

## New Sexual Harassment Policies to Implement the New Title IX Regulations

- Harben, Hartley & Hawkins, LLP

This Policy Update summarizes the major requirements of the new Title IX regulations on sexual harassment from the U. S. Department of Education/ Office for Civil Rights and discusses policy and procedural changes needed to implement them. Samples are provided for boards of education that may want to use them as a guide for updating their local policies.

Enacted in 1972, Title IX prohibits discrimination on the basis of sex in education programs and activities that receive Federal financial assistance (recipients). In 1975, regulations to implement Title IX were enacted, which reinforced Title IX’s non-discrimination mandate and addressed prohibition of sex discrimination in hiring, admissions, athletics, and other aspects of recipients’ education programs or activities. The regulations also required recipients to designate an employee to coordinate their efforts to comply with Title IX and to adopt and publish grievance procedures providing for prompt and equitable resolution of complaints that a recipient is discriminating based on sex.

During the decades following the issuance of the first Title IX regulations, whether sexual harassment in violation of Title IX occurred has been determined largely by case law, as the U.S. Department of Education

has not, up until now, promulgated any Title IX regulations to address sexual harassment as a form of sex discrimination. Instead, the Department addressed the subject through a series of guidance documents and Dear Colleague Letters. Prompted by a change in Presidential administrations and in the Secretary of Education’s office, the Department withdrew the 2011 Dear Colleague Letter, a major policy statement on Title IX sexual harassment, and similar guidance.

At the same time, the Department issued a question and answer document designed as an “interim, non-binding interpretation of Title IX sexual harassment responsibilities” while the Department conducted rulemaking to arrive at legally binding regulations. Thus, the Title IX regulations issued in May 2020 impose, for the first time, legally binding rules on recipients, including school districts, with respect to responding to sexual harassment.

The final regulations obligate school districts to respond promptly and supportively to persons alleged to be victimized by sexual harassment, to resolve allegations of sexual harassment promptly and accurately under a predictable grievance process that provides due process protections to alleged victims and alleged perpetrators of sexual harassment, and to effectively implement remedies for victims. The regulations clarify and modify Title IX administrative requirements regarding remedies the Department may impose on districts for Title IX violations and the procedures and grievance process for responding to allegations of sexual harassment.

“This Policy Update summarizes the major requirements of the new Title IX regulations on sexual harassment...”

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## Designation of Title IX Coordinator

Districts must “designate and authorize at least one employee to coordinate its efforts to comply with its responsibilities,” under Title IX, “which employee must be referred to as the “Title IX Coordinator’.” The requirement to “designate” a Title IX Coordinator is not new, but districts should give careful consideration as to which employee(s) they will “authorize” to coordinate their expanded Title IX responsibilities with specific response obligations under the sexual harassment regulations. Districts are reminded that Georgia’s “Equity in Sports Act” (Code Section 20-2-315) requires every school system to designate an employee to coordinate its efforts under the Act and provides that the person “may be the same person designated under” federal Title IX regulations. Some districts designate a coach or athletic director as the Title IX Coordinator to fulfill the tasks required by that code section, particularly completing and submitting to the State Department the annual report regarding expenditures and participation rates for each gender. Districts that have assigned the title of Equity in Sports Coordinator to persons fulfilling such roles should consider whether this person’s duties include handling complaints having to do with Title IX equity in sports claims, and if so, revise their title. Note that the regulations require that the Title IX Coordinator responsible for implementing any of the Title IX provisions must have in his or her title “Title IX Coordinator.”

## Notice

Because of the crucial role of Title IX Coordinators, the regulations strengthen the requirements for contacting the person(s) filling the position and ensuring that the contact information is widely available. Districts must notify students, parents or legal guardians, employees, applicants for admission or employment, and professional organizations with which the district has professional agreements of the name or title, office address, email address, and telephone number for the designated Title IX Coordinator(s).

The district also must notify the persons listed above that the district does not discriminate on the basis of sex in any education program or activity it operates,

which extends to admissions and employment, and that inquiries about the application of Title IX or its regulations may be referred to the Title IX Coordinator or to the Assistant Secretary of the U.S. Department of Education, or both.

Sample Policy JCAC ends with sample notice language.

## Training

Awareness of and training on the new Title IX responsibilities are critical and likely will be the first implementation step for most districts. The regulations require separation of employee roles related to different stages of the Title IX sexual harassment response process, as well as training to ensure that, among other mandates, individuals implementing the process do not have a conflict of interest or bias for or against the complainants or respondents. Title IX Coordinator(s) must be trained on responsibilities for receiving reports, providing and implementing supportive measures, and specific aspects related to coordinating the district’s overall efforts to comply. Districts also must designate and train investigators and decision makers on the definition of sexual harassment, conducting investigations, how to serve impartially and other training specified in the sample policy. A notable change is that although the Title IX Coordinator still can investigate allegations in formal complaints, he or she cannot make findings or determinations of responsibility.

## Policy Requirement

Districts must have a policy that states they do not discriminate on the basis of sex in the education programs or activities they operate and that they will comply fully with Title IX and its implementing regulations. Again, the policy requirement is not new. Most districts have in their policy manual Policy JAA-Equal Educational Opportunities applicable to students and GAAA-Equal Employment Opportunities applicable to employees. Sample Policy JAA states not only that the district will comply with Title IX, but also with other federal nondiscrimination mandates that require a complaint process- Title VI (race, color, or national origin); and Section 504 and the Americans with Disabilities Act (disability).

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Reports or complaints of discrimination based on sex that do not allege sexual harassment should continue to be handled in accordance with Policy JAA. For example, a complaint from a female student alleging that she was not allowed to play a certain sport simply because of her sex with no elements of sexual harassment could still be handled in accordance with the less complicated procedures in Policy JAA. Because sexual harassment as defined under Title IX now has a specific policy requirement with a mandated grievance process, Policy JAA has been revised to direct reports or complaints of alleged Title IX sexual harassment to a separate policy.

