SEXUAL HARASSMENT REGULATION

This regulation is intended to create and preserve an educational and working environment free from unlawful sexual harassment on the basis of sex, gender and/or sexual orientation in furtherance of the district's commitment to provide a healthy and productive environment for all students, employees and "non-employees" (i.e., contractors, subcontractors, vendors, consultant and other persons providing services pursuant to a contract, or their employees) that promotes respect, dignity and equality.

Sexual Harassment Defined

"Sexual harassment" means unwelcome sexual advances, requests for sexual favors, sexually motivated physical conduct or other verbal or physical conduct or communication of a sexual nature.

"Gender-based harassment" means verbal, non-verbal or physical aggression, intimidation or hostility that is based on actual or perceived gender identity or expression.

Sexual or gender-based harassment occurs when:

1. submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of an employee's or "non-employee's" employment or a student's education (including any aspect of the student's participation in school-sponsored activities, or any other aspect of the student's education); or
2. submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting an employee's or "non-employee's" employment or a student's education; or
3. the conduct or communication has the purpose or effect of substantially or unreasonably interfering with an employee's or "non-employee's" work performance or a student's academic performance or participation in school-sponsored activities, or creating an intimidating, hostile or offensive working or educational environment.

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, and other sexual and gender-based activity of a criminal nature as defined under the State Penal Law;
2. unwelcome sexual invitations or requests for sexual activity in exchange for grades, promotions, preferences, favors, selection for extracurricular activities or job assignments, homework, etc.;
3. unwelcome and offensive public sexual display of affection, including kissing, making out, groping, fondling, petting, inappropriate touching of one's self or others, sexually suggestive dancing, and massages;

4. any unwelcome communication that is sexually suggestive, sexually degrading 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, sexually degrading, 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 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," "mooning," "snuggies" or "wedgies" (pulling underwear up at the waist so it goes in between the buttocks), bra-snapping, skirt "flip-ups," "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 imply sexual motives or intentions;
9. clothing with sexually obscene or sexually explicit slogans or messages;
10. unwelcome and offensive skits, assemblies, and productions that are sexually suggestive, sexually degrading, or that imply sexual motives or intentions, or that are based on sexual stereotypes;
11. unwelcome written or pictorial display or distribution of pornographic or other sexually explicit materials such as magazines, videos, films, Internet material, etc.;
12. any unwelcome behavior based on sexual stereotypes and attitudes that is offensive, degrading, 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 during class projects, physical education classes or field trips because of the individual’s sex, gender expression or gender identity;
    c. taunting or teasing an individual because they are participating in an activity not typically associated with the individual’s sex or gender

For purposes of this regulation, action or conduct shall be considered "unwelcome" if the student, employee or non-employee did not request or invite it and regarded the conduct as undesirable or offensive. In addition, in the remainder of this regulation, the term sexual harassment will refer to both sexual and gender-based harassment.

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 may constitute sexual harassment. In many cases (other than quid pro quo situations where the alleged harasser offers academic or employment 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 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 affected the ability of the student to participate in or benefit from his or her education or altered the conditions of the student's learning environment or 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 another student or a co-worker);
4. the number of individuals involved;
5. the age and sex of the alleged harasser and the subject 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, but non-sexual harassment.

Reporting Complaints

Any person who believes he or she has been the target of sexual harassment by a student, district employee, "non-employee" or third party related to the school is required to report complaints as soon as possible after the incident in order to enable the district to effectively investigate and resolve the complaint. Targets are encouraged to submit the complaint in writing; however, complaints may be filed verbally.

Complaints should be filed with the Principal or the Title IX coordinator.

Any school employee who receives a complaint of sexual harassment from a student shall inform the student of the employee's obligation to report the complaint to the school administration, and then shall immediately notify the Principal and/or the Title IX coordinator. School employees receiving complaints of sexual harassment from "non-employees" shall direct the complainant to the Building Principal.

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.

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 his/her name not be revealed to the individual(s) against whom a complaint is filed, the staff member responsible for conducting the investigation shall inform the complainant that:

1. the request may limit the district's ability to respond to his/her 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 other students, employees or “non-employees.”

Investigation and Resolution Procedure

A. Initial (Building-level) Procedure

The Principal or the Title IX coordinator shall 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 Principal or 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.

As soon as possible but no later than three working days following receipt of a complaint, the Principal or Title IX coordinator should begin an investigation of the complaint according to the following steps:

1. Interview the target and document the conversation. Instruct the target to have no contact or communication regarding the complaint with the alleged harasser. Ask the target specifically what action he/she wants taken in order to resolve the complaint. Refer the target, as appropriate, to school social workers, school psychologists, crisis team managers, other school staff, or appropriate outside agencies for counseling services.
2. Review any written documentation of the harassment prepared by the target. If the target has not prepared written documentation, instruct the target to do so, providing alternative formats for individuals with disabilities and young children, who have difficulty writing and need accommodation.
3. 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.
4. 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 he/she makes contact with or retaliates against the target, he/she will be subject to immediate disciplinary action.
5. Interview any witnesses to the complaint. Where appropriate, obtain a written statement from each witness. Caution each witness to keep the complaint and his/her statement confidential.
6. Review all documentation and information relevant to the complaint.
7. Where appropriate, suggest mediation as a potential means of resolving the complaint. In addition to mediation, use appropriate informal methods to resolve the complaint, including but not limited to:

    a. discussion with the accused, informing him or her 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.

