

SEXUAL HARASSMENT AND RETALIATION (STAFF)

Code **GBAA** Issued **9/20**

Spartanburg Four is committed to maintaining a learning and working environment free from sexual harassment or retaliation. In keeping with this commitment, the district will not tolerate harassment of district staff in the course of their employment by any person, including, but not limited to, any supervisor, coworker, vendor, visitor, student, or other staff member of the district based on the staff member's sex (including gender identity, sexual orientation, and pregnancy, childbirth, or any related medical conditions). Further, the district will not tolerate retaliation against a person who has made a report or filed a complaint alleging sexual harassment or who has participated as a witness in a sexual harassment investigation.

All district staff are responsible for helping to ensure that sexual harassment or retaliation does not occur. If a staff member feels that he/she has experienced or witnessed sexual harassment or retaliation, he/she will immediately notify his/her supervisor or building-level principal or file a formal complaint with the district's Title IX coordinator. A staff member who does not promptly report what he/she reasonably believes to be sexual harassment or retaliation may be subject to disciplinary action.

Reports of sexual harassment or retaliation may be made anonymously, but formal disciplinary action will not be taken solely on the basis of an anonymous report. The district will investigate all sexual harassment and retaliation reports impartially, thoroughly, and promptly take immediate and proportionate corrective action to end the harassment or retaliation and prevent the reoccurrence of similar misconduct, up to and including termination of employment, as appropriate. Investigations may occur even if the alleged victim does not file a complaint directly or wish to see action taken by the district or school administration. On an individualized and appropriate basis, interim measures may be taken following receipt of a complaint to minimize the risk of harm to all parties and to prevent continued sexual harassment or retaliation.

Confidentiality

To the fullest extent practicable, while ensuring a thorough and impartial investigation, the district will keep reports and the terms of their resolution confidential, including the names of individuals who submit reports, witnesses who provide information regarding reports, and the person against whom the complaint is made. All records generated under the terms of this policy and related administrative procedures will be maintained with utmost confidentiality to the extent permitted by law, specifically the Family Educational Rights and Privacy Act (FERPA). Confidentiality, however, cannot be guaranteed. All complainants proceeding through the complaint process will be advised that their identities may be disclosed to the party being accused of inappropriate conduct.

Discipline

Students whose behavior is found to be in violation of this policy will be subject to discipline and graduated consequences, up to and including expulsion, consistent with policy JICDA, *Code of Conduct*.

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Staff members found in violation of this policy will be subject to disciplinary action, up to and including termination, and may be referred to law enforcement officials, as appropriate, consistent with policy GBEB, *Staff Conduct*.

Visitors or volunteers found in violation of this policy will be subject to appropriate sanctions and may be referred to law enforcement officials, as appropriate.

Notification

Notice of this policy will be circulated to all district schools and departments and incorporated in employee handbooks. Staff will receive copies and indicate by their signature an understanding of the contents of the policy. The district will provide training for all staff on a yearly basis. All new staff members will receive training as part of their orientation. All administrators will be trained in prevention of sexual harassment and retaliation.

Cf. GBAC, JIAA

Adopted 9/20

Legal References:

- A. United States Code of Laws, as amended:
 - 1. Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. Section 2000e, *et seq.*
 - 2. Title IX of the Education Amendments of 1972, 20 U.S.C.A. Section 1681, *et seq.*

- B. S.C. Code of Laws, 1976, as amended:
 - 1. Section 1-13-80 - Prohibits discrimination in hiring and other employment practices on the basis of race, color, religion, sex (including pregnancy, childbirth, or related medical conditions), age, national origin, or disability.

SEXUAL HARASSMENT AND RETALIATION (STAFF)

Code **GBAA-R** Issued **9/20**

Spartanburg Four has adopted the following procedures to promptly and fairly address reports of sexual harassment and retaliation.

Definitions

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

Respondent is an individual who is reported to be the perpetrator of conduct that could constitute sexual harassment.

Sexual harassment means unwelcome sexual advances, requests for sexual favors, sexually motivated physical conduct, or other verbal or physical conduct of a sexual nature under any of the following conditions:

- Submission to such conduct is made either expressly or implicitly a term or condition of a student's education regarding aid, benefit, or service (i.e. quid pro quo harassment).
- Such conduct or communication is so severe, pervasive, and objectively offensive under the reasonable person standard that it effectively denies a person equal access to the education program or activity.
- Sexual assault, dating violence, domestic violence, or stalking as defined in federal law.