Sample Policy JCAC-Sexual Harassment contains the federal definition of sexual harassment, channels reports or complaints to the Title IX Coordinator, and outlines the sexual harassment grievance process requirements. Its opening paragraph acknowledges that the policy may not address every aspect of federal law or regulation, which would prevail in such cases. Nothing in the regulations prevents moving some of the details in Policy JCAC to regulations or procedures, but districts should exercise caution not to intermingle or combine such details with other complaint policies or procedures.

### Definitions

Sample Policy JCAC defines important terms needed to understand the policy. Such terms are bolded, but definitions are not repeated in this article. The regulations adopt the Gebser/Davis judicial standard, based on a pair of U. S. Supreme Court cases from the 1990s, as to when a school district can be held liable in court for its response to allegations of sexual harassment under Title IX. In the Gebser case, a female student's relationship with a male teacher was not reported to the school until the relationship ended, after which the teacher was arrested and fired. The student sued the district, arguing that the district should have known about the teacher's misconduct and acted to stop it. The Court decided that a district may be liable for monetary damage under Title IX when an official with authority to take corrective action has **actual knowledge** of sexual harassment within a district program or activity but responds with **deliberate indifference**. In the Davis case, the Court

heard a Georgia case in which a female elementary student alleged she was sexually harassed by a male classmate. The Court affirmed the actual knowledge and deliberate indifference components of Gebser, adding that with student-on-student **sexual harassment**, the district can only be liable when the harassment is "so severe, pervasive, and objectively offensive that it can be said to deprive the victim of access to the educational opportunities or benefits provided by the school."

What constitutes "actual knowledge" is expanded under the regulations. Previously considered to be notice to an "official with authority" to act, the definition now includes notice to the Title IX coordinator or to "any employee." The potential implications of that regulatory change cannot be overemphasized. Regulatory comments suggest that just as all K-12 employees are mandatory reporters for child abuse, they also should be mandatory reporters for sexual harassment. Thus, employees must be trained about their role as reporters for sexual harassment when students report to them, including how and to whom such reports should be made.

### GRIEVANCE PROCESS

The regulations require districts to set "reasonably prompt time frames for conclusion of the grievance process," but do not mandate a set timeline from beginning to end, based on OCR's belief that "recipients are in the best position to balance the interests of promptness, and fairness and accuracy." Instead, the regulations require districts to designate and include in the grievance process what the set time frame will be for each phase, which must include two federally mandated separate periods of at least 10 days each for the parties to review evidence and to submit written questions about the investigative report. Temporary delays or extensions are allowed for reasons specified in the sample Policy JCAC. (Step 15)

The sample Policy JCAC has an 80-school days timeline, which can be adjusted if districts believe more time will be needed at any stage, so long as a decision can still be reached within a "reasonably prompt" time frame. Districts may decide to define "days" in another way, including calendar days or business days.

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The regulations clarify that “any person may report sexual harassment”, which may be done by phone, mail, email, or in person. However, a **formal complaint** is a document filed by an alleged victim or signed by the Title IX Coordinator alleging sexual harassment against an individual and requesting that the district investigate the allegation of sexual harassment. Parents or legal guardians can file for and act on behalf of their children under the age of 18. (*Steps 1-2*)

When the district receives a formal complaint or report, the Title IX Coordinator must immediately contact the complainant to offer and discuss the availability of **supportive measures**, explain that supportive measures are available with or without filing a formal complaint, and explain how to file a formal complaint (*Step 3*). If the report or formal complaint clearly does not meet the definition of sexual harassment under Title IX, it may be treated as an offense to be reported under Policy JAA and/or handled in accordance with the student code of conduct. Obviously, reasons for handling the report through procedures other than the sexual harassment grievance process should be carefully documented.

Once a formal complaint is filed, it triggers the district’s obligation to provide written notice to the **complainant** and the **respondent** that includes certain information listed in the policy. (*Steps 4-6*). The notice must include information such as the relevant grievance procedures, information about the allegations with details such as the identities of the parties and the date and location of the alleged incident, if known, and a statement that the respondent is presumed not responsible.

Schools must assign an investigator(s) to interview parties and witnesses, collect evidence related to the allegations and produce a written investigative report. Before finalizing the report, all evidence must be provided to both parties and they must have at least 10 days to review and submit written questions and additional evidence. The investigator must then finalize the report and send it to the parties, who must have the opportunity to submit written responses to the report. After that final exchange of information, a determination of responsibility must be made within

10 days by a separate decision maker, who cannot be the same person as the investigator or the Title IX Coordinator. (*Steps 7-9*)

The determination of responsibility has presented a major quandary for districts with a responsibility to handle sexual harassment complaints under state laws and the student code of conduct. For example, bullying based on sex could fit the Title IX sexual harassment definition. Districts generally would immediately move to handle such offenses in accordance with the code of conduct, possibly before a disciplinary tribunal. However, the Title IX regulations prohibit the district from punishing a student until a determination of responsibility has been reached following the prescribed grievance process. Reconciling these two procedures and attempting to ensure that results are consistent may end up being the biggest challenge for public school districts in Georgia.

## Appeals

Both parties must be allowed to appeal the determination of responsibility. Parties can appeal the district’s dismissal of a formal complaint or based on allegations of procedural irregularity, new evidence, or conflict of interest or bias on the part of the Title IX Coordinator, investigator or decision maker, any of which could have affected the outcome. (*Step 10*)

## Retention of Records

Districts must create and keep for seven years records of its actions taken in response to a report or formal complaint of sexual harassment. This includes, but is not limited to, documentation regarding each sexual harassment investigation, responsibility of determination, disciplinary action imposed, remedies and supportive measures provided, and appeal or informal resolution documentation. (*Step 12*)

## Conclusion

The timing of the issuance of the new Title IX regulations and the short implementation timeline could not have been worse for districts trying to get school started amid the Covid-19 pandemic. The regulations impose significant challenges for school districts and raise some legal questions to which there are no satisfying answers. For example, the National School

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## New Upgrade Coming to the Simbli Policy Module

This past year we added some great new features to the Simbli Policy Module including...

