

 Required Local Notice

SEXUAL HARASSMENT OF EMPLOYEES REGULATION

This regulation is intended to create and preserve a working environment free from unlawful sexual harassment on the basis of perceived or self-identified 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 employees (including all staff, applicants for employment, both paid and unpaid interns, exempt and non-exempt status, part-time, seasonal, and temporary workers, regardless of immigration status) and “non-employees” (i.e., contractors, subcontractors, vendors, consultants and other persons providing services pursuant to a contract, or their employees) that promotes respect, dignity and equality. Sexual harassment is defined in the accompanying policy.

Unacceptable Conduct

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, 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 promotions, preferences, favors, selection for job assignments, etc., or when accompanied by implied or overt threats concerning the target's work 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 perceived or self-identified sex, sexual orientation, gender identity or transgender status, such as interfering with, destroying or damaging a person's work area or equipment; sabotaging that person's work activities; bullying, yelling, or name calling; or otherwise interfering with that person's ability to work or 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 (including, but not limited to, projects or trips) because of the individual's perceived or self-identified sex, sexual orientation, gender identity or expression or transgender status;
 - C. taunting or teasing an individual because they are participating in an activity not typically associated with the individual's sex, sexual orientation or gender.

For purposes of this regulation, action or conduct will be considered "unwelcome" if the employee or "non-employee" 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 work setting if the harassment impacts the individual's employment in a way that violates their legal rights, including when employees or "non-employees" travel on district business, or when the harassment is done by electronic means (including on social media).

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 above definition of sexual harassment and should therefore be treated as sexual harassment. Not all unacceptable conduct with sexual connotations or based on sex may constitute sexual harassment. Such conduct must rise above what a reasonable victim of discrimination with the same protected characteristics would consider petty slights or trivial inconveniences 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 another employee policy or 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 individual investigating the complaint should consider:

1. The degree to which the conduct altered the conditions of the employee's or "non-employee's" working 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

Employees and "non-employees" who believe they have been the target of sexual harassment in the workplace are encouraged to report complaints 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 an employee or "non-employee" is required to report the incident or behavior to the district. Targets are encouraged to submit the complaint in writing; however, complaints may be filed verbally.

Complaints should be filed with the Title IX coordinator. Supervisory and managerial personnel are required to report known complaints of sexual harassment, and may be subject to discipline for failing to report suspected or reported sexual harassment, knowingly allowing sexual harassment to continue, or engaging in any retaliation.

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 complaints will discuss confidentiality standards and concerns with all complainants.

If a complainant requests that their name not be revealed to the individual(s) against whom a complaint is filed, the staff member responsible for conducting the investigation will inform the complainant that:

1. The request may limit the district's ability to respond to their complaint;
2. District policy and federal law prohibit retaliation against complainants and witnesses;
3. The district will attempt to prevent any retaliation; and
4. The district will take strong responsive action if retaliation occurs.

If the complainant still requests confidentiality after being given the notice above, the investigator will take all reasonable steps to investigate and respond to the complaint consistent with the request as long as doing so does not preclude the district from responding effectively to the harassment and preventing the harassment of others.

Investigation and Resolution Procedure

1. Level 1: Initial Procedure

When the investigation is not being reviewed under Title IX, the assigned Title IX investigator will conduct a preliminary review when they receive a verbal or written complaint of sexual harassment, or if they observe sexual harassment. Except in the case of severe or criminal conduct, the Title IX coordinator should make all reasonable efforts to resolve complaints informally at the school level. The goal of informal investigation and resolution procedures is to end the harassment and obtain a prompt and equitable resolution to a complaint. 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.

When a complainant decides to file a formal Title IX complaint, or if the investigation does not get resolved above, immediately, but no later than five working days following receipt of a complaint, the Title IX investigator shall begin an investigation of the complaint according to the following steps:

- A. Provide appropriate notice to each individual who will be interviewed or asked to provide evidence.
- B. 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.
- C. 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 who may need accommodation. If the complainant refuses to complete a complaint form or written documentation, the Title IX investigator shall complete a complaint form (see exhibit 0110.2-E) based on the verbal report.
- D. Request, review, obtain and preserve relevant evidence of harassment (e.g., documents, emails, phone records, etc.), if any exist.

E. 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 writing.

F. Instruct 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 will be subject to immediate disciplinary action.

G. 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.

H. Review all documentation and information relevant to the complaint. If this is a Title IX formal complaint and investigation, the investigator will provide the parties with all of the evidence collected and interview notes. The parties will have 10 days to return a written document to the investigator regarding the relevance of each item. The Title IX investigator will have 10 days to then summarize the evidence obtained during the investigation. The Title IX investigation summary will be provided to each party and arrangements will be made for a Decision Maker to review the matter, use a question and answering process between the parties to gather to permit indirect cross examination of a party or witness and make a conclusion regarding whether Sexual Harassment under Title IX was violated.

