



( ) Required  
( ) Local  
( ) Notice

## **SEXUAL HARASSMENT OF STUDENTS REGULATION**

This regulation is intended to create and preserve an educational environment free from unlawful sexual harassment on the basis of actual or perceived sex, sexual orientation, and/or gender identity and expression, in furtherance of the district's commitment to provide a healthy and productive environment for all students that promotes respect, dignity and equality. Sexual harassment is defined in the accompanying policy.

### **Unacceptable Conduct**

School-related conduct that the district considers unacceptable and which may constitute sexual harassment includes, but is not limited to, the following:

1. rape, attempted rape, sexual assault, attempted sexual assault, forcible sexual abuse, hazing, dating violence, stalking, domestic violence and other sexual and gender-based activity of a criminal nature as defined under the State Penal Law;
2. unwelcome sexual advances or invitations or requests for sexual activity, including but not limited to those in exchange for grades, preferences, favors, selection for extracurricular activities, homework, etc., or when accompanied by implied or overt threats concerning the target's school evaluations, other benefits or detriments;
3. unwelcome or offensive public sexual display of affection, including kissing, hugging, making out, groping, fondling, petting, inappropriate touching of one's self or others (e.g., pinching, patting, grabbing, poking), sexually suggestive dancing, and massages;
4. any unwelcome communication that is sexually suggestive, sexually degrading or derogatory or implies sexual motives or intentions, such as sexual remarks or innuendoes about an individual's clothing, appearance or activities; sexual jokes; sexual gestures; public conversations about sexual activities or exploits; sexual rumors and "ratings lists;" howling, catcalls, and whistles; sexually graphic computer files, messages or games, etc.;
5. unwelcome and offensive name calling or profanity that is sexually suggestive or explicit, sexually degrading or derogatory, implies sexual intentions, or that is based on sexual stereotypes or sexual orientation, gender identity or expression;
6. unwelcome physical contact or closeness that is sexually suggestive, sexually degrading or derogatory, or sexually intimidating such as the unwelcome touching of another's body parts, cornering or blocking an individual, standing too close, spanking, pinching, following, stalking, frontal body hugs, etc.;
7. unwelcome and sexually offensive physical pranks or touching of an individual's clothing, such as hazing and initiation, "streaking" (running naked in public), "mooning" (exposing one's buttocks), "snuggies" or "wedgies" (pulling underwear up at the waist so it goes in between the buttocks), bra-snapping, skirt "flip-ups," "pantsing" or "spiking" (pulling down someone's pants or swimming suit); pinching; placing hands inside an individual's pants, shirt, blouse, or dress, etc.;
8. unwelcome leers, stares, gestures, or slang that are sexually suggestive; sexually degrading or derogatory or imply sexual motives or intentions;
9. clothing with sexually obscene or sexually explicit slogans or messages;

10. unwelcome written or pictorial display or distribution (including via electronic devices) of pornographic or other sexually explicit materials such as signs, graffiti, calendars, objects, magazines, videos, films, Internet material, etc.;
11. other hostile actions taken against an individual because of that person's actual or perceived sex, sexual orientation, gender identity or expression, such as interfering with, destroying or damaging a person's school area or equipment; sabotaging that person's school activities; bullying, yelling, or name calling; or otherwise interfering with that person's ability to participate in school functions and activities; and
12. any unwelcome behavior based on sexual stereotypes and attitudes that is offensive, degrading, derogatory, intimidating, or demeaning, including, but not limited to:
  - A. disparaging remarks, slurs, jokes about or aggression toward an individual because the person displays mannerisms or a style of dress inconsistent with stereotypical characteristics of the person's sex;
  - B. ostracizing or refusing to participate in group activities with an individual (for example, during class projects, physical education classes or field trips) because of the individual's actual or perceived sex, sexual orientation, and/or gender identity or expression;
  - C. taunting or teasing an individual because they are participating in an activity not typically associated with the individual's actual or perceived sex, sexual orientation, or gender.

For purposes of this regulation, action or conduct will be considered "unwelcome" if the student did not request or invite it and regarded the conduct as undesirable or offensive.

Sexual harassment may occur on school grounds, school buses and at all school-sponsored activities, programs and events, including those that take place at locations outside the district, or outside the school setting if the harassment impacts the individual's education in a way that violates their legal rights, including when the harassment is done by electronic means (including on social media). Any complaint of sexual harassment that does not meet the jurisdiction of Title IX will still be addressed under the District's Code of Conduct and/or New York State law.