- User interface improvements
- Responsive design to easily access your policies on your phone or mobile device
- 100% ADA compliance
- Inline comments to provide for greater collaboration on policies

But there's more. Effective **October 10, 2020**, GSBA will be releasing our largest upgrade to the Simbli Policy Module in over 12 years.

**Multiple Policy Types** – We know that currently your district is having to manage numerous manuals in addition to your Board Policy Manual. Things like staff handbooks, student handbooks, school safety manuals, business continuity plans, financial procedures manual, IT procedures manuals, etc. With this new release, you will now be able to manage all of those manuals directly in the Simbli Policy Module. Each manual can be set for public and/or private permissions. This allows you to manage and access all of your manuals online and in one place.

**User Permissions** – With the addition of Policy Types, we have also expanded and enhanced the user permissions so that you can make sure everyone has the right access to the right manual.

**Printing** – Easily print your entire, or a portion, of your board policy manual to a PDF. Maybe you just want to print all of the draft policies, or you want to all policies that have not been updated or reviewed since a certain date. You can also add page numbers and a watermark and/or a footer to your PDF.

**Policy Listing Page** – With this release, we are introducing what we call “Sticky Filters” to the policy listing page. Now users can customize what columns and filters they want displayed for them on the policy listing page and that view will stay for them each time they pull up the manual.

**Policy History** – The policy history has been expanded to not only show prior versions of policies ut now you can see prior versions of regulations or other document types

**Policy Sub-Status** – Districts can now create custom “sub-status” labels to mark a draft policy for “1st Reading” or “2nd Reading” providing users greater guidance on the status of a policy.

**Copy Policies** – Policy administrators can now copy an existing document within a manual or from one manual to another.

**Search** – Search has been updated to now allow users to search across multiple manual types.

**GSBA Sample Policies** – Now when GSBA posts a Policy Update or Alert and includes a sample policy, Policy Administrators can now click a button to automatically copy that sample into their local manual as a draft ready to be customized to their local needs.

GSBA will be holding both webinars and training sessions in September and October in conjunction with the rollout to help you prepare to take advantage of all that this release has to offer. Keep an eye out for upcoming dates and times. ■

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Boards Association, supported by GSBA, sent a letter to OCR asking the agency to clarify how districts can reconcile the Title IX formal complaint procedures with districts' existing policies and student codes of conduct. As of this writing, there has been no response.

To prepare for compliance, districts should focus on training employees and updating policies. As always, but of even more importance given the subject matter and complex procedures involved, districts should consult with legal counsel regarding policy wording before it is presented to the board for adoption. Legal counsel also should be consulted upon the district's receipt of a complaint of sexual harassment, as there are many potential legal issues that could arise and result in challenges to student discipline decisions, lawsuits and, of course, OCR complaints. ■

# Monthly Policy Alerts



## SEPTEMBER:

**Litigation:** No policy implications

**Legislation:** No policy implications

**State Board Rules:** No policy implications

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## Sample Policy Disclaimer

This policy is provided solely as a sample. Any board of education adopting such a policy should use this sample as a framework or starting point and, after carefully reviewing the applicable laws, regulations and state rules, modify the policy as appropriate to meet the needs of the local school system. Any policy should be carefully reviewed by the board of education's legal counsel.

### Board Policy

Descriptor Code: JAA

### **Equal Educational Opportunities**

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The School District does not discriminate on the basis of race, color or national origin, sex or disability in any student program or activity. It is the policy of the Board of Education to comply fully with the requirements of Title VI, Title IX, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, and all accompanying regulations.

Any student, applicant for admission, parent or guardian or other person who believes he or she or any student has been discriminated against or harassed in violation of this policy must make a complaint in accordance with the procedures outlined below.

### **COMPLAINTS PROCEDURE**

Complaints made to the School District regarding alleged discrimination or harassment on the basis of race, color or national origin in violation of Title VI, on the basis of sex (except as stated below) in violation of Title IX, or on the basis of disability in violation of Section 504 of the Rehabilitation Act of 1973 or the Americans With Disabilities Act will be processed in accordance with the following procedure:

1. a. Any student, applicant for admission, employee, parent or guardian or other person with a complaint or report alleging a violation of Title VI, Section 504, the ADA or Title IX, excluding sexual harassment as described in 1b, shall promptly notify, in writing or orally, either the principal for his/her school or the appropriate coordinator designated by the school principal or the District. If the report or complaint is oral, either the coordinator or school principal to whom the report or complaint is made shall promptly prepare a memorandum or written statement of the complaint as made to him or her by the complainant and shall have the complainant read and sign the memorandum or statement if it accurately reflects the complaint made. If the complaint is made to a school principal, he or she shall be responsible for notifying the appropriate coordinator of the complaint. Reports or complaints other than those described in 1b shall be handled in accordance with the procedures starting in 2.
  - b. Any person with a complaint or report alleging sexual harassment as defined in Policy JCAC (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sexual harassment), may report, in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator on the District's website, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator. Such reports will be handled in accordance with the procedures and grievance process specified in Policy JCAC.
2. If the alleged offending individual is the coordinator or the principal, the complaint shall either be made by the complainant to the Superintendent or, if the complaint is initially made to the school principal, reported by the principal to the Superintendent. If the alleged offending individual is the Superintendent, the complaint shall be made to the designated coordinator, who shall, without further investigation, report the complaint to the Board chairperson.

