to determine what may have occurred will be compromised by the passage of time.

The following options are available to insure the safety of a student who might be in imminent danger of continued contact during the investigation process:

- a. Temporary removal of the alleged student victim from contact with the other student.
- b. Temporary removal of the alleged student violator from service
- c. The accused student may be restricted in activity until it has been determined if a reportable offense has occurred. If a reportable offense has occurred, the student may be recommended for change of IEP or placement review.
- d. If the accused individual is not another campus based student, the individual's presence on campus will be excluded by means of legal enforcement. A permanent exclusion from campus will be in effect if the accused is found guilty.
- e. Any other appropriate action permissible under Iowa and special education law to ensure the student's safety.

Duties of Investigator – Student to Student Sexual Misconduct Allegations

- (1) Upon receipt of the report, the investigator shall make and provide a copy of the report to the person filing and to the student's parent or guardian if different from the person filing.
- (2) Upon receipt of a report of sexual misconduct or other notice of an allegation of sexual misconduct, the investigator shall review the facts alleged to determine that the allegations, if true, support the exercise of jurisdiction.
- (3) The investigator shall notify the parent, guardian, or legal custodian of a child, in pre kindergarten through grade six, of the date and time of the interview and of the right to be present or to see and hear the interview or send a representative in the parent's place. The investigator shall interview the alleged victim as soon as possible, but in no case later than five days from the receipt of a report or notice of the allegation of sexual abuse. The investigator may record the interview electronically. The investigator shall exercise prudent discretion in the investigative process to preserve the privacy interests

of the individuals involved. To the maximum extent possible, the investigator shall maintain the confidentiality of the report.

The designated investigator's role is not to determine the guilt or innocence. The designated investigator shall determine, by a preponderance of the evidence, and based upon the investigator's training and experience and the credibility of the student, whether it is likely that an incident took place.

If, in the investigator's opinion, it is likely that an incident in the nature of a criminal sexual act occurred, the investigator shall temporarily defer further investigation and shall immediately contact appropriate law enforcement officials, notifying the student's parent or guardian and the person filing the report, if different from the student's parent or guardian, of the action taken.

If, in the investigator's opinion, an incident occurred that would not constitute a criminal sexual act but that was in the nature of inappropriate, intentional sexual behavior by the student, toward a student, further investigation is warranted. Prior to interviewing any collateral sources who may have knowledge of the circumstance contained in the report the investigator shall provide notice of the impending interview of student witnesses who are in prekindergarten through grade six, to their parent, guardian, or legal custodian, and may provide notice to the parent or guardian of older students, prior to interviewing those students.

If, in the investigator's opinion, the allegation of sexual misconduct is unfounded either because the conduct did not occur or the conduct did not meet the definition of misconduct in these rules, further investigation is not warranted. The investigator shall notify the student's parent or guardian, the person filing the report, if different from the student's parent or guardian, and the parent(s) of the other student named in the report of this conclusion in a written investigative report to the extent permitted by the Family Educational Rights and Privacy Act (FERPA) and the Individuals with Disabilities Education Act (IDEA).

Within 15 calendar days of receipt of the report or notice of alleged sexual misconduct, the designated investigator shall complete a written investigative report.

The written investigative report shall include:

1. The name, age, address, and attendance center of the alleged student victim named in the report.
2. The name and address of the student's parent or guardian and the name and address of the person filing the report, if different from the student's parent or guardian
3. The name and address of the student named in the report as allegedly responsible for the misconduct of the student

4. An identification of the nature, extent, and cause, if known, of any injuries or abuse to the student named in the report
5. A general review of the investigation
6. Any actions taken for the protection and safety of the student
7. A statement that, in the investigator's opinion, the allegations in the report are either:
 - a. Unfounded. (It is not likely that an incident, as defined in these policies and procedures, took place) or
 - b. Founded. (It is likely that an incident took place.)
8. The disposition or current status of the investigation
9. A listing of the options available to the parents or guardian of the student to pursue the allegations. These options include, but are not limited to:
 - a. Contacting law enforcement
 - b. Contacting private counsel for the purpose of filing a civil suit or complaint

The investigator shall retain the original copy of the investigative report. The person filing the report, the parent(s) or guardian(s) of the student named as the victim in the report and the parent(s) or guardian(s) of the named student shall be notified that the investigation has been concluded and of the disposition or anticipated disposition of the case to the extent permitted by the Family Educational Rights and Privacy Act (FERPA) and the Individuals with Disabilities Education Act (IDEA).

Training for Investigators

Annual in-service training will be provided for the designated investigator and the alternate(s).

Training for Employees

Annual in-service of Chapter 102 reporting of abuse of student(s) by school employee(s), student to student sexual misconduct policy, anti-bullying harassment policy and mandatory reporting of child abuse to the Department of Human Services will be provided to all special school employees.

Related Policies and Procedures:

Handbook Section IBS

Sexual Harassment Policy

Grievance Procedure Under Affirmative Action: Race, Ethnicity, Religion, Sex, Sexual Orientation, Gender Identity, Age, Handicap, Title IX, Sexual Harassment

Employee Code of Conduct

Anti-Bullying/Harassment Policy

Student Handbook Provision, Initiations, Hazing, Bullying or Harassment

Procedure For Notification In Case Of Suspected Or Reported Student-To-Student Bullying, Sexual Harassment Or Abuse

Procedure for Reporting Suspected Child Abuse, Dependent Adult Abuse or Abuse of a Student by a School Employee

REGENTS POLICIES

4.30 Policies on Harassment

6.30 Abuse Policy at the Special Schools

6.32 Student Wellness Policy for the Special Schools

6.33 Anti-Bullying/Harassment at the Special Schools

6.34 Illegal Items at the Special Schools or in a Student's Possession <

ISD employee handbook policies:

Section IV E Policy on Harassment and Violence

Section IV F Grievance Procedures

Section IV H Student Staff Relations Policy

Section IV I Procedure for Reporting Suspected or Alleged Child Abuse

Section V Employee Code of Conduct and Right to Grievance and

Appeals

ISD Handbooks (2007)

Child Abuse Reporting Policy

Nondiscrimination Policy

ISD High School Code of Conduct

Students Charged with Criminal Offenses

Harassment and Bullying

Student Grievance Procedure

Guidelines for Success

ISD Rules of Conduct

Discipline Policy

Federal Laws

Family Educational Rights and Privacy Act (FERPA)

Individual with Disabilities Education Act (IDEA)

Title IX