### **Determining if Prohibited Conduct is Sexual Harassment**

Complaints of sexual harassment will be thoroughly investigated to determine whether the totality of the behavior and circumstances meet any of the elements of the definitions of sexual harassment as outlined in the policy and should therefore be treated as sexual harassment. Not all unacceptable conduct with sexual connotations may constitute sexual harassment. In many cases (other than quid pro quo situations where the alleged harasser offers academic rewards or threatens punishment as an inducement for sexual favors), unacceptable behavior must be sufficiently severe, pervasive and objectively offensive to be considered sexual harassment. If the behavior doesn't rise to the level of sexual harassment, but is found to be objectionable behavior, the behavior may be addressed under other components of the Code of Conduct and, when appropriate the individual will be educated and counseled in order to prevent the behavior from continuing.

In evaluating the totality of the circumstances and making a determination of whether conduct constitutes sexual harassment, the following may be considered:

1. the degree to which the conduct affected the ability of the student to participate in or benefit from their education or altered the conditions of the student's learning environment;
2. the type, frequency and duration of the conduct;
3. the identity of and relationship between the alleged harasser and the subject of the harassment (e.g., sexually based conduct by an authority figure is more likely to create a hostile environment than similar conduct by a peer);
4. the number of individuals involved;
5. the age and sex of the alleged harasser and the target of the harassment;
6. the location of the incidents and context in which they occurred;
7. other incidents at the school; and
8. incidents of gender-based discrimination.

## **Reporting Complaints**

Students who believe they been the target of sexual harassment related to the school setting are encouraged to report complaints to the Title IX Coordinator as soon as possible after the incident in order to enable the district to promptly and effectively investigate and resolve the complaint. Any person who witnesses or is aware of sexual harassment of a student is required under the law to report the incident or behavior to the district. If the District receives notice of such an incident, the Title IX Coordinator must be immediately informed. The student target will meet with the Title IX Coordinator for several responses: (1) to receive any reasonable supportive measures; and (2) to learn of their right to file a formal complaint. Targets are encouraged to submit the complaint in writing; however, complaints may be filed verbally. However, the target must formalize their complaint in order for it to be investigated under Title IX.

Complaints should be filed with the principal or a Title IX coordinator; however, students may go to any district employee with sexual harassment complaints.

Any school employee who receives a complaint of sexual harassment from a student must inform the student of the employee's obligation to report the complaint to the school administration, and must then immediately notify the principal and/or a Title IX coordinator.

In order to assist investigators, targets should document the harassment as soon as it occurs and with as much detail as possible including: the nature of the harassment; dates, times, places it has occurred; name of harasser(s); witnesses to the harassment; and the target's response to the harassment.

The Title IX coordinator will refer the target, as appropriate, to school social workers, school psychologists, crisis team managers, other school staff, or appropriate outside agencies for counseling services.

## **Confidentiality**

It is district policy to respect the privacy of all parties and witnesses to complaints of sexual harassment. To the extent possible, the district will not release the details of a complaint or the identity of the complainant or the individual(s) against whom the complaint is filed to any third parties who do not need to know such information. However, because an individual's need for confidentiality must be balanced with the district's legal obligation to provide due process to the

accused, to conduct a thorough investigation, or to take necessary action to resolve the complaint, the district retains the right to disclose the identity of parties and witnesses to complaints in appropriate circumstances to individuals with a need to know. The staff member responsible for investigating formal complaints will discuss confidentiality standards and concerns with all complainants.

## **Investigation and Resolution Procedure**

### **1. Level 1: Initial Procedure**

If the student target decides to file a formal complaint, the Title IX Coordinator will appoint a Title IX investigator. In addition, the parties will be advised of the possibility of informal resolution by a trained facilitator. Both parties need to volunteer and give written consent to participate in informal resolution.

All persons involved in an investigation (complainants, witnesses and alleged harassers) will be accorded due process to protect their rights to a fair and impartial investigation. This investigation shall be prompt and thorough, and shall be completed as soon as possible. There shall be a presumption that the accused is not responsible for the alleged conduct until after a determination is made. No questions or evidence may be permitted that are protected under a legally recognized privilege, unless the person holding the privilege has waived the privilege.

Immediately, but no later than five working days following receipt of a formal complaint, the assigned Title IX investigator shall notify the parties, prospective witness, and any individual who may have evidence important to the investigation. The Title IX investigator shall begin an investigation of the complaint according to the following steps:

Interview the target and document the conversation. Recommend the target to have no contact or communication regarding the complaint with the alleged harasser. Ask the target specifically what action they want taken in order to resolve the complaint.