3. The coordinator or his or her designee shall have fifteen school days to gather all information relevant to the report or complaint made, review the information, determine the facts relating to the complaint, review the action requested by the complainant, and attempt to resolve the complaint with the complainant and any other persons involved. The coordinator or designee shall prepare a written response to the complaint detailing any action to be taken in response to the complaint and the time frame in which such action will be taken and copies of this response shall be furnished to the complainant, the appropriate coordinator and the principal or his or her designee.
4. If the complaint is not resolved at the conclusion of this fifteen-day period or if the complainant is not satisfied with the resolution of the complaint, the complainant shall have the right, within five school days of receiving a copy of the written response, to have the complaint referred to the Superintendent of Schools. If the alleged offending individual is the Superintendent, the complainant may have the complaint referred to the Board of Education, rather than the Superintendent.
5. The Superintendent shall have fifteen school days to review the complaint and the response of the coordinator or designee and attempt to resolve the complaint. The Superintendent shall furnish to the complainant a written response setting forth either his or her approval of the action recommended by the coordinator or designee or the action to be taken by the School District in response to the complaint in lieu of that recommended by the coordinator or designee and the time frame in which such action shall be taken.
6. This policy is not intended to deprive any student or parent of any right they may have to file a complaint under any other applicable policy of the local board or to contact the Office for Civil Rights or other appropriate state or federal agency with regard to any allegations that the School District has violated the statutes described above.
7. The School District shall be responsible for distributing and disseminating information relevant to this policy and procedure to students, parents and employees through appropriate procedures.
8. No reprisal shall occur as a result of reporting unlawful discrimination or harassment under this policy, and any attempt to retaliate against a complainant shall be disciplined as is appropriate.
9. The confidentiality of any individual making a complaint or report in accordance with this policy, to the extent it is reasonably possible and complies with the law, shall be protected, although the discovery of the truth and the elimination of unlawful harassment shall be the overriding consideration.

Contact information for the following coordinators is available on the District's website.

***[List position to avoid policy changes when names change.]***

Title IX:

Title VI:

Section 504:

ADA:

## Sample Policy Disclaimer

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### Board Policy

Descriptor Code: JCAC

### Sexual Harassment of Students

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The intent of this policy is to comply with the Title IX federal regulations concerning sexual harassment. To the extent that additional requirements are specified in federal law or regulations, the District shall comply with such requirements.

#### DEFINITIONS

**Actual knowledge** means notice of sexual harassment or allegations of sexual harassment to the District's Title IX Coordinator or to any official or employee of the District. This notice requirement is not met when the only District official or employee with actual knowledge is the respondent.

**Complainant** means an individual who is alleged to be the victim of conduct that could constitute sexual harassment. If the complainant is under the age of 18, the parent or legal guardian can file a complaint and act on behalf of the student.

**Days** for the purpose of this policy means "school days."

**Deliberately indifferent** means a response to sexual harassment that is clearly unreasonable in light of the known circumstances.

**Formal complaint** means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the District investigate the allegation of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in a District education program or activity. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information listed for the Title IX Coordinator in the District's nondiscrimination notice posted on its website. As used in this policy, the phrase "document filed by a complainant" means a document or electronic submission (such as by electronic mail or through an online portal provided by the District) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party under this policy.

**Respondent** means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

**Sexual harassment** means conduct on the basis of sex that satisfies one or more of the following:

1. An employee of the District conditioning the provision of a District aid, benefit, or service on an individual's participation in unwelcome sexual conduct;
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the District's education program or activity; or
3. "Sexual assault"- an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation; or

"Dating Violence"- sex-based violence committed by a person-

(A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(B) where the existence of such a relationship shall be determined based on a consideration of the following factors:

(i) The length of the relationship.

(ii) The type of relationship.

(iii) The frequency of interaction between the persons involved in the relationship; or

"Domestic Violence"- sex-based violence which includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction; or

"Sex-based Stalking" - engaging in a course of conduct directed at a specific person that would cause a reasonable person to-

(A) fear for his or her safety or the safety of others; or

(B) suffer substantial emotional distress.

**Supportive measures** means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the recipient's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the District's educational environment, or deter sexual harassment. The District shall presume that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process. The grievance process will be followed before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The District shall maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the District to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

## **NONDISCRIMINATION POLICY**

It is the policy of the Board of Education to comply fully with the requirements of state law, Title IX and its accompanying regulations.

The School District prohibits discrimination based on sex and sexual harassment of students by other students, employees, volunteers or others other whom the District has authority in any District education program or activity. Education program or activity includes locations, events, or circumstances over which the District exercises substantial control over both the respondent and the context in which the sexual harassment occurs.

The District shall respond promptly in a manner that is not deliberately indifferent when it has actual knowledge of sexual harassment against a person in an education program or activity.

The District shall require that any individual designated and authorized as a Title IX Coordinator, investigator, decision-maker, or any person designated to facilitate an informal resolution process, not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. The District shall ensure that Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, will receive training on the definition of sexual harassment, the scope of the District's education program or activity, how to conduct an investigation and grievance process including questioning, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudice of the facts at issue, conflicts of interest, and bias. The District shall ensure that decision-makers receive training on any technology to be used during questioning, and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant. The District also shall ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence. Any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, shall not rely on sex stereotypes and shall promote impartial investigations and adjudications of formal complaints of sexual harassment.

Reports or complaints made to the School District regarding alleged sexual harassment in violation of Title IX shall be processed in accordance with the following process:

## **GRIEVANCE PROCESS**

1. Reports or complaints may be verbal or written and may be made at any time (including during non-business hours), in person, by mail, by telephone, or by electronic mail using the contact information posted on the school and/or district website.
2. Any student, employee, parent or other person wishing to report or file a complaint alleging a violation as described above shall promptly notify either the principal or counselor at his/her school or the Title IX Coordinator designated and authorized by the District. Any employee who receives information from a student alleging sexual harassment shall report it to the principal or Title IX Coordinator. If the alleged offending individual is the principal, the report or complaint should be made by the complainant to the Title IX Coordinator.

3. The Title IX Coordinator shall promptly contact the complainant to discuss the availability of supportive measures as defined in this policy, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint. The District shall treat complainants and respondents equitably by following this grievance process before punishing the respondent or providing remedies to the complainant. Remedies will be designed to restore or preserve equal access to the District's education program or activity. Such remedies may include the same individualized services described as "supportive measures." However, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent.

