

SEXUAL HARASSMENT AND RETALIATION (STUDENTS)

Code **JIAA** Issued **9/20**

Spartanburg Four is committed to maintaining a learning environment free from sexual discrimination and harassment. In keeping with this commitment, the district will not tolerate sexual harassment of students in the education program or any district activity (including admission) by any person, including, but not limited to, other students, staff members, volunteers, or visitors. 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.

This policy applies to behavior that takes place:

- in any school or district building or on any school or district premises before, during, or after school
- on any bus or other vehicle as part of a school activity
- during any school or district-sponsored activity or extracurricular activity
- at any time or place when the student is under the care of district staff
- at any time or place when the behavior can be reasonably expected to materially and substantially interfere with or disrupt the educational environment of the school

It also applies to behavior communicated in writing or electronically through mail, telephones, cell phones, computers, or other telecommunication devices and includes text messaging, instant messaging, and social media. In the situation that the behavior originated from a non-school computer or network, but has been brought to the attention of school officials, the decision for the district to take action in accordance with this policy will be based on whether the conduct is determined to be reasonably expected to materially and substantially interfere with or disrupt the educational environment of the school. While the behavior may not be considered a violation of Title IX, it should be treated as a violation of district policy and the applicable code of conduct.

All students and staff members are responsible for helping to ensure that sexual harassment does not occur. If a student or staff member feels that he/she has experienced or witnessed sexual harassment directed towards a student, he/she will immediately notify a teacher, supervisor or building-level principal, and/or file a formal complaint with the district's Title IX coordinator as outlined in the administrative rule associated with this policy. A staff member who does not promptly report what he/she reasonably believes to be sexual harassment may be subject to disciplinary action.

Reports of sexual harassment 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 reports impartially, thoroughly, and promptly and take immediate and proportionate corrective action to end the sexual harassment and prevent the reoccurrence of similar misconduct. Investigations may occur even if the alleged victim does not file a complaint directly or does not wish to see action taken by 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

PAGE 2 - JIAA - SEXUAL DISCRIMINATION, HARASSMENT, AND RETALIATION (STUDENTS)

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 individuals named in such reports. 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 will be disclosed to the party being accused of inappropriate conduct.

Parents/Legal guardians of any student making a complaint or against whom any complaint is made will be notified as soon as practical following the filing of the complaint.

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*.

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 district policy, including GBEB, *Staff Conduct* and GBEBB, *Staff Conduct with Students*.

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 placed on our website. At the beginning of each school year, the information in this policy and its associated administrative rule will be provided to staff members, students, and parents/legal guardians. Information provided to students will be presented in a manner appropriate to the student's age, grade, and comprehension level.

Cf. JICFAA

Adopted 9/2020

Legal References:

A. United States Code of Laws, as amended:

1. Age Discrimination Act of 1975, 42 U.S.C.A. Section 6101, *et seq.*
2. American with Disabilities Act of 1990, 42 U.S.C.A. Section 12101, *et seq.*
3. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C.A. Section 701, *et seq.*
4. Title II of the Americans with Disabilities Act, 42 U.S.C.A. Section 12132.
5. Title IV of the Civil Rights Act of 1964, 42 U.S.C.A. Section 2000c, *et seq.*
6. Title VI of the Civil Rights Act of 1964, 42 U.S.C.A. Section 2000d, *et seq.*
7. 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 16-3-755 - Sexual battery with a student.

SEXUAL HARASSMENT AND RETALIATION (STUDENTS)

Code **JIAA-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.
- 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

PAGE 2 - JIAA-R - SEXUAL HARASSMENT AND RETALIATION (STUDENTS)

- class modifications
- schedule changes
- increased monitoring or supervision

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 students, parents/legal guardians, and others in navigating the complaint resolution process.

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

*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, parents/legal guardians, 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.

Harassing or retaliatory behavior perpetrated against a student by a staff member and/or violations of policy GBEBB, *Staff Conduct with Students*, should be reported immediately to both the district Title IX coordinator and the superintendent. Informal complaint procedures will not be utilized to handle such complaints.

If a complaint involves allegations of child abuse, appropriate notifications to law enforcement and the Department of Social Services will be made in accordance with policy JLF, *Student Welfare*.

The parent/legal guardian of any student subject to sexual harassment or retaliation, or the student himself/herself if over the age of eighteen (18), may seek resolution through either the informal or formal procedures described below except as otherwise prohibited by this policy. When complaints involve two (2) or more students, the parent/legal guardian of each student will be notified of and receive all correspondence related to such complaints.

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

PAGE 3 - JIAA-R - SEXUAL HARASSMENT AND RETALIATION (STUDENTS)

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.

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 principal's 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

PAGE 4 - JIAA-R - SEXUAL HARASSMENT AND RETALIATION (STUDENTS)

notice, including the reasons for dismissal, will be provided to both parties simultaneously. The dismissal of a formal complaint is subject to appeal.

The assistant principal 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, 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 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

Within the parameters of the Family Educational Rights and Privacy Act (FERPA), the Title IX coordinator will keep the complainant and the respondent informed of the status of the investigation process. At the close of the investigation, a written final report on the investigation will be delivered to the parents/legal guardians of the complainant and the parents/legal guardians of the respondent.

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.

PAGE 5 - JIAA-R - SEXUAL HARASSMENT AND RETALIATION (STUDENTS)

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.

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

PAGE 6 - JIAA-R - SEXUAL HARASSMENT AND RETALIATION (STUDENTS)

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.

Retaliation

It is a separate and distinct violation of policy for any member of the district community to retaliate against any student who reports alleged sexual discrimination or harassment or against any student 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 student 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 district policy, including GBEB, *Staff Conduct* and GBEB, *Staff Conduct with Students*.

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

PAGE 7 - JIAA-R - SEXUAL HARASSMENT AND RETALIATION (STUDENTS)

- 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.

Issued 9/2020