- A. Review any written documentation of the harassment prepared by the target. If the target has not prepared written documentation, ask the target to do so, providing alternative formats for individuals with disabilities and young children, who have difficulty writing and need accommodation.
- B. Request, review, obtain and preserve any evidence of harassment (e.g., documents, emails, phone records, etc.), if any exist.
- C. Interview the alleged harasser regarding the complaint and inform the alleged harasser that if the objectionable conduct has occurred, it must cease immediately. Document the conversation. Provide the alleged harasser an opportunity to respond to the charges in both verbally and in writing.
- D. Inform the alleged harasser to have no contact or communication regarding the complaint with the target and to not retaliate against the target. Warn the alleged harasser that if they make such contact with or retaliate against the target, they may be subject to immediate and/or additional disciplinary action.
- E. Interview any witnesses to the complaint. Where appropriate, obtain a written statement from each witness. Caution each witness to keep the complaint and their statement confidential. Employees may be required to cooperate as needed in investigations of suspected sexual harassment.

F. Review all documentation and information relevant to the complaint and provide to the parties for review. Each party shall have 10 days to provide a written response to the Title IX investigator. The Title IX investigator will have 10 days to summarize and prepare the final investigation report. The Title investigator will not reach a determination of fault.

#### Involvement and Notification

- A. Parents/guardians of student targets and accused students will be notified within one school day of allegations that are serious or involve repeated conduct.
- B. The parents/guardians of students who file complaints are welcome to participate at each stage of both informal and formal investigation and resolution procedures.
- C. If either the target or the accused is a student receiving special education services under an IEP or section 504/Americans with Disabilities Act accommodations, the committee on special education will be consulted to determine the degree to which the student's disability either caused or is affected by the discrimination or policy violation. In addition, due process procedures required for persons with disabilities under state and federal law will be followed.
- D. The Title IX investigator will submit a copy of all investigation and interview documentation to each party and the Title IX decision-maker.
- E. The Title IX decision-maker will report back to both the target and the accused, notifying them in writing, and also in person as appropriate, regarding the decision-makers process for determining the outcome of the investigation, including the question and answer format available to both parties and that the decision maker will share with both parties in writing the questions and answers. Once the question and answer process is completed, the decision maker will make a determination as to fault. The decision maker will notify both parties of the outcome of the investigation and the action necessary to resolve the complaint. For example, if a the respondent is found to be responsible for the behavior in violation of the Sexual Harassment Policy, the decision maker will refer the matter to a 3214 hearing if the behavior could warrant discipline greater than 5 days suspension. The decision-maker will instruct the parties to report immediately if the objectionable behavior occurs again or if anyone retaliates against them.
- F. The decision-maker will notify the parties that if they desire further investigation and action based on the grounds for appeal set forth below, they may request a level two review by contacting the Superintendent of Schools. The Title IX investigator will also notify the target of their right to contact the New York State Division of Human Rights, or the U.S. Department of Education's Office for Civil Rights.
- G. Create a written documentation of the investigation, kept in a secure and confidential location, containing:
  - a. A list of all documentation and other evidence reviewed, along with a detailed summary;
  - b. A list of names of those interviewed along with a detailed summary of their statements;
  - c. A timeline of events;
  - d. A summary of prior relevant incidents, reported or unreported; and
  - e. The final resolution of the complaint, together with any corrective action(s).

If the initial investigation results in a determination that sexual harassment did occur, based on a preponderance of the evidence, the decision-maker will promptly notify the Superintendent, who may then take prompt disciplinary action, including but not limited to suspension from school, in accordance with district policy, the applicable collective bargaining agreement or state law.

Where the Title IX coordinator/investigator has a reasonable suspicion that the alleged harassment involves criminal activity, they must immediately notify the Superintendent, who will then contact appropriate child protection and law enforcement authorities. Where criminal activity is alleged or suspected by a district employee, the accused employee will be suspended pending the outcome of the investigation, consistent with all contractual or statutory requirements.

Appeals may be made by either the target or the accused on the following grounds and must be submitted in writing to the Superintendent within 10 days of receipt of the written decision:

- Procedural irregularities affected the outcome of the matter
- New evidence that was not reasonably available at the time of the determination regarding responsibility or dismissal was made that would affect the outcome of the matter; and
- The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or was biased.

## 2. Level 2: Appeals Procedure

The Superintendent will promptly review those complaints appealed to the Superintendent following an initial investigation by a Title IX investigator. In the event the complaint of sexual harassment involves the Superintendent, the complaint will be filed with or referred to the Human Resource Manager or Board President, who may refer the complaint to a trained investigator not employed by the district for investigation.

The level 2 review should begin as soon as possible but not later than five working days following receipt of the complaint by the Superintendent, Human Resource Manager or Board President.