**4. Formal Complaint:**

Upon receipt of a formal complaint, the District shall within 10 days provide the following written notice to the parties who are known:

(A) Notice of the District's grievance process;

(B) Notice of the allegations potentially constituting sexual harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known. The written notice shall include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process. The written notice shall inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence. The written notice shall inform the parties of any provision in the code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process. The notice shall describe the range of or list the possible disciplinary sanctions and remedies that the District may implement following any determination of responsibility.

(C) If, in the course of an investigation, the District decides to investigate allegations about the complainant or respondent that are not included in the notice provided pursuant to paragraph (4)(B), the District shall provide notice of the additional allegations to the parties whose identities are known.

**5. Dismissal of a formal complaint.**

The District shall investigate the allegations in a formal complaint. If the conduct alleged in the formal complaint would not constitute sexual harassment as defined herein even if proved or did not occur in the District's education program or activity or in the United States, then the District shall dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX; such a dismissal does not preclude action under another provision of the District's code of conduct.

(A) The District may dismiss the formal complaint or any allegations therein, if at any time during the investigation: A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; the respondent is no longer enrolled or employed by the District; or specific circumstances

prevent the District from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

(B) Upon a dismissal required or permitted pursuant to paragraph (5), the District shall promptly send written notice of and reason(s) for the dismissal simultaneously to the parties.

## **6. Consolidation of formal complaints.**

The District may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances. Where a grievance process involves more than one complainant or more than one respondent, references to the singular "party," "complainant," or "respondent" include the plural, as applicable.

## **7. Investigation of a formal complaint.**

After providing written notice to the parties of the receipt of a formal complaint, the District shall have 15 days to investigate. When investigating a formal complaint and throughout the grievance process, the District shall—

(A) Assume the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility and not place such burdens on the parties provided that the District cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the District obtains that party's voluntary, written consent to do so;

(B) Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;

(C) Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;

(D) Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding; however, the District may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties;

(E) Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all investigative interviews or other meetings, with sufficient time for the party to prepare to participate;

(F) Provide both parties an equal opportunity to inspect and review any non-privileged evidence obtained as part of the investigation that is directly related to the allegations

raised in a formal complaint, including the evidence upon which the District does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. Prior to completion of the investigative report, the District shall send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties shall have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report. The District shall make all such evidence subject to the parties' inspection and review available at any meeting to give each party equal opportunity to refer to such evidence during the meeting, including for purposes of cross-examination; and

(G) Create within 5 days an investigative report that fairly summarizes relevant evidence, and at least 10 days prior to the determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

(H) If at any point in the investigation of reported sexual harassment of a student, the investigator determines that the reported harassment should more properly be termed abuse, the reported incident or situation shall be referred pursuant to the established protocol for child abuse investigation. Reported sexual harassment determined not to be sexual harassment as defined under Title IX may be investigated in accordance with Policy JAA.

## **8. Questions.**

After the District has sent the investigative report to the parties and before reaching a determination regarding responsibility, the decision-maker(s) shall afford a 10 day period for each party to have the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. The District shall not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege. The decision-maker(s) shall explain to the party proposing the questions any decision to exclude a question as not relevant.

## **9. Determination regarding responsibility.**

The decision-maker(s), who cannot be the same person(s) as the Title IX Coordinator or the investigator(s), shall, within 10 days of the conclusion of the question and answer period, issue a written determination regarding responsibility. To reach this determination, the District shall apply the preponderance of the evidence standard of evidence to formal complaints against students, to formal complaints against employees and to all complaints of sexual harassment.

The written determination shall include—

- (A) Identification of the allegations potentially constituting sexual harassment as defined in this policy;
- (B) A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, and methods used to gather other evidence;
- (C) Findings of fact supporting the determination;
- (D) Conclusions regarding the application of the District's code of conduct to the facts;
- (E) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the District imposes on the respondent, and whether remedies designed to restore or preserve equal access to the District's education program or activity will be provided by the District to the complainant; and
- (F) The District's procedures and permissible bases for the complainant and respondent to appeal.
- (G) The District shall provide the written determination to the parties simultaneously. The determination regarding responsibility becomes final either on the date that the District provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.
- (H) The Title IX Coordinator is responsible for effective implementation of any remedies.

#### 10. **Appeals.**

The District shall offer both parties 10 days after a decision for an appeal from a determination regarding responsibility, and from a District's dismissal of a formal complaint or any allegations therein, on the following bases:

- (A) Procedural irregularity that affected the outcome of the matter;
- (B) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- (C) The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.
- (D) As to all appeals, the District shall:
  - (i) Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;

- (ii) Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;
- (iii) Ensure that the decision-maker(s) for the appeal complies with the training standards set forth in this policy;
- (iv) Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
- (v) Issue a written decision describing the result of the appeal and the rationale for the result; and
- (vi) Provide the written decision simultaneously to both parties within 10 days of the receipt of the appeal.

#### **11. Informal resolution.**

The District shall not require as a condition of enrollment or continuing enrollment or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment consistent with this policy. Similarly, the District shall not require the parties to participate in an informal resolution process and shall not offer an informal resolution process unless a formal complaint is filed. However, at any time prior to reaching a determination regarding responsibility the District may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that the District—

- (A) Provides to the parties a written notice disclosing: The allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;
- (B) Obtains the parties' voluntary, written consent to the informal resolution process; and
- (C) Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

#### **12. Recordkeeping.**

The District shall maintain for a period of seven years records of—

- (A) Each sexual harassment investigation including any determination regarding responsibility, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the District's education program or activity;
- (B) Any appeal and the result therefrom;

(C) Any informal resolution and the result therefrom; and

(D) All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. The District shall make these training materials publicly available on its website, or if the District does not maintain a website, shall make these materials available upon request for inspection by members of the public.

