Agenda Request Form

Meeting Date	Agenda Item Number
November 19, 2020	C-1

Title

Modification to School Board Policy JCAC regarding Harassment and Consideration of New School Board Policy JCAC II regarding Sexual Harassment under Title IX -- on Second Reading

Requested Action

School Board Consideration of Superintendent's Recommendation for Approval of Modification to School Board Policy JCAC regarding Harassment and Consideration of New School Board Policy JCAC II regarding Sexual Harassment under Title IX -- on Second Reading

Summary Explanation and Background

During the Spring of 2020, the U.S. Department of Education (USED) issued new regulations governing the investigation and disposition of sexual harassment allegations for K-12 public schools. These USED regulations were finalized over the summer and released for implementation by local school districts on August 14, 2020. Accordingly, at the August 20, 2020 regular School Board Meeting, the Superintendent recommended, and the School Board passed, a resolution incorporating the new regulations inclusive of a sexual harassment definition and the standards for review of all sexual harassment allegations.

Subsequent to the aforementioned resolution, the Superintendent is now recommending modification to School Board Policy JCAC regarding Harassment whereby sexual harassment investigations are removed to be placed in a stand-alone School Board Policy. Accordingly, the new JCAC II School Board Policy regarding Sexual Harassment under Title IX has been developed to specifically address all investigations of sexual harassment allegations. In conjunction with this new School Board Policy, the Superintendent and staff will also develop necessary administrative guidelines to inform students, parents/guardians and employees of all School District procedures required by the new USED regulations.

Priority Area

Organizational and Operational Effectiveness

Financial Impact

n/a

Exhibits: (List)

Proposed JCAC
Proposed JCAC II

Source of Additional Information

Tom Roach, School Board Attorney	770.479.1406
Dr. Brian V. Hightower, Superintendent of Schools	770.479.1871
Dr. Debra Murdock, Chief Operations Officer	770.479.1871

Harassment

The Cherokee County Board of Education prohibits discrimination and harassment based upon "Constitutionally-Protected Differences" and other legally protected statuses (e.g., race, age, ~~gender, gender identity,~~ color, religion, national origin, disability or any other constitutionally protected class or status). As such, it is the policy of the School District to address such complaints at the lowest level of administration in order to quickly and efficiently resolve all such matters. Due to the May 6, 2020 amendment to Title IX, Board Policy JCAC will no longer address sexual harassment. For the Cherokee County Board of Education's Policy and Grievance Procedures on sexual harassment, please refer to JCAC (II), which specifically addresses sexual harassment as defined in Title IX.

All employees are responsible for prevention of harassment and discrimination against students/employees, including the responsibility to report any conduct which they believe to be in violation of this policy. No person will be subject to retaliation or reprisal for making a good faith complaint under this policy or for participating in an investigation.

This Policy establishes the role and responsibility of the applicable Title Coordinator(s) ("Coordinator") and the role of the Chief Operations Officer (COO) in action steps, and the collection and analysis of reporting data in this regard.

The Superintendent will also develop administrative checklists to aid investigations.

I. DEFINITION

Harassment and discrimination may include any conduct which has the effect of unreasonably interfering with a student's participation in an educational program or activity, including conduct by school employees, students or others. Examples may include racially offensive jokes, slurs or comments; ~~offensive touching or requests for dates or favors; unwelcome sexual conduct or unwelcome conduct on the basis of sex that effectively denies a student access to an educational program~~; different treatment of students based upon Constitutionally-Protected Differences and/or other legally protected statuses; display or communication of racially offensive photographs, writing or materials; or conditioning educational benefits on a student's participation in, or reaction to, such conduct. Discipline and/or supportive measures may be imposed for such conduct without regard to whether it rises to the level of a violation of law.

II. COMPLAINT PROCEDURES

Complaints made to the School District regarding alleged discrimination, harassment or retaliation for complaints about, or opposition to discrimination or harassment will be processed in accordance with the following procedure:

1. Any student or other person with a complaint alleging a violation as described above will promptly notify the Coordinator, as annually appointed by the Superintendent, and/or principal of the school or work site location supervisor attended by the person believed to have suffered discrimination/harassment. If a report is made to a principal or work location supervisor, the principal or work location supervisor will forward the

complaint to the Coordinator. The complainant need not be the victim of the discrimination/harassment, but may be any person aware of the conduct.

2. Upon receipt of a discrimination/harassment complaint, the Coordinator will (a) facilitate a prompt investigation of the complaint, (b) take any interim action necessary to protect students, staff or operations of the school or work location pending the result of the investigation, and (c) make any necessary reporting of the allegations. Said investigation will consist at a minimum of interviewing the complainant, accused person(s), and persons with direct knowledge of the alleged events. Said investigation will be concluded as soon as practicable, and generally within fifteen (15) business days (defined as days when the School District Central Office is open for business) of receipt of the complaint. Upon completion of the investigation the Coordinator will initiate such remedial actions as are necessary to prevent any further harassment. Such steps may include: counseling, suspension, expulsion, or any other remedial action deemed appropriate to address and eliminate further discrimination/harassment. Upon completion of the investigation the Coordinator will notify appropriate parties (which may include the alleged victim(s), accused, and/or their parents or legal guardians) in writing of the substance of the investigation and remedial measures to be taken pending any appeal. The Coordinator will retain, review and analyze the investigative file of each complaint and will report the results of the review and analysis annually to the Superintendent.

3. The complainant may seek a review of the initial decision by written request received by the Coordinator within five (5) business days of the date of the decision.