The Superintendent of Schools will review all documentation from the Level One investigation and from the decision-maker. The Superintendent may request that the target, alleged harasser, the Title IX investigator, decision-maker, student, non-employee, or any member of the District's staff present a written statement setting forth any information that such person has relative to the complaint and the facts surrounding it or may, in his/her discretion, decide to speak with any individuals regarding the complaint.

When reviewing cases involving volunteers and non-employees, the investigator shall consider the extent of the District's control and any other legal responsibility the District may have with respect to the conduct of the accused.

If a level 2 investigation results in a determination that sexual harassment did occur, prompt corrective action will be taken to end the harassment.

No later than 60 school days following receipt of the complaint, the Superintendent (or in cases involving the Superintendent, the Board-appointed investigator) will notify the target and alleged harasser, in writing, of the outcome of the investigation. If additional time is needed to complete the investigation or take appropriate action, the Superintendent or Board-appointed investigator will provide all parties with a written status report within 60 school days following receipt of the complaint.

The target and the alleged harasser have the right to be represented by an advisor of their choice,, during sexual harassment investigations and the decision-making process.

### **External Remedies**

In addition, targets have the right to register sexual harassment complaints with the U.S. Department of Education's Office for Civil Rights (OCR) and the New York State Division of Human Rights (DHR). The OCR can be contacted at (800) 421-3481, 400 Maryland Avenue SW, Washington, DC 20202-1100, or at <https://www2.ed.gov/about/offices/list/ocr/docs/howto.html>. The DHR can be contacted at (888) 392-3644, [www.dhr.ny.gov/complaint](http://www.dhr.ny.gov/complaint), or at 1 Fordham Plaza, Fourth Floor, Bronx, NY 10458.

Nothing in these regulations limits the right of the complainant to file a lawsuit in either state or federal court, or to contact law enforcement officials if the sexual harassment involves unwanted physical touching, coerced physical confinement or coerced sex acts, or other acts which may constitute a crime.

### **Retaliation Prohibited**

Any act of retaliation against any person who opposes sexually harassing behavior, or who has filed a complaint in good faith, is prohibited and illegal, and therefore subject to disciplinary action. Likewise, retaliation against any person who has, in good faith, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing of a sexual harassment complaint is prohibited. For purposes of this policy, retaliation includes but is not limited to: verbal or physical threats, intimidation, ridicule, bribes, destruction of property, spreading rumors, stalking, harassing phone calls, discipline, discrimination, demotion, denial of privileges, any action that would keep a person from coming forward to make or support a sexual harassment claim, and any other form of harassment. Such actions need not be job- or education-related, or occur in the workplace or educational environment, to constitute unlawful retaliation. Any person who retaliates may be subject to immediate disciplinary action, up to and including suspension or termination.

### **Discipline/Penalties and Consequences**

Any individual who violates the sexual harassment policy by engaging in prohibited sexual harassment may be subject to appropriate disciplinary and/or remedial action. Measures available to school authorities include, but are not limited to the following:

**Students:** Discipline may range from a reprimand up to and including suspension from school, to be imposed consistent with the student conduct and discipline policy and applicable law.

**Employees:** Discipline may range from a warning up to and including termination, to be imposed consistent with all applicable contractual and statutory rights.

**Volunteers:** Penalties may range from a warning up to and including loss of volunteer assignment.

**“Non-employees”** (i.e., contractors, subcontractors, vendors, consultants and other persons providing services pursuant to a contract, or their employees): Penalties may range from a warning up to and including loss of district business.

**Other individuals:** Penalties may range from a warning up to and including denial of future access to school property.

### **False Complaints**

False or malicious complaints of sexual harassment may result in corrective or disciplinary action taken against the complainant.

### **Training**

All students and employees will be informed of this policy and regulation in student and employee handbooks, on the district website and student registration materials. A poster summarizing the policy will also be posted in a prominent location at each school. All secondary school student body officers will receive district training about the policy at the beginning of each school year.

In addition, age-appropriate curricular materials will be made available so that it can be incorporated in instruction K-12 to ensure that all students are educated to recognize and report sexual harassment, and on appropriate and inappropriate behavior.

Building Principals are responsible for informing students and staff on a yearly basis of the terms of this policy, including the procedures established for investigation and resolution of complaints, general issues surrounding sexual harassment, the rights and responsibilities of students and employees, and the impact of sexual harassment on the target.

All District personnel serving as Title IX coordinators, investigators, decision-makers, informal resolution facilitators, or appeals decision makers will be trained in compliance with Title IX and its regulations.

Adoption date: September 1, 2020