(i) For each response required under the District's process for responding to a sexual harassment formal complaint, the District shall create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the District shall document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the District's education program or activity. If the District does not provide a complainant with supportive measures, then the District shall document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the District in the future from providing additional explanations or detailing additional measures taken.

### **13. Confidentiality.**

The District shall keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by federal or state law or regulations, or to carry out the purposes of Title IX requirements, including the conduct of any investigation or judicial proceeding arising thereunder.

### **14. Retaliation Prohibited.**

(A) No District or person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation or proceeding under Title IX. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.

Complaints alleging retaliation may be filed in accordance with the procedures specified in Policy JAA.

(B) The exercise of rights protected under the First Amendment does not constitute retaliation prohibited under subparagraph (a).

(C) Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy does not constitute retaliation prohibited under subparagraph (a); provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

#### **15. Time Frame.**

The District shall allow for the temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

#### **NOTICE:**

The District is required by Title IX and its implementing regulations to notify employees, students, parents or legal guardians, applicants for admission and employment, and professional organizations holding professional agreements with the District that the District does not discriminate on the basis of sex in the operation of its education programs or activities, including admissions and employment.

Contact information for the District's Title IX Coordinator is located on its website and in all handbooks or catalogs that the District makes available to employees, students, parents or legal guardians, applicants for admission and employment, and professional organizations holding professional agreements with the District.

Inquiries about Title IX and its implementing regulations may be referred to the District's Title IX Coordinator, to the Assistant Secretary of the U.S. Department of Education, or both.

## Sample Policy Disclaimer

This policy is provided solely as a sample. Any board of education adopting such a policy should use this sample as a framework or starting point and, after carefully reviewing the applicable laws, regulations and state rules, modify the policy as appropriate to meet the needs of the local school system. Any policy should be carefully reviewed by the board of education's legal counsel.

### Board Policy

Descriptor Code: GAAA

### Equal Opportunity Employment

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The School District does not discriminate on the basis of race, color, national origin, religion, age, disability, or sex in its employment practices. It is the policy of the Board of Education to comply fully with the requirements of Title VI, Title VII, Title IX, Section 504 of the Rehabilitation Act of 1973, the Americans With Disabilities Act (ADA), the Age Discrimination in Employment Act (ADEA) and all accompanying regulations.

Any employee, applicant for employment, or other person who believes he or she has been discriminated against or harassed in violation of the laws specified below must make a complaint in accordance with the procedure outlined below.

#### COMPLAINTS PROCEDURE

Complaints made to the School District regarding alleged discrimination or harassment on the basis of race, color or national origin in violation of Title VI; sex (except as stated below) in violation of Title IX; religion in violation of Title VII; disability in violation of Section 504 or the ADA, or age in violation of the ADEA, will be processed in accordance with the following procedure:

- (a) Any employee, applicant for employment, or other person with a complaint or report alleging a violation as described above, excluding sexual harassment as defined in 1b, shall promptly notify, in writing or orally, either the principal for his/her school or the appropriate coordinator designated by the school principal or the District. If the report or complaint is oral, either the coordinator or school principal to whom the complaint is made shall promptly prepare a memorandum or written statement of the complaint as made to him or her by the complainant and shall have the complainant read and sign the memorandum or statement if it accurately reflects the complaint made. If the complaint is made to a school principal, he or she shall be responsible for notifying the appropriate coordinator of the complaint. Reports or complaints other than those described in 1b shall be handled in accordance with the procedures starting in 2.

(b) Any person with a complaint or report alleging sexual harassment as defined in Policy GAEB (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sexual harassment), may report, in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator on the District's website, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator. Such reports will be handled in accordance with the procedures and grievance process specified in Policy GAEB.
- If the alleged offending individual is the coordinator, the complaint shall either be made by the complainant to the Superintendent or, if the complaint is initially made to the school principal, reported by the principal to the Superintendent. If the alleged offending individual is the Superintendent, the complaint shall be made to the designated coordinator, who shall, without further investigation, report the complaint to the Board chairperson.

3. The coordinator or his or her designee shall have fifteen school days to gather all information relevant to the complaint made, review the information, determine the facts relating to the complaint, review the action requested by the complainant, and attempt to resolve the complaint with the complainant and any other persons involved. The coordinator or designee shall prepare a written response to the complaint detailing any action to be taken in response to the complaint and the time frame in which such action will be taken and copies of this response shall be furnished to the complainant, the appropriate coordinator and the principal or his or her designee.
4. If the complaint is not resolved at the conclusion of this fifteen-day period or if the complainant is not satisfied with the resolution of the complaint, the complainant shall have the right, within five school days of receiving a copy of the written response, to have the complaint referred to the Superintendent of Schools. If the alleged offending individual is the Superintendent, the complainant may have the complaint referred to the Board of Education, rather than the Superintendent.
5. The Superintendent shall have fifteen school days to review the complaint and the response of the coordinator or designee and attempt to resolve the complaint. The Superintendent shall furnish to the complainant a written response setting forth either his or her approval of the action recommended by the coordinator or designee or the action to be taken by the School District in response to the complaint in lieu of that recommended by the coordinator or designee and the time frame in which such action shall be taken. The decision of the Superintendent shall be final.
6. This policy is not intended to deprive any employee of any right they may have to file a grievance pursuant to any other policy of the local Board of Education, specifically the policy designed to implement Official Code of Georgia Annotated 20-2-989.5, where appropriate. This policy is not intended to provide an alternative process for resolving evaluation and employment disputes where there already exists a due process procedure mandated by state law or State Department of Education regulations, specifically including, but not limited to, hearings to be conducted pursuant to the Fair Dismissal Act of Georgia. The complainant retains at all times the right to contact the Office of Civil Rights, the Equal Employment Opportunity Commission or any other appropriate state or federal agency with regard to any allegations that the School District has violated the statutes described above.
7. The School District shall be responsible for distributing and disseminating information relevant to this policy and procedure to employees through appropriate procedures.
8. No reprisal shall occur as a result of reporting unlawful discrimination or harassment under this policy, and any attempt to retaliate against a complainant shall be disciplined as is appropriate.
9. The confidentiality of any individual making a complaint or report in accordance with this policy, to the extent it is reasonably possible and complies with the law, shall be protected, although the discovery of the truth and the elimination of unlawful harassment shall be the overriding consideration.