Sexual harassment may include, but is not limited to, the following:

- sexually-oriented teasing, name-calling, abuse, or harassment
- unwelcome comments or conduct based on an individual's gender identity or nonconformity with gender stereotypes
- graphic or written statements including, but not limited to, text messages, typed or hand-written notes, derogatory cartoons, drawings, posters, or graffiti
- inquiries into one's sexual experiences or activities
- unwelcome touching including, but not limited to, pinching, patting, constant brushing against another's body, or physical interference with movement or work
- remarks with sexual or demeaning implications
- subtle or direct propositions for sexual favors

Note that such harassment does not have to be of a sexual nature and can include offensive remarks about a person's sex, sexual orientation, and/or gender identity or expression.

Sexual harassment is prohibited against members of the same sex as well as against members of the opposite sex.

Supportive measures are non-disciplinary, non-punitive, individualized services and will be offered to the complainant and the respondent, as appropriate. These measures may include, but are not limited to, the following:

- counseling

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- modifying work schedules or locations
- placing mutual restrictions on contact between the parties
- providing leaves of absence

The measures offered to the complainant and the respondent will remain confidential 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 the district staff member(s) designated to receive and investigate complaints of alleged sexual harassment and retaliation. Additionally, this individual is available during regular work hours to discuss concerns related to sexual harassment and retaliation, as well as to assist staff members in navigating the complaint resolution process.

The following individual(s) serve(s) as Title IX coordinator (s) for the district:

*Mrs. Britt M. McKinney, Director of Federal and State Programs
118 McEdco Road, Woodruff, SC 29388
864-476-3186
bmckinney@spartanburg4.org*

Reporting

Members of the district community, including, but not limited to, staff members and students, are encouraged to promptly report incidents of sexual harassment to the Title IX coordinator or building-level principal.

Reports may be made orally or in writing via mail, telephone, electronic mail, or in person meeting at any time, including non-business hours. All reports not made directly to the Title IX coordinator will be memorialized in writing and reported to the Title IX coordinator within two (2) business days.

Reports of prohibited conduct should be made as soon as possible after the alleged act or knowledge of the alleged act. Failure to promptly report may impair the district's ability to investigate and address the prohibited conduct.

Grievance Process

Upon learning of an instance of alleged sexual harassment or retaliation, even if no formal complaint is filed, the Title IX coordinator will promptly contact the complainant to discuss the availability of supportive measures irrespective of the filing of a formal complaint and explain the process for filing a formal complaint.

The district will respect the confidentiality of the complainant and the respondent to the greatest extent possible and information will only be disclosed to the appropriate individuals as necessary to investigate allegations of harassment and take disciplinary action.

Disciplinary consequences or sanctions will not be initiated against the respondent until the grievance process has been completed. Unless there is an immediate threat to the physical health or safety of any student arising from the allegation of sexual harassment that justifies removal, the respondent's placement will not be changed. The respondent will have the opportunity to challenge the decision immediately following a change in placement. If the respondent is a staff member, he/she may be placed on administrative leave during the pendency of the grievance process.

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Formal complaint

The formal complaint process under Title IX does not apply to sexual harassment or retaliation occurring outside of the United States. However, the district will investigate all instances of sexual harassment and retaliation, including those that occur outside of the country (field trips, study abroad, etc.) in accordance with district policy. Should an investigation conclude that such actions took place, the respondent will be subject to discipline.

Forms for initiating a formal complaint may be found online as an exhibit to this administrative rule. Printed copies are available in the school office, the district office, and from the Title IX coordinator. All formal complaints must include the following information, to the extent it is available:

- identity of the individual believed to have engaged in harassing conduct (hereinafter “respondent”)
- nature of the alleged conduct
- date and location of the alleged violation
- list of potential witnesses
- resolution sought by the complainant
- signature of complainant

The Title IX coordinator can initiate a formal complaint by alleging sexual harassment against a respondent and signing the complaint document. The Title IX coordinator is not the complainant in such circumstances.

Investigation

Upon receipt of a formal complaint, the Title IX coordinator will provide written notice of the grievance process to the parties to include the following information:

- statement of the allegations
- statement that the respondent is presumed not responsible for the allegations until a determination is made
- prohibition against making a false statement or knowingly submitting false information
- right to have an advisor, who may be an attorney, present during any subsequent meetings
- list of supportive measures available to both parties

If the Title IX coordinator dismisses a complaint that does not meet the requirements of Title IX, after the complaint is withdrawn in writing, when the respondent moves out of the district or is no longer employed with the district, or for any other reason during the investigation process, written notice, including the reasons for dismissal, will be provided to both parties simultaneously. **This does not preclude the district from investigating the facts under another district policy (e.g. policy GBA, *Open Hiring and Equal Employment Opportunity* (e.g. Title VII complaints) or GBAC, *Discrimination, Harassment, or Retaliation*) or the student/staff member code of conduct.** The dismissal of a formal complaint is subject to appeal.

