

Marlborough

Harassment, Discrimination, and Retaliation Prevention Policy

Revised October 2022

1. **Introduction and Overarching Rules**

The School prohibits harassment, discrimination or retaliation against an applicant, employee, contractor, intern, or volunteer, by an employee, student, board member, or an individual with whom the School has a business, contractual, or professional relationship, such as volunteers, independent contractors, interns, or vendors, on the basis of any protected classification or protected activity, as defined in this policy. Harassment, discrimination, and retaliation as defined in this policy is strictly prohibited and will not be tolerated. This policy applies to all terms and conditions of employment, internships, and volunteer opportunities, including, but not limited to, selection, hiring, placement, promotion, disciplinary action, layoff, transfer, leave of absence, compensation, and training. A single act can violate this policy and provide grounds for discipline or other appropriate sanctions. Conduct need not be or rise to the level of a violation of law in order to violate this policy. Similarly, a violation of this policy does not necessarily qualify as a violation of law and there are many circumstances in which a violation of this policy would not also constitute a violation of law. If an employee is in doubt as to whether any particular conduct may violate this policy, do not engage in the conduct, and seek guidance from your supervisor, the Manager of Human Resources, or the Head of School.

Definitions

Protected Classifications

This policy prohibits harassment or discrimination because of an individual's protected classification(s). A "protected classification" includes race (including traits historically associated with race, including, but not limited to, hair texture and protective hairstyles), color, religious creed (including religious observance or practices, such as dress or grooming practices), age (40 years and over), ancestry, national origin, citizenship, marital status, physical or mental disability, sex (including gender, gender identity, gender expression, transgender, pregnancy, childbirth, breastfeeding, or related medical conditions), sexual orientation (including heterosexuality, homosexuality, and bisexuality), genetic characteristics, genetic information, veteran or military status, and any other status protected by applicable local, state or federal laws.

Policy Coverage

This policy prohibits employees or individuals with whom the School has a business, contractual, or professional relationship, such as unpaid interns, volunteers, independent contractors, or vendors, from harassing or discriminating against applicants, employees, contractors, unpaid interns, or volunteers ("Covered Persons"), because of (1) a Covered Person's protected classification; (2) the perception of a Covered Person's protected classification, or (3) the protected classification or

perceived protected classification of a person with whom the Covered Person associates. This policy also prohibits retaliation as defined below. There are separate Student Anti-Harassment and Anti-Bullying policies in the Student Handbook of Expectations that apply to harassment and bullying towards students.

Discrimination

This policy, like Marlborough School's Non-Discrimination and Equal Employment Opportunity Policy, also prohibits discrimination. Discrimination means treating a Covered Person differently from other similarly situated individuals at the School, by taking an adverse action against or denying a benefit to that Covered Person, because of the Covered Person's actual or perceived protected classification, or the protected classification or perceived protected classification of a person with whom the Covered Individual associates.

Harassment

Harassment means words or conduct undertaken because of a Covered Person's actual or perceived protected classification, or association with an individual who has an actual or perceived protected classification, which are both objectively and subjectively offensive to another person.

Harassment is not limited to conduct by School employees. Under certain circumstances, harassment can also include conduct by students, or individuals with whom the School has a business, contractual, or professional relationship, such as parents, legal guardians, unpaid interns, volunteers, independent contractors, or vendors. Harassment may include, but is not limited to, the following types of behavior engaged in because of a person's protected classification

- a. Speech: This includes epithets (nicknames and slang terms), derogatory or suggestive comments, propositioning, jokes or slurs, including graphic verbal commentaries about an individual's body, or that identify a person on the basis of his or her protected classification. This might include comments on appearance including dress or physical features, or dress consistent with gender identification, or race-oriented stories and jokes.
- b. Visual acts: This includes derogatory posters, notices, bulletins, cartoons, drawings, sexually suggestive objects, or e-mails on the basis of a protected classification.
- c. Physical acts: This includes assault, offensive touching, impeding or blocking movement, grabbing, patting, leering, making express or implied job related threats or promises in return for submission to physical acts.
- d. Sexual harassment: This is defined as unwelcome sexual advances, requests for sexual favors, and other conduct of a sexual nature where submission is made a term or condition of employment, where submission to or rejection of the conduct is used as the basis for employment decisions, or where the conduct is intended to or actually does unreasonably interfere with an individual's work performance or create an intimidating, hostile, or offensive working environment. This may include conduct between members of the opposite or same gender, and may also include conduct not motivated by sexual desire.

