

POLICY

Mary McLeod Bethune Day Academy Public Charter School

Sexual Harassment

I. PURPOSE

By issuing a single, comprehensive policy statement, the Board of Trustees seeks to clarify and reaffirm its commitment to ensuring that all MMBDAPCS employees and students are provided with a work and learning environment that is free of sexual harassment. Sexual harassment is a form of discrimination based on gender or sexual orientation, which is prohibited by this policy in addition to federal law.

II. POSITION

Mary McLeod Bethune Day Academy PCS *will* not condone or tolerate any form of sexual harassment of or by, staff or students. Mary McLeod Bethune Day-Academy PCS is committed to the creation and maintenance of a learning and work environment in which all persons who participate in school programs and activities can do so in an atmosphere free from all forms of sexual harassment. The superintendent is directed to make every effort to make certain that everyone affected by this policy shall be informed of its provisions and also that infractions of it may be in violation of federal/civil and/or criminal laws. It is the intention of Mary McLeod Bethune Day Academy PCS to take whatever action may be needed to prevent, correct, and, if necessary, discipline behavior which violates this policy.

It is the responsibility of every supervisor and principal to recognize acts of sexual harassment and take necessary action to ensure that such instances are addressed swiftly, fairly, and effectively. Consequently, all Mary McLeod Bethune Day Academy PCS administrators, teachers, and staff in schools, offices, and other facilities shall be cognizant of, and responsible for, effectively implementing the sexual harassment complaint resolution procedures established in this policy.

III. DEFINITIONS

Sexual harassment consists of unwelcome sexual advances, requests for sexual favors, and other verbal, graphic, written, or physical conduct of a sexual nature when made by a member of the district staff, student, or member of the public while on district property or while attending a Mary McLeod Bethune Day Academy PCS function, where:

- A. submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment or education; or

- B. submission to or rejection of such conduct *is* used as a basis for *employment* or education decisions affecting such individual; or
- C. such conduct has the purpose or effect of substantially interfering with an individual's educational or work performance, or creating an intimidating, hostile, or offensive employment or educational environment.
- D. Sexual harassment may include, but is not limited to:
 - 1. Suggestive or obscene letters, notes, invitations, e-mails, derogatory comments, slurs, jokes, epithets, assault, touching, fondling; sexual molestation or assault, impeding or blocking movement leering, gestures, display of sexually suggestive objects, posters; or cartoons.
 - 2. Continuing to express sexual interest after being informed that the interest is unwelcome.
 - 3. Implying or withholding support for an appointment, promotion, or change of assignment; suggesting a poor performance report will be prepared; or suggesting probation will be failed. Within the educational environment, actual withholding of or implying that grades earned or deserved would be withheld; suggesting a poor performance evaluation will be prepared; or suggesting a scholarship recommendation or college application will be denied.
 - 4. Coercive sexual behaviors used to control, influence, or affect the career, salary, and/or work environment of another employee. Within the educational environment, engaging in coercive sexual behavior to control, influence, or affect the educational opportunities, grades, and/or learning environment of a student.
 - 5. Offering favors or educational or employment benefits, such as grades or promotions, favorable *duties* or shifts, recommendations, reclassifications, etc., in exchange for sexual favors.
- E. In determining whether the alleged conduct constitutes sexual harassment, consideration shall be given to the record as a whole and to the totality of the- circumstances, including the nature of the sexual advances and the *context in* which the alleged incidents occurred. A single incident may result in violation of this policy.

IV. STANDARDS OF CONDUCT

Between an employee and a student, sexual harassment is any conduct of a sexual nature. Between students, sexual harassment is inappropriate conduct of a sexual nature. Specific definitions follow.

- A. *Standard of Conduct for Employees.* No employee may engage in conduct of a sexual nature with a student at any time or under any circumstances, regardless if the student consents and whether such conduct takes place on • school property or in connection with any school-sponsored activity.
- B. *Standard of Conduct for Students:* Verbal or physical conduct of a sexual nature by one student to another may constitute sexual harassment.