Contact information for the following coordinators is available on the District's website.

***[List position to avoid policy changes when names change.]***

Title VI:

Title VII:

Title IX:

Section 504:

ADA:

ADEA:

## Sample Policy Disclaimer

This policy is provided solely as a sample. Any board of education adopting such a policy should use this sample as a framework or starting point and, after carefully reviewing the applicable laws, regulations and state rules, modify the policy as appropriate to meet the needs of the local school system. Any policy should be carefully reviewed by the board of education's legal counsel.

### Board Policy

Descriptor Code: GAEB

### Sexual Harassment of Employees

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The intent of this policy is to comply with the Title IX federal regulations concerning sexual harassment. To the extent that additional requirements are specified in federal law or regulations, the District shall comply with such requirements.

#### DEFINITIONS

**Actual knowledge** means notice of sexual harassment or allegations of sexual harassment to the District's Title IX Coordinator or to any official or employee of the District. This notice requirement is not met when the only District official or employee with actual knowledge is the respondent.

**Complainant** means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

**Days** for the purpose of this policy means "school days."

**Deliberately indifferent** means a response to sexual harassment that is clearly unreasonable in light of the known circumstances.

**Formal complaint** means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the District investigate the allegation of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in a District education program or activity. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information listed for the Title IX Coordinator in the District's nondiscrimination notice posted on its website. As used in this policy, the phrase "document filed by a complainant" means a document or electronic submission (such as by electronic mail or through an online portal provided by the District) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party under this policy.

**Respondent** means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

**Sexual harassment** means conduct on the basis of sex that satisfies one or more of the following:

1. An employee of the District conditioning the provision of a District aid, benefit, or service on an individual's participation in unwelcome sexual conduct;
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the District's education program or activity; or
3. "Sexual assault"- an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation; or

"Dating Violence"- sex-based violence committed by a person-

(A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(B) where the existence of such a relationship shall be determined based on a consideration of the following factors:

(i) The length of the relationship.

(ii) The type of relationship.

(iii) The frequency of interaction between the persons involved in the relationship; or

"Domestic Violence"- sex-based violence which includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction; or

"Sex-based Stalking" - engaging in a course of conduct directed at a specific person that would cause a reasonable person to-

(A) fear for his or her safety or the safety of others; or

(B) suffer substantial emotional distress.

**Supportive measures** means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the recipient's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the District's educational environment, or deter sexual harassment. The District shall presume that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process. The grievance process will be followed before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The District shall maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the District to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

## **NONDISCRIMINATION POLICY**

It is the policy of the Board of Education to comply fully with the requirements of state law, Title IX and its accompanying regulations.

The School District prohibits discrimination based on sex and sexual harassment of employees by other employees, board members, students, volunteers, or others over whom the District has authority in any District education program or activity. Education program or activity includes locations, events, or circumstances over which the District exercises substantial control over both the respondent and the context in which the sexual harassment occurs.

The District shall respond promptly in a manner that is not deliberately indifferent when it has actual knowledge of sexual harassment against a person in an education program or activity.

The District shall require that any individual designated and authorized as a Title IX Coordinator, investigator, decision-maker, or any person designated to facilitate an informal resolution process, not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. The District shall ensure that Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, will receive training on the definition of sexual harassment, the scope of the District's education program or activity, how to conduct an investigation and grievance process including questioning, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. The District shall ensure that decision-makers receive training on any technology to be used during questioning, and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant. The District also shall ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence. Any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, shall not rely on sex stereotypes and shall promote impartial investigations and adjudications of formal complaints of sexual harassment.

Reports or complaints made to the School District regarding alleged sexual harassment in violation of Title IX shall be processed in accordance with the following process:

## **GRIEVANCE PROCESS**

1. Reports or complaints may be verbal or written and may be made at any time (including during non-business hours), in person, by mail, by telephone, or by electronic mail using the contact information posted on the school and/or district website.
2. Any employee, applicant for employment, or other person wishing to report or file a complaint alleging a violation as described above shall promptly notify either the principal at his/her school or the Title IX Coordinator designated and authorized by the District. Any employee who receives information alleging sexual harassment of an employee shall report it to the principal or Title IX Coordinator. If the alleged offending individual is the principal, the report or complaint should be made by the complainant to the Title IX Coordinator.

3. The Title IX Coordinator shall promptly contact the complainant to discuss the availability of supportive measures as defined in this policy, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint. The District shall treat complainants and respondents equitably by following this grievance process before punishing the respondent or providing remedies to the complainant. Remedies will be designed to restore or preserve equal access to the District's education program or activity. Such remedies may include the same individualized services described as "supportive measures." However, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent.

**4. Formal Complaint.**

Upon receipt of a formal complaint, the District shall within 10 days provide the following written notice to the parties who are known:

(A) Notice of the District's grievance process;

(B) Notice of the allegations potentially constituting sexual harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known. The written notice shall include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process. The written notice shall inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence. The written notice shall inform the parties of any provision in the employee code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process. The notice shall describe the range of or list the possible disciplinary sanctions and remedies that the District may implement following any determination of responsibility.

C) If, in the course of an investigation, the District decides to investigate allegations about the complainant or respondent that are not included in the notice provided pursuant to paragraph (4)(B), the District shall provide notice of the additional allegations to the parties whose identities are known.

**5. Dismissal of a formal complaint.**

The District shall investigate the allegations in a formal complaint. If the conduct alleged in the formal complaint would not constitute sexual harassment as defined herein even if proved or did not occur in the District's education program or activity or in the United States, then the District shall dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX; such a dismissal does not preclude action under another provision of the District's policies.