I. Where appropriate, use appropriate informal methods to resolve the complaint, including but not limited to:

- a. discussion with the accused, informing them of the district's policies and indicating that the behavior must stop;
- b. suggesting counseling and/or sensitivity training;
- c. conducting training for the department or school in which the behavior occurred, calling attention to the consequences of engaging in such behavior;
- d. requesting a letter of apology to the complainant;
- e. writing letters of caution or reprimand; and/or
- f. separating the parties.

Involvement and Notification

A. If the alleged harasser is a student, their parents/guardians will be notified within one school day of allegations that are serious or involve repeated conduct.

B. If the alleged harasser 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 caused the discrimination or policy violation. In addition, due process procedures required for persons with disabilities under state and federal law will be followed.

C. The Title IX investigator will submit a copy of all investigation and interview documentation to the decision-maker.

D. The decision-maker will report back to both the target and the accused, notifying them in writing, and also in person as appropriate regarding the outcome of the investigation and the action taken to resolve the complaint. The decision-maker will instruct the parties to report immediately if the objectionable behavior occurs again or 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 U.S. Department of Education's Office for Civil Rights, the U.S. Equal Employment Opportunity Commission, or the New York State Division of Human 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 question and answer exchange as well as the answers that were provided in writing to each side; and
- f. How the decision-maker came to their final decision.

If under Title IX the decision-maker determines 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, up to and including suspension or discharge, in accordance with district policy, the applicable collective bargaining agreement or state law.

If a complaint received by the assigned Title IX coordinator contains evidence or allegations of serious or extreme harassment, such as employee to student harassment, criminal touching, quid pro quo (e.g., offering an employment reward or punishment as an inducement for sexual favors), or acts which shock the conscience of a reasonable person, the complaint will be referred promptly to the Superintendent, who shall determine how the investigation will proceed. In addition, where the Title IX coordinator has a reasonable suspicion that the alleged harassment involves criminal activity, they must immediately notify the Superintendent, who will then contact appropriate 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 the 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 two review should begin as soon as possible but not later than three 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 a person of their choice, at their own expense, during sexual harassment investigations and hearings.

External Remedies

Employee targets have the right to register sexual harassment complaints with the U.S. Department of Education's Office for Civil Rights (OCR), the federal Equal Employment Opportunity Commission (EEOC) 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 EEOC can be contacted at (800) 669-4000, <https://www.eeoc.gov/employees/howtofile.cfm>, info@eeoc.gov, or at 33 Whitehall Street, 5th Floor, New York, NY 10004 or 300 Pearl Street, Suite 450, Buffalo, NY 14202. The DHR can be contacted at (888) 392-3644, www.dhr.ny.gov/complaint, or at 1 Fordham Plaza, Fourth Floor, Bronx, NY 10458.

Many localities enforce laws protecting individuals from sexual harassment and discrimination. An individual may contact the county, city or town in which they live to find out if such a law exists.

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.

Nondisclosure agreements

The district may include nondisclosure agreements (to not disclose the underlying facts and circumstances of a sexual harassment complaint) in any sexual harassment settlement agreement or resolution only if it is the complainant's preference. Any such nondisclosure agreement will be provided in writing to all parties in plain English and, if applicable, in the primary language of the complainant. Complainants have twenty-one days to consider any such nondisclosure provision before it is signed by all parties, and have seven days to revoke the agreement after signing. Nondisclosure agreements only become effective after this seven-day period has passed.

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

Any individual who violates the sexual harassment policy by engaging in prohibited sexual harassment will 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, consultant 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 employees will be informed of this policy and regulation in employee handbooks, on the district website and other appropriate materials. A poster summarizing the policy will also be posted in a prominent location at each school. The district will provide all existing employees with either a paper or electronic copy of the district's sexual harassment policy and regulation, and will provide the same to new employees before the employee starts their job. These materials will be provided in English and in an employee's primary language, for those languages for which the NYS Department of Labor has provided a translated template policy.

All students will be informed of the basic provisions of this policy and regulation (e.g., that sexual harassment of employees and "non-employees" is prohibited, as well as what is appropriate and inappropriate behavior) in student handbooks, on the district website and student registration materials. 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 on appropriate and inappropriate behavior.

All new employees will receive training on this policy and regulation at new employee orientation or as soon as possible after starting their job, unless they can demonstrate that they have received equivalent training within the past year from a previous employer. All other employees will be provided training at least once a year regarding this policy and the district's commitment to a harassment-free working environment. Principals, Title IX team, and other administrative employees who have specific responsibilities for investigating and resolving complaints of sexual harassment will receive yearly training on this policy, regulation and related legal developments. Training will be provided in English and in an employee's primary language, for those languages for which the NYS Department of Labor has provided translated model training.

Annual employee training programs will be interactive and include: (i) an explanation of sexual harassment consistent with guidance issued by the NYS Department of Labor and the NYS Division of Human Rights; (ii) examples of conduct that is unlawful sexual harassment; (iii) information on federal and state laws about sexual harassment and remedies available to victims of sexual harassment; (iv) information concerning employees' right to make complaints and all available forums for investigating complaints; and (v) address the conduct and responsibilities of supervisors.

Principals in each school and program directors 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.

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