8. Parent/Student/Employee/"Non-Employee" Involvement and Notification

    a. Parents of student targets and accused students shall be notified within one school day of allegations that are serious or involve repeated conduct.
    b. The parents 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 disabled 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 shall be followed.

d. The Principal or Title IX Coordinator (i.e., the investigator) shall submit a copy of all investigation and interview documentation to the Superintendent.

e. The investigator shall 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 investigator shall instruct the target to report immediately if the objectionable behavior occurs again or if the alleged harasser retaliates against him/her.

f. The investigator shall notify the target that if he/she desires further investigation and action, he/she may request a district level investigation by contacting the Superintendent of Schools. The investigator shall also notify the target of his/her right to contact the U.S. Department of Education's Office for Civil Rights and/or a private attorney. Employees may also contact the U.S. Equal Employment Opportunity Commission or the New York State Division of Human Rights.

If the initial investigation results in a determination that sexual harassment did occur, the investigator will promptly notify the Superintendent, who shall then take prompt disciplinary action in accordance with district policy, the applicable collective bargaining agreement or state law.

If a complaint received by the Principal or the 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 academic or employment reward or punishment as an inducement for sexual favors), or acts which shock the conscience of a reasonable person, the complaint shall be referred promptly to the Superintendent. In addition, where the Principal or the Title IX coordinator has a reasonable suspicion that the alleged harassment involves criminal activity, he/she should immediately notify the Superintendent, who shall then contact appropriate child protection and law enforcement authorities. Where criminal activity is alleged or suspected by a district employee, the accused employee shall be suspended pending the outcome of the investigation, consistent with all contractual or statutory requirements.

Any party who is not satisfied with the outcome of the initial investigation by the Principal or the Title IX coordinator may request a district-level investigation by submitting a written complaint to the Superintendent within 30 days.

B. District-level Procedure

The Superintendent shall promptly investigate and resolve all sexual harassment complaints that are referred to him/her by a Principal or Title IX coordinator, as well as those

appealed to the Superintendent following an initial investigation by a Principal or Title IX coordinator. In the event the complaint of sexual harassment involves the Superintendent, the complaint shall be filed with or referred to the Board President, who shall refer the complaint to a trained investigator not employed by the district for investigation.

The district level investigation should begin as soon as possible but not later than three working days following receipt of the complaint by the Superintendent or Board President.

In conducting the formal district level investigation, the district will use investigators who have received formal training in sexual harassment investigation or that have previous experience investigating sexual harassment complaints.

If a district investigation results in a determination that sexual harassment did occur, prompt corrective action will be taken to end the harassment. Where appropriate, district investigators may suggest mediation as a means of exploring options of corrective action and informally resolving the complaint.

No later than 30 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 30 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. In addition, targets have the right to register sexual harassment complaints with the U.S. Department of Education's Office for Civil Rights.

Employee targets also have the right to register complaints with the federal Equal Employment Opportunity Commission and the New York State Division of Human Rights. Nothing in these regulations shall be construed to limit the right of the complainant to file a lawsuit in either state or federal court. No district contract or collective bargaining agreement may include a binding arbitration clause for sexual harassment requiring arbitration before bringing the matter to a court.

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 shall be provided to all parties. Complainants shall have twenty-one days to consider any such nondisclosure provision before it is signed by all parties, and shall have seven days to revoke the agreement after signing. Nondisclosure agreements shall 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, is prohibited and illegal, and therefore subject to disciplinary action.

Likewise, retaliation against any person who has 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, and any other form of harassment. Any person who retaliates is 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 action. Disciplinary 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 students and employees shall be informed of this policy in student and employee handbooks, on the district website and student registration materials. In addition, the District will provide this policy to all employees in writing. A poster summarizing the policy shall also be

posted in a prominent location at each school. All secondary school student body officers shall 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.

All new employees shall receive information about this policy and regulation at new employee orientation. All other employees shall be provided information at least once a year regarding this policy and the district's commitment to a harassment-free learning and working environment. Principals, Title IX coordinators, and other administrative employees who have specific responsibilities for investigating and resolving complaints of sexual harassment shall receive yearly training on this policy, regulation and related legal developments.

Annual employee training programs shall 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; and (iv) information concerning employees' right to make complaints and all available forums for investigating complaints.

Principals in each school and program directors shall be 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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