Guidelines for Identifying Harassment

To help clarify what constitutes harassment in violation of this policy, use the following guidelines:

- Harassment includes any conduct which would be “unwelcome” to an individual of the recipient’s same protected classification and which is taken because of the recipient’s protected classification.
- It is no defense that the recipient appears to have voluntarily “consented” to the conduct at issue. A recipient may not protest for many legitimate reasons, including not wishing to be or appear insubordinate or to avoid being ostracized or subjected to retaliation.
- Simply because no one has complained about a joke, gesture, picture, physical contact, or comment does not mean the conduct is welcome. Harassment can evolve over time. The fact no one is complaining now does not preclude anyone from complaining if the conduct is repeated in the future.
- Even visual, verbal, or physical conduct between two employees who appear to welcome the conduct can, depending on the circumstances, constitute harassment of another employee or individual who observes the conduct or learns about the conduct later. Conduct can constitute harassment even if it is not explicitly or specifically directed at a particular individual.
- Conduct can constitute harassment in violation of this policy even if the individual engaging in the conduct has no intention to harass. Even well-intentioned conduct can violate this Policy if the conduct is directed at, or implicates a protected classification, and if an individual of the recipient’s same protected classification would find it offensive (*e.g.*, gifts, excessive attention, endearing nicknames).

The determination of what constitutes harassment will depend on specific facts and the context in which the conduct occurs.

Retaliation

Retaliation means an adverse action taken because an applicant, employee, student, contractor, unpaid intern, or volunteer has reported harassment or discrimination, or has participated in the complaint and investigation process described herein. An “adverse action” may include, but is not limited to, the following actions: (1) disciplinary action; (2) counseling; (3) taking sides because an individual has reported harassment or discrimination; (4) spreading rumors about a complainant or about someone who supports or assists the complainant or who participates in the investigation; (5) shunning or avoiding an individual who reports harassment or discrimination; or (6) making real or implied threats of intimidation to prevent or deter an individual from reporting harassment or discrimination.

2. Policy on Reporting, Investigation, Remedies, and Related Issues with Respect to Harassment, Discrimination, and Retaliation

How to Report a Harassment, Discrimination, or Retaliation Complaint

An employee, applicant, board member, student, contractor, unpaid intern, volunteer, or other Covered Person experiencing or observing harassment, discrimination, or retaliation that is prohibited under this policy, or receiving a report of harassment, discrimination, or retaliation that is prohibited under this policy, should promptly take the following steps, so the complaint can be addressed in a timely manner. No employee needs supervisory approval to make a report. Even without a report, the School may initiate an investigation where it has reason to believe that conduct that violates this policy has occurred.

A. Oral Reports and Written Process:

Oral Report – If a person believes this policy has been violated, he or she should report the conduct to a supervisor, a dean, the Human Resources Manager, the Associate Head of Finance and Administration, or the Head of School. Any supervisory employee who receives such a report must in turn take it to the Head of School. If the complaint received is against the Head of School, the recipient must direct the report to the President of the Board of Trustees.

Written Process – An individual who believes this policy has been violated may provide a written complaint to a supervisor, a dean, the Human Resources Manager, the Associate Head of Finance and Administration, or the Head of School. Any supervisor or management employee who receives such a report must in turn direct it to the Head of School. If the complaint received is against the Head of School, the recipient must direct the report to the President of the Board of Trustees.

The Anonymous Alerts system can be accessed at:

<https://www.anonymousalerts.com/marlboroughschool/>. Reports received through this system will be directed to the Head of School, the Human Resources Manager, or the Associate Head of Finance and Administration.