The principal of the school will serve as the investigator and be responsible for investigating complaints in an equitable manner that involves an objective evaluation of all relevant evidence; credibility determinations may not be based on an individual’s status as a complainant, respondent,

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or witness. The burden for obtaining evidence sufficient to reach a determination regarding responsibility rests on the school district and not the complainant or respondent.

Once a complaint is received, the investigator will initiate an investigation within five (5) business days of receipt of the complaint. If an investigation is not initiated within five (5) business days, the investigator will provide the Title IX coordinator with appropriate documentation detailing the reasons why the investigation was not initiated within the required timeframe.

All investigations will be completed within twenty (20) school days from the receipt of the initial complaint. If the investigation is not complete within twenty (20) school days, the investigator will provide the Title IX coordinator with appropriate documentation detailing the reasons why the investigation has not been completed.

Investigations will be conducted in the following manner:

- provide an equal opportunity for the parties to present witnesses and evidence
- not restrict the ability of either party to discuss the allegations under investigation or gather and present relevant evidence
- refrain from requiring, allowing, relying upon, or otherwise using questions or evidence that seek disclosure of information protected under a legally recognized privilege unless such privilege has been waived
- provide the parties with the same opportunities to have others present during any grievance proceeding
- provide to parties whose participation is requested 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
- provide both parties an equal opportunity to inspect and review any evidence directly related to the allegations in the formal complaint
- result in the creation of an investigative report that fairly summarizes relevant evidence
 - prior to the completion of the investigative report, the investigator will send to each party the evidence subject to inspection and review; all parties will have at least ten (10) days to submit a written response which will be taken into consideration in creating the final report

Determination of responsibility

The respondent is presumed to not be responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process. The preponderance of the evidence standard will be used in making this determination.

The Director of Personnel will act as the decision-maker. He/She will receive the final report of the investigation and allow each party ten (10) business days to submit additional questions to be answered by the appropriate party with limited follow-up prior to determining responsibility.

The decision-maker will provide the written determination to the parties simultaneously along with information about how to file an appeal within fourteen (14) days after the deadline for receiving all information from the parties.

A substantiated complaint against a student may result in corrective or disciplinary action up to and including expulsion. A substantiated complaint against a staff member will result in disciplinary action up to and including termination.

After a determination of responsibility is made, the Title IX coordinator will work with the complainant to determine if further supportive measures are necessary. The Title IX coordinator will also determine whether any other actions are necessary to prevent reoccurrence of the harassment.

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Appeals

The Director of Special Services will hear appeals. If the complainant or respondent is not satisfied with the determination of the decision maker, he/she may request a review by the Director of Special Services. Additionally, a complainant can request an appeal upon the dismissal of a formal complaint.

The request for appeal must be made in writing to the Title IX coordinator within ten (10) business days of receipt of the decision maker's determination or dismissal of the complaint. The appeal must include the original complaint form, a copy of the report and determination, and a written statement as to the reason for appeal.

Grounds for appeal include the following factors:

- procedural irregularity that affected the outcome of the case
- new evidence that was not reasonably available when the complaint was dismissed or a determination was made that could affect the outcome of the matter
- district staff member assigned to the matter had a conflict of interest or bias for or against the parties that affected the outcome of the matter

The Director of Special Services will review the material submitted and provide both parties five (5) business days to submit a written statement outlining their position. Within fourteen (14) business days of the deadline to receive submissions from the parties, a written decision will be issued simultaneously to both parties stating whether the determination of the decision maker will be upheld, modified, or reversed along with the rationale.

The decision of the Director of Special Services is final.

Informal Complaint Procedure (Mediation)

The district's informal complaint procedure may be initiated after a formal complaint has been made. The informal complaint process is designed to resolve complaints quickly, efficiently, and to the mutual satisfaction of all parties involved. Mediation is a voluntary process intended to allow the parties involved in a complaint to discuss their respective understandings of the incident with each other through the assistance of a trained mediator. Mediation is designed to encourage each person to be honest and direct with the other and to accept personal responsibility where appropriate. Where circumstances allow, and both parties agree to participate in writing, mediation will be initiated as soon as possible.