V. REVIEW

This policy shall be reviewed on an on-going basis in accordance with the Board of Trustees.

1.0 Hiring and Employment Policies

1.1 Mary McLeod Bethune Mission Statement

The mission of Mary McLeod Bethune Day Academy Public Charter School (MMBDA) is to implement a high performing day school that provides a challenging academic program in a supportive, parentally involved, and diverse learning environment to enable each student to achieve academic success, talent, and positive social development.

1.2 Equal Employment Opportunity (EEO) Policy

It is the policy of Mary McLeod Bethune Day Academy PCS that no person may be illegally discriminated against in employment by reason of their age, race, creed, color, disability, pregnancy, marital status, sex, citizenship, national origin, ancestry, sexual orientation, arrest record, conviction record, military service, membership in the National Guard, state defense force or any other reserve component of the military forces of the United States, political affiliation, use or nonuse of lawful products off the employer's premises during nonworking hours, declining to attend a meeting or to participate in any communication about religious matters or political matters, the authorized use of family or medical leave or worker's compensation benefits, genetic information, or any other factor prohibited by state or federal law.

Equal Employment Opportunity Complaints

Mary McLeod Bethune Day Academy PCS encourages informal resolution of complaints under this policy. A formal complaint resolution procedure is available, however, to address allegations of violations of the policy in the Mary McLeod Bethune Day Academy PCS.

1.3 Accommodation for Disabilities

Reasonable accommodations shall be made for qualified individuals with a disability, unless such accommodations would impose an undue hardship on the Mary McLeod Bethune Day Academy PCS. A reasonable accommodation is a change or adjustment to job duties or work environment that permits a qualified applicant or employee with a disability to perform the essential functions of a position or enjoy the benefits and privileges of employment compared to those enjoyed by employees without disabilities.

Requests for accommodations under the Americans with Disabilities Act from current employees must be made in writing in accordance with Mary McLeod Bethune Day Academy PCS policy.

1.4 Fair Labor Standards Act

Certain types of workers are exempt from the minimum wage and overtime pay provisions, including bona fide executive, administrative, and professional employees who meet regulatory requirements under the Fair Labor Standards Act [FLSA].

illegal discrimination does not exist in its policies, regulations and operations. Anyone who believes that he or she has been the subject of discrimination or harassment or has knowledge of violations of this policy shall report the matter in accordance with established complaint procedures to their immediate supervisor or the Executive Director. All reports regarding employee discrimination or harassment shall be taken seriously, treated fairly and promptly and thoroughly investigated. Individual privacy shall be protected to the extent possible. There shall be no retaliation against any person who files a complaint under this policy. MMBDA shall take appropriate and necessary action to eliminate employee discrimination or harassment. Actions that result in discrimination on a basis not related to an employee's job performance or those that are determined to be harassment shall be subject to disciplinary action, up to and including dismissal.

All employees have a duty to report incidents of potential discrimination or alleged harassment to their principal, immediate supervisor or designated equal employment officer. Employees who fail to report incidents of potential discrimination or alleged harassment, as described above, may be subject to disciplinary action, up to and including dismissal. In addition, supervisory employees who fail to respond to discrimination or harassment complaints or to act on their knowledge of violation of this policy will likewise be subject to disciplinary action, up to and including dismissal.