- B. The Head of School, or the President of the Board of Trustees if the complaint is against the Head of School, together with the Human Resources Manager and the Associate Head of Finance and Administration make up the Filter Group and will review the complaint and determine if it should be forwarded to the appropriate members of the Mandatory Notification Group. The Mandatory Notification Group consists of the Head of School, the Associate Head of Finance and Administration, the President of the Board of Trustees, and the School’s labor and employment attorney. If any individual in the Mandatory Notification Group is the subject of the complaint, that person will not receive the complaint.
- C. Option to Report to Outside Administrative Agencies – applicants, employees, contractors, interns, and volunteers have the option to report harassment, discrimination, or retaliation to the U.S. Equal Employment Opportunity Commission (EEOC) or the California Civil Rights Department (“CRD”). The EEOC can be reached at 1-800-669-4000 or at www.eeoc.gov. The CRD can be reached at 1-800-884-1684 or at <https://calcivilrights.ca.gov/>.

School’s Response to Complaint of Harassment, Discrimination, or Retaliation

After receiving an oral report or written complaint, or when the School otherwise learns of an alleged potential violation of this policy, the Head of School or her designee may request clarification and may then conduct an initial inquiry to determine whether the oral report or written

complaint alleges a potential violation of this policy. If the complaint is against the Head of School, the President of the Board of Trustees or his/her designee may request the clarification and conduct an initial inquiry. To request clarification or conduct an initial inquiry, the Head of School, the President of the Board of Trustees, or their respective designees generally would meet with the individual(s) who made the oral report or written complaint and/or that was reportedly subjected to conduct that violates this policy.

Investigation of the Complaint

If an oral report or written complaint alleges a potential violation of this policy, or the School otherwise learns of an alleged potential violation of this policy, the School will initiate an investigation. The investigation will be conducted by qualified personnel or a qualified outside investigator as determined in the sole discretion of the School.

The Head of School determines how the investigation will be conducted, including deciding whether the School will use an internal or an outside investigator. In the event that a complaint alleging a violation of this policy is either made against the Head of School, or involves a matter in which the Head of School has a conflict of interest, the Board President or his/her designee will take the place of the Head of School for purposes of this section of the policy.

During the investigation, the Head of School or other appropriate School administrator may take interim action as appropriate, such as placing the person alleged to have violated this policy (the “Respondent”) on paid administrative leave or temporarily transferring the Respondent. Generally, no interim action should be taken to change the working conditions of the individual(s) who made the oral report or written complaint or the person (if different) who was reportedly subjected to conduct that violates this policy, unless that individual voluntarily consents to the temporary change.

The investigation will be conducted in a fair, timely, and thorough manner. The School will document and track the investigation for reasonable progress and timely closures. The investigation will normally include interviews with the individual(s) who made the oral report or written complaint, the person (if different) who was reportedly subjected to conduct that violates this policy, the Respondent, and other persons believed to have relevant knowledge concerning the allegations. Interviews may be audio recorded if the investigator provides verbal notice to inform everyone in the room that the interview will be audio recorded. Witnesses will be advised that retaliation against those who make a complaint or who participate in the investigation is prohibited. Whenever possible, the investigation will commence with an interview of the complaining party. Before the investigation is concluded, the Respondent will be informed of the allegations made against him or her, and be provided with an opportunity to respond to the allegations.

Once the information gathering process is completed, the investigator will provide an investigative report containing the investigator’s findings of fact, which will be reasonable conclusions based on the evidence collected. The investigator will make findings based on a “preponderance of the evidence” standard. The report will be shared with School representatives who have a need to know the outcome.

Remedial and Disciplinary Action

Once the investigation is complete, the School will determine if the conduct violates School Policy and if so, the appropriate corrective action. Any employee or student determined to have violated this policy will be subject to disciplinary action, up to and including termination or expulsion. Disciplinary action may also be taken against any supervisor, director or other management employee who condones or ignores potential violations of this policy, or who otherwise fails to take appropriate action to enforce this policy. Because an individual with whom the School has business, contractual, or professional relationship, such as parents, legal guardians, unpaid interns, volunteers, independent contractors, or vendors are not employees of the School, the School may not be able to take corrective action in the same way or to the same extent that it can with respect to School employees or students. However, the School will make appropriate efforts to take corrective action for violations of this policy, or if appropriate, to cause others to take corrective action.