Mediation is only available in those circumstances where the district believes that the allegations are appropriate for resolution through an informal process, and both parties voluntarily agree to participate. Mediation is not appropriate in certain cases, such as alleged sexual assaults, even on a voluntary basis.

Participation in mediation does not waive an individual's right to participate in the formal complaint procedure or to pursue other remedies available by law, including the filing of a complaint with state or federal agencies, as appropriate. An individual may request suspension of the informal complaint procedure and initiation of the formal complaint procedure at any time.

Upon the written consent of all parties to the complaint, the Title IX coordinator will seek an outcome through mediation conducted by a qualified district mediator or an external professional engaged by the district. All parties to the complaint must mutually agree upon any resolution reached through the mediation process. The outcome of the mediation will be documented and maintained by the Title IX coordinator.

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Retaliation

It is a separate and distinct violation of policy for any member of the district community to retaliate against a staff member who reports alleged sexual discrimination or harassment or against a staff member who testifies, assists, or participates in an investigation, proceeding, or hearing relating to such discrimination or harassment. It is possible that an individual may be found to have violated this anti-retaliation provision even if the underlying complaint of sexual harassment is not found to be a violation of district policy. An individual is not allowed to do anything that would discourage a staff member from resisting or complaining about sexual harassment. Retaliation includes, but is not limited to, any form of intimidation, reprisal, or harassment.

Students found to have engaged in retaliation will be subject to discipline and graduated consequences, up to and including expulsion, consistent with policy JICDA, *Code of Conduct*.

Staff found to have engaged in retaliation may be subject to disciplinary action, up to and including termination, consistent with policy GBEB, *Staff Conduct*.

False Reports

Because incidents of sexual harassment and retaliation frequently involve interactions between persons that are not witnessed by others, reports of such conduct cannot always be substantiated by additional evidence. Lack of corroborating evidence or “proof” should not discourage individuals from making a report under this policy. However, individuals who make reports that are later found to have been intentionally false or made maliciously without regard for truth may be subject to discipline and graduated consequences, up to and including expulsion, consistent with policy JICDA, *Code of Conduct*. This provision does not apply to reports made in good faith, even if the facts alleged in the report cannot be substantiated by subsequent investigation.

Training

The district will provide training for all staff members serving as the Title IX coordinator, investigator, decision maker, or appellate authority for the informal or formal grievance process. Staff members will be trained on the following:

- definition of sexual harassment
- procedures of the grievance process
- impartiality required to prevent prejudgment of facts, conflicts of interest, and bias
- technology necessary for the grievance process
- relevance and summary of evidence
- determination of responsibility report

Materials used for training purposes may not rely on sex stereotypes, will promote impartial investigations and adjudication, and will be posted online.

Recordkeeping

The district must maintain records of complaints, investigations, and appeals for seven (7) years.

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STAFF CONCERNS/COMPLAINTS/GRIEVANCES

Code **GBK** Revised **02/13**

Purpose: To establish the basic structure for orderly and expeditious resolution of staff concerns, complaints and grievances.

The board recognizes the need for a procedure providing a prompt and effective means of resolving differences that may arise among employees and between employees and administrators.

A grievance is a disagreement involving the work situation in which an individual or group of individuals believes an injustice has been done due to one of the following reasons.

- a lack of policy
- an unfair policy
- deviation from a policy
- misapplication of interpretation of a policy or contract

Employees should secure an equitable solution of grievances at the most immediate administrative level. Employees are encouraged to seek resolution of disputes under the existing grievance regulation and will have the right to do so with complete freedom from reprisal.

Nothing in this policy limits the right of any employee to discuss a grievance with any appropriate member of the administration. Such grievance may be adjusted without formal proceedings, provided the adjustment is consistent with board policy and existing administrative rules and regulations.

The superintendent is responsible for maintaining administrative procedures which will facilitate this policy.

Adopted 6/6/83; Revised 2/2/98, 2/4/13

STAFF CONCERNS/COMPLAINTS/GRIEVANCES

Code **GBK-R** Issued **10/19**

The board encourages employees to discuss their concerns or complaints informally with their supervisors. Often, the cause of a problem or concern is merely a misunderstanding among the individuals involved. If, at any time, an employee feels that a formal mechanism for raising his/her concern or problem is needed, he/she should follow the procedure below.

Purpose

The purpose of this procedure is to settle, at the lowest possible administrative level, employee complaints relating to contracts, salaries and working conditions. "Working conditions" refers to areas of class loads, planning time, adequate physical facilities, activities, etc. The district will keep these proceedings as informal and confidential as may be appropriate at all levels of procedure.