1.8 Drug and Alcohol-Free Workplace Policy

MMBDA is committed to maintaining a work environment that is free of drug and alcohol abuse and prohibits the following (not-all-inclusive):

- Use, possession, solicitation, distribution, transfer, sale, dispensation or manufacturing of illegal drugs or alcohol while on duty, while on property owned or managed by MMBDA, while operating any vehicle within the scope of your employment; Reporting to work with the odor of alcoholic beverages on your person and/or behaving in an erratic manner which could reasonably indicate drug or alcohol impairment;
- Refusing to consent to submit to urine, breath, hair or blood sample testing when requested for any reason;
- Failing to adhere to the requirements of any drug or alcohol treatment or counseling program in which the employee is enrolled when such treatment is a condition of continued employment; Failure to notify MMBDA of any arrest for drug and/or alcohol related offenses within five days of the arrest, including D.U.I./D.W.I.;
- Failure to notify MMBDA of any conviction, plea of nolo contendere (i.e., no contest), or deferred application, under any criminal drug statute for violations within five days of conviction;
- Reporting to work or working under the influence of alcohol, illegal drugs, other substance (including over-the-counter and/or prescribed medications) which may affect work performance, alertness, coordination or response, the safety of the employee or others, or threatens the reputation or integrity of MMBDA.

******For complete policy please refer to MMBDA Drug Policy in Policy Handbook Folder******

6.3 Grievance Procedure

MMBDA recognizes the value of a grievance procedure that provides for the timely review of employee grievances in a fair workable manner. A grievance is considered to be any dispute between an employee and the school that impacts an employee's ability to perform his/her job. Although purely personal matters between employees would not ordinarily give rise to a grievance subject to this grievance procedure, any matter that adversely affects an employee's ability to perform his/her job could be the subject of a grievance. Employees shall use the following procedure for resolving disputes regarding employee termination, employee discipline, or workplace safety issues. Employees with contractual grievance procedures shall follow the contractual procedure.

Timeline

A. Informal Grievance Submission:

The employee must discuss any grievance related to discipline or workplace safety with the employee's principal or immediate supervisor prior to filing a formal written grievance in order to informally resolve the issue. Grievances related to termination may proceed straight to the written grievance step.

B. Formal Grievance Submission:

The employee must file a written grievance within fifteen (15) working days of the termination, discipline or actual or reasonable knowledge of the alleged workplace safety issue. "Working day" is defined as any day that the Mary McLeod Bethune Day Academy PCS Business Office is open. The grievance must be in writing.

C. Administrative Response:

The Executive Director (or designee) will meet with the grievant within fifteen (15) working days of receipt of the written grievance. The Executive Director will provide a written response within five (5) working days of the meeting.

D. Board of Trustees Review:

The non-prevailing party may file a request for Board of Trustees review within ten (10) working days of receipt of the Executive Director Response. The Board of Trustees shall make a decision regarding whether or not a hearing will be held within twenty-five (25) working days of the appeal. A written decision will be made within sixty (60) working days of the filing of the appeal.

******All timelines may be extended by mutual agreement******

General Requirements

An employee may only initiate a grievance in writing regarding employee termination, employee discipline or alleged workplace safety issues.

The term "employee termination", as used in this section, shall not include the following:

1. Layoffs;
2. Workforce reduction activities;
3. Voluntary termination including, without limitation, quitting or resignation
4. Job abandonment;
5. End of employment due to disability;
6. Retirement;
7. Non-Renewal;
8. Any other cessation of employment not involving involuntary termination
9. including but not limited to completion of assignment of a temporary, seasonal,
10. contract, daily assignment, substitute, or replacement employment relationship.

The term "employee discipline," shall include any employment action that results in disciplinary suspension without pay, disciplinary reduction in pay or other benefits, or disciplinary demotion. The term "employee discipline", as used in this section, shall not include the following:

- Plans of correction or performance improvement;
- Performance evaluations or reviews;
- Documentation of employee acts and/or omissions in an employment file;
- Oral or written reprimands;
- Administrative suspension with pay;
- Administrative suspension without pay pending investigation of alleged misconduct or nonperformance;
- Non-disciplinary wage, benefit or salary adjustments; or,
- Other non-material employment actions.

The term "workplace safety" as used in this section means any alleged violation of any standard established under state law or rule or federal law or regulation relating to workplace safety.