(A) The District may dismiss the formal complaint or any allegations therein, if at any time during the investigation: A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; the

respondent is no longer employed by the District; or specific circumstances prevent the District from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

(B) Upon a dismissal required or permitted pursuant to paragraph (5), the District shall promptly send written notice of and reason(s) for the dismissal simultaneously to the parties.

## **6. Consolidation of formal complaints.**

The District may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances. Where a grievance process involves more than one complainant or more than one respondent, references to the singular "party," "complainant," or "respondent" include the plural, as applicable.

## **7. Investigation of a formal complaint.**

After providing written notice to the parties of the receipt of a formal complaint, the District shall have 15 days to investigate. When investigating a formal complaint and throughout the grievance process, the District shall—

(A) Assume the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility and not place such burdens on the parties provided that the District cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the District obtains that party's voluntary, written consent to do so;

(B) Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;

(C) Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;

(D) Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding; however, the District may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties;

(E) Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all investigative interviews or other meetings, with sufficient time for the party to prepare to participate;

(F) Provide both parties an equal opportunity to inspect and review any non-privileged evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the District does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. Prior to completion of the investigative report, the District shall send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties shall have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report. The District shall make all such evidence subject to the parties' inspection and review available at any meeting to give each party equal opportunity to refer to such evidence during the meeting, including for purposes of cross-examination; and

(G) Create within 5 days an investigative report that fairly summarizes relevant evidence, and at least 10 days prior to the determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

(H) Reported sexual harassment determined not to be sexual harassment as defined under Title IX may be investigated in accordance with Policy GAAA.

## **8. Questions.**

After the District has sent the investigative report to the parties and before reaching a determination regarding responsibility, the decision-maker(s) shall afford a 10 day period for each party to have the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. The District shall not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege. The decision-maker(s) shall explain to the party proposing the questions any decision to exclude a question as not relevant.

## **9. Determination regarding responsibility.**

The decision-maker(s), who cannot be the same person(s) as the Title IX Coordinator or the investigator(s), shall, within 10 days of the conclusion of the question and answer period, issue a written determination regarding responsibility. To reach this determination, the District shall apply the preponderance of the evidence standard of evidence to formal complaints against students, to formal complaints against employees and to all complaints of sexual harassment.

The written determination shall include—

(A) Identification of the allegations potentially constituting sexual harassment as defined in this policy;

(B) A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, and methods used to gather other evidence;

(C) Findings of fact supporting the determination;

(D) Conclusions regarding the application of the District's policies to the facts;

(E) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the District imposes on the respondent, and whether remedies designed to restore or preserve equal access to the District's education program or activity will be provided by the District to the complainant; and

(F) The District's procedures and permissible bases for the complainant and respondent to appeal.

(G) The District shall provide the written determination to the parties simultaneously. The determination regarding responsibility becomes final either on the date that the District provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

(H) The Title IX Coordinator is responsible for effective implementation of any remedies.

## 10. Appeals.

The District shall offer both parties 10 days after a decision for an appeal from a determination regarding responsibility, and from a District's dismissal of a formal complaint or any allegations therein, on the following bases:

(A) Procedural irregularity that affected the outcome of the matter;

(B) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and

(C) The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

(D) As to all appeals, the District shall:

(i) Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;

- (ii) Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;
- (iii) Ensure that the decision-maker(s) for the appeal complies with the training standards set forth in this policy;
- (iv) Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
- (v) Issue a written decision describing the result of the appeal and the rationale for the result; and
- (vi) Provide the written decision simultaneously to both parties within 10 days of the receipt of the appeal.

**11. Informal resolution.**

The District shall not require as a condition of employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment consistent with this policy. Similarly, the District shall not require the parties to participate in an informal resolution process and shall not offer an informal resolution process unless a formal complaint is filed. However, at any time prior to reaching a determination regarding responsibility the District may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that the District—

- (A) Provides to the parties a written notice disclosing: The allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;
- (B) Obtains the parties' voluntary, written consent to the informal resolution process.

**12. Recordkeeping.**

The District shall maintain for a period of seven years records of—

- (A) Each sexual harassment investigation including any determination regarding responsibility, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the District's education program or activity;
- (B) Any appeal and the result therefrom;
- (C) Any informal resolution and the result therefrom; and

(D) All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. The District shall make these training materials publicly available on its website, or if the District does not maintain a website, shall make these materials available upon request for inspection by members of the public.

(i) For each response required under the District's process for responding to a sexual harassment formal complaint, the District shall create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the District shall document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the District's education program or activity. If the District does not provide a complainant with supportive measures, then the District shall document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the District in the future from providing additional explanations or detailing additional measures taken.

### **13. Confidentiality.**

The District shall keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by federal or state law or regulations, or to carry out the purposes of Title IX requirements, including the conduct of any investigation or judicial proceeding arising thereunder.

### **14. Retaliation Prohibited.**

(a) No District or person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation or proceeding under Title IX. Intimidation, threats, coercion, or discrimination, including charges against an individual for employee code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.

Complaints alleging retaliation may be filed in accordance with the procedures specified in Policy GAAA.

(b) The exercise of rights protected under the First Amendment does not constitute retaliation prohibited under subparagraph (a).

(c) Charging an individual with an employee code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy does not constitute retaliation prohibited under subparagraph(a); provided,

however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

#### **15. Time Frame.**

The District shall allow for the temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

#### **NOTICE:**

The District is required by Title IX and its implementing regulations to notify employees, students, parents or legal guardians, applicants for admission and employment, and professional organizations holding professional agreements with the District that the District does not discriminate on the basis of sex in the operation of its education programs or activities, including admissions and employment.

Contact information for the District's Title IX Coordinator is located on its website and in all handbooks or catalogs that the District makes available to employees, students, parents or legal guardians, applicants for admission and employment, and professional organizations holding professional agreements with the District.

Inquiries about Title IX and its implementing regulations may be referred to the District's Title IX Coordinator, to the Assistant Secretary of the U.S. Department of Education, or both.