Please be advised that an employee who engages in unlawful harassment may be personally liable for the harassment, regardless of whether the School knew or should have known of the conduct and/or failed to take appropriate corrective action. The School does not consider conduct in violation of this policy to be within the course and scope of employment or the direct consequence of the discharge of one's duties at the School. Accordingly, to the extent permitted by law, the School reserves the right to refuse to provide a defense or pay legal fees and costs or to pay damages assessed against any employee based on conduct in violation of this policy.

Closure

The investigation will be closed in a timely manner. At the conclusion of the investigation, the Head of School or her designee, will notify the Complainant or the individual that was reportedly subjected to conduct that violates this policy in general terms of the outcome of the investigation. If discipline is imposed, typically the level of discipline will not be communicated to the complainant.

3. Confidentiality

The School cannot keep oral reports or written complaints made under this policy completely confidential due to the need to investigate potential violations of this policy and take effective corrective action if applicable, or to comply with other legal requirements. The School will, however, keep oral reports or written complaints made under this policy confidential to the greatest extent possible, disclosing such information only as necessary to investigate the complaint, take interim action, or take corrective action. The School will not disclose a completed investigation result or written report (if any) except as it deems necessary to support a disciplinary action, report internally on an as-needed basis, take remedial action, defend the School in administrative or legal proceedings, comply with a court order, or as otherwise required by law.

4. Responsibilities of Employees and Supervisory Employees

Employees

In order to establish and maintain a professional working environment, while at the same time preventing harassment, discrimination, and retaliation, employees are expected to:

- Set an example of acceptable conduct by not participating in or provoking behavior that violates this policy. You should not be or act angry or insulted if an individual tells you that your behavior is offensive. People have different ethical values and standards and may be offended by behavior you think is proper. Tell the individual you did not realize your behavior was offensive, and immediately cease the conduct.
- Report harassment, discrimination, or retaliation as quickly as possible, whether the employee is the target of the conduct or a witness.
- If an employee witnesses harassment, he or she should tell the individual being harassed that the School has a policy prohibiting such behavior, and that he or she can demand that the harasser cease the behavior. If an employee who witnesses harassment is comfortable doing so, he or she should also tell the harasser to cease the behavior.
- Fully cooperate with the School's investigation of complaints made or other alleged violations under this policy.

Supervisory Employees

In addition to the responsibilities listed above, supervisors, directors, or any other supervisory or management employees are responsible for the following:

- Implementing this policy by taking all complaints seriously and modeling behavior that is consistent with this policy.
- Taking positive steps to eliminate any form of harassment, discrimination, or retaliation observed or brought to his/her attention.
- Taking positive steps to protect against retaliation by any supervisory, management, or other employee.
- Monitoring the work environment and taking appropriate action to stop potential policy violations.
- Following up with those who have complained or were reportedly subjected to conduct that violates this policy, to confirm the conduct complained of has stopped.
- Reporting potential violations of this policy of which he or she becomes aware, regardless of whether a report already has been made or a complaint already has been formally submitted.

Mandatory Training

The School requires that all of its employees receive at least one hour of training on this policy, and that all of its supervisory employees receive at least two hours of training on this policy. Employees will receive training on this policy within six months of being hired, and then at least once every two years. Temporary and seasonal employees hired to work for less than six months will receive training on this policy within 30 calendar days after the hire date or within 100 hours worked, whichever occurs first. The School will schedule training sessions and attendance at the training will be documented. The Civil Rights Division provides free online training courses on preventing

sexual harassment and abusive conduct in the workplace that are available at:
<https://calcivilrights.ca.gov/shpt/>.

Dissemination of Policy

All employees shall receive a copy of this policy when they are hired. The policy may be updated from time to time and redistributed with a form for the employee to sign and return acknowledging that the employee has received, read, and understands this policy.

Student Anti-Harassment Policy

Employees must also familiarize themselves and adhere to the separately published policies related to prohibiting student harassment.

Acknowledgement and Promise to Comply

By signing below, I certify that I have read, understand, and agree to abide by Marlborough's - Harassment, Discrimination, and Retaliation Prevention Policy. I also verify that I have been provided with an opportunity to ask questions about this policy, and state that I understand that if I have questions in the future I can ask them of my supervisor or of the Human Resources Manager.

Employee Name

Employee Signature

Date signed