The Formal Grievance Submission must be in writing and contain:

1. A statement of the pertinent facts surrounding the nature of the grievance.
2. The date the incident occurred.
3. The steps taken to informally resolve the grievance, the individuals involved in the attempted resolution, and the results of such discussions.
4. The specific requested remedy; and,
5. Must include the workplace safety rule alleged to have been violated, if applicable.

The Administration's written response to the grievance must contain:

1. A statement of the date the meeting between the Administration and grievant was held.
2. A decision as to whether the grievance is sustained or denied.
3. In the event the grievance is denied, a statement outlining the timeline to appeal the denial.

Appeals to the Board of Trustees:

The Board of Trustees may decide, in each situation, whether it will review the record and make a decision, assign an independent hearing officer to create a recommendation for the School Board's review, or hold a new hearing and make an independent decision. The manner of review is the sole choice of the School Board. The Board of Trustees' written decision regarding the grievance must contain:

1. A decision as to whether the grievance sustained, denied or modified.

Process

Grievances will be processed per the provided timelines.

- An employee may advance a grievance to the next step if a response is not provided within the designated timeframes.
- An employee may not file or advance a grievance outside of the designated timeframes.
- The Executive Director may advance a grievance to the next step at the written request of either the employee or the supervisor.
- Failure of the employee to adhere to any of the specified timelines within the process shall result in the grievance being denied. The Board of Trustees in its discretion may, however, consider an otherwise untimely grievance at the Board of Trustees level of the grievance procedure.
- Grievance meetings/hearings held during the employee's off-duty hours will not be compensated.
- Granting the requested or agreed upon remedy resolves the grievance.
- The decision of the Board of Trustees is final and not subject to further review.

Consolidation of Grievances

Grievances of the same type, and with similar fact situations, may be consolidated at the discretion of the Administration.



Mary McLeod Bethune Day Academy Public Charter School

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Whistleblower Protections Policy

A whistleblower as defined by this policy is an employee of Mary McLeod Bethune Day Academy PCS who reports an activity that he/she considers to be illegal or dishonest to one or more of the parties specified in this Policy. The whistleblower is not responsible for investigating the activity or for determining fault or corrective measures; appropriate management officials are charged with these responsibilities.

Examples of illegal or dishonest activities are violations of federal, state or local laws; billing for services not performed or for goods not delivered; and other fraudulent financial reporting.

If an employee has knowledge of or a concern of illegal or dishonest fraudulent activity, the employee is to contact his/her immediate supervisor, Executive Director, or the Chair of the Mary McLeod Bethune Day Academy Board of Trustees.. The employee must exercise sound judgment to avoid baseless allegations. An employee who intentionally files a false report of wrongdoing will be subject to discipline up to and including termination.

Whistleblower protections are provided in two important areas -- confidentiality and against retaliation. Insofar as possible, the confidentiality of the whistleblower will be maintained. However, identity may have to be disclosed to conduct a thorough investigation, to comply with the law and to provide accused individuals their legal rights of defense. Mary McLeod Bethune Da Academy PCS will not retaliate against a whistleblower. This includes, but is not limited to, protection from retaliation in the form of an adverse employment action such as termination, compensation decreases, or poor work assignments and threats of physical harm. Any whistleblower who believes he/she is being retaliated against must contact the Executive Director immediately. The right of a whistleblower for protection against retaliation does not include immunity for any personal wrongdoing that is alleged and investigated.

Defend Trade Secrets Act (DTSA) Compliance: "Immunity from Liability for Confidential Disclosure of a Trade Secret to the Government or in a Court Filing:

(1) Immunity—An individual shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that—(A) is made—(i) in confidence to a federal, state or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

(2) Use of Trade Secret Information in Anti-Retaliation Lawsuit—An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual—(A) files any document containing the trade secret under seal; and (B) does not disclose the trade secret, except pursuant to court order."

All reports of illegal and dishonest activities will be promptly submitted to the Board of Trustees Chair who is responsible for investigating and coordinating corrective action.

Employees with any questions regarding this policy should contact the Human Resources office.