Definition

A grievance is a claim by an employee of a violation, misinterpretation or misapplication of a provision of school board policies and administrative procedures or rules and regulations as they affect the employment or work of such employee.

The board does not consider actions which are subject to the Teachers Employment and Dismissal Act, S.C. Code 1976, as amended, Section 59-25-410, et seq. and employment decisions implemented under the district's reduction in force policy to be grievances under this procedure.

Joint grievances

The district may allow employees to present a joint grievance where each grievant alleges essentially the same facts or circumstances and requests the same relief. Joint grievances must bear the signature of each grievant. The district reserves the right to consolidate individual grievances and the right to hear joint grievances on a separate basis.

Definition of supervisor

The term "supervisor" means any person having the authority to recommend employment, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline an employee or any person having the responsibility for directing or reviewing the work of an employee.

Definition of day

A "day" is any day on which the administrative office is open.

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Grievance procedure

Step One

- An employee who wishes to file a grievance must complete the prescribed grievance form and present it to his/her direct supervisor within 10 days following either the event giving rise to the grievance or the time when the employee reasonably should have gained knowledge of its occurrence.
- Should the employee believe that resolution of the grievance requires a decision beyond the supervisor's level or area of authority, the employee will so state such belief upon submitting the grievance form. If the supervisor is in agreement concerning authority to resolve the grievance, he/she will immediately pass the grievance on to the appropriate supervisor, who will handle the matter as a first level grievance. The direct supervisor may, however, determine that resolution of the grievance is not outside his/her authority and hear the grievance.
- The appropriate supervisor will arrange a meeting with the employee within five days of receipt of the grievance. The supervisor will provide the employee with a written response to the grievance within five days after the meeting. The response will include the name of the next level supervisor to whom the grievance may be appealed, provided such appeal is presented in writing within five days.

Step Two

- The grievance may be appealed through each supervisory or administrative level to the superintendent. At each level, the procedure set out above will be followed. The original grievance and the supervisor's response will serve as the basis of the meeting. The employee and the supervisor at the preceding level may summarize the facts previously presented.
- On appeals to the superintendent, the superintendent will arrange a meeting within five days of receipt of the grievance and will respond in writing to the employee within five days of his/her hearing of the grievance. The superintendent will make summaries of the lower level presentations and responses, and may at his/her discretion, hear witnesses and evidence directly.

Upon mutual agreement between the employee and the supervisor, the time requirements under this procedures may be extended at any step, except that neither party will unreasonably refuse an extension or unreasonably delay the proceeding.

Appeal to the board of trustees

After following the above procedure, an employee may request a meeting with the board of trustees for the purpose of discussing the grievance which arose from his/her employment. The request will be made in writing to the superintendent within five days of the superintendent's response to the grievance.

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The superintendent will, at the next regularly scheduled board meeting, present to the board the request that the grievance be heard, together with copies of all correspondence and responses from the lower administrative levels.

The board will notify the employee of its decision (whether or not to meet with the grievant to discuss the grievance) within the 10 days. Should the board decide to discuss the grievance with the grievant, said discussion will be informal and non-adversarial for the discussion of employment as allowed under S.C. Code, Section 30-4-70 (Supp. 1984).

Civil rights grievances

The district will use the grievance procedures set forth above to process employee complaints based on alleged violations of Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendment Act of 1972, Section 504 of the Rehabilitation Act of 1973 and Titles I and II of the Americans with Disabilities Act of 1990 (referred to as “civil rights grievances”).

However, if the grievance is not resolved after the first two levels above, the employee may appeal in writing to the district’s director of state and federal programs. If the employee does not file such appeal within five days of the grievant’s receipt of the written response, the employee waives his/her right to appeal.

If the employee files an appeal, the director of state and federal programs will investigate the claim as appropriate. He/She will conduct a hearing within five days following any investigation. All interested persons and their representatives, if any, will have an opportunity to submit evidence relevant to the complaint. The director of state and federal programs will render a decision on the matter within five days after received of the grievance or, if a hearing is conducted, within five days after the conclusion of the hearing. The decision and any description of the resolution will be in writing and a copy forwarded to the grievant.

After appeal to the director of state and federal programs, the grievant may follow the procedures described above beginning with appeal to the superintendent.

The employee’s pursuit of other remedies such as the filing of a complaint with the responsible federal department or agency will not impair his/her right to a prompt and equitable resolution of any civil rights grievance.

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