4. Upon timely written request, the Coordinator will forward a copy of the investigative file to the COO. The COO or designee will have up to fifteen (15) business days to review the appeal, investigative file and the previous decision and determine, if additional investigation is warranted, any change in the remedial action recommended. The COO or designee will promptly notify appropriate parties of the appeal decision.

5. The decision of the COO or his/her designee will be the final decision under this policy. Additional due process will be provided for any disciplinary measures as required by law.

The complainant retains at all times the right to contact the Office of Civil Rights or the Equal Employment Opportunity Commission with regard to any allegations that the School District has violated any law.

This Policy will be distributed to all students annually. Additionally, the Coordinator and other employees designated by the Superintendent will receive appropriate training in investigating, remediating and analyzing complaints of discrimination/harassment on an annual basis.

*Appropriate Federal agencies promulgate regulation from time-to-time to implement Federal Laws prohibiting discrimination in schools and the workplace. To the extent that this Policy is

inconsistent with or conflicts with any of those regulations, the current regulation controls, and the part or parts of this Policy inconsistent with or in conflict with those regulations will be rescinded.

ADOPTED: **August 2, 2001**
REVISED: **July 16, 2020**

Cherokee County Board of Education

BOARD POLICY **Descriptor Code: JCAC (II)**
Supplement School Board Policy JCAC
Sexual Harassment under Title IX

The Cherokee County Board of Education adheres to all federal, state and local civil rights laws prohibiting discrimination in education. As a recipient of federal financial assistance for educational activities, the School District is required by Title IX of the Education Amendments of 1972 to ensure that all of its educational programs and activities do not discriminate on the basis of sex, gender, or gender identity. The School District also prohibits retaliation against any person opposing discrimination or participating in any discrimination investigation or complaint process.

This Policy is intended to reflect the requirements of the new federal regulations pertaining to Title IX of the Education Amendments Act of 1972, which became effective on August 14, 2020. The Grievance Procedures included in this supplemental Policy are structured according to requirements of the new Title IX regulations.

While all forms of discrimination and harassment are prohibited in the School District and addressed under Board Policy JCAC, the purpose of this supplemental policy is to address, and only to address, ***sexual harassment as defined in Title IX*** that occurs within the educational programs and activities of the School District, and to provide a grievance process for investigating and reaching a final determination of responsibility for a formal complaint of sexual harassment.

This Policy establishes the roles and responsibilities of the applicable Title IX Investigator(s), Title IX Coordinator, Decision-Maker, and Appeals Decision-Maker. The Superintendent of Schools will also develop administrative guidelines and checklists to aid investigations.

I. DEFINITION

Sexual harassment (Title IX Prohibited Conduct) is conduct on the basis of sex (including, without limitation, gender, sexual orientation, and/or gender identity), occurring in the School District's educational programs or activities that satisfies one or more of the following:

1. Unwelcome sex-based/related conduct occurring in the United States determined by a reasonable person to be so severe, pervasive, **AND** objectively offensive that it effectively denies a person equal access to the education program or activity (this standard requires consideration of all the facts and circumstances, including, but not limited to, the ages and disability statuses of the harasser and victim and the number of individuals involved and their authority); **OR**,
2. Sexual assault, dating violence, domestic violence or stalking as defined in the United States as defined in state or federal law.

Behaviors that constitute sexual harassment may include, but are not limited to: Sexually suggestive remarks or jokes; verbal harassment or abuse; displaying or distributing sexually suggestive pictures, in whatever form (e.g., drawings, photographs, videos, irrespective of format); sexually suggestive gesturing, including touching oneself in a sexually suggestive manner in front of others; harassing or sexually suggestive or offensive messages that are

written or electronic; subtle or direct propositions for sexual favors or activities; touching of a sexual nature or groping; and teasing or name-calling related to sexual characteristics or the belief or perception that an individual is not conforming to expected gender roles or conduct. Note: incidents of the above conduct would still need to satisfy one or both of the criteria in paragraphs 1-2 of this definition.

II. GRIEVANCE PROCEDURES

The Title IX Grievance Process is initiated by way of a Formal Complaint ("complaint" or "formal complaint") filed by the Complainant, the Complainant's parent/guardian or the Title IX Coordinator.

A. Formal Complaint Requirements

At a minimum, a formal complaint must:

1. Contain the name and address of the Complainant and the student's parent or guardian if the complainant is a minor student;
2. Describe the alleged sexual harassment in sufficient detail to include the known identities of persons involved, the conduct allegedly constituting sexual harassment, and the date and location of the incident;
3. Request an investigation of the matter; and,
4. Be signed by the Complainant, Complainant's parent or Title IX Coordinator, as applicable.

The complaint may be filed with the Title IX Coordinator in person, by mail, or by email. Complaint forms may be obtained from the Title IX Coordinator, the School District's Student Code of Conduct, or on the School District's websites. The Title IX Coordinator may be contacted in person, by mail, by telephone, or by email, using the contact information contained within the Student Code of Conduct or posted on the School District's website. Unless otherwise designated by the Superintendent and posted on the School District's Title IX website notice, the School District Title IX Coordinator will be the **Executive Director of Administrative Leadership (EDAL) whose office is located at 1205 Bluffs Parkway, Canton, GA 30114, general phone number (770) 479-1871.**

B. Initial Steps and Notice of Formal Complaint.

1. The Title IX Coordinator will provide a Notice of Formal Complaint to the Complainant and the Complainant's parent/guardian, and to the Respondent (if known) and the Respondent's parent/guardian within **five calendar days** of receiving a Formal Complaint, which will include the following:

    a. The School District's Title IX Grievance Process Administrative Guidelines;
    b. A notice of the right to pursue informal resolution provided both the Complainant and Respondent agree;

c. The Rights and Responsibilities of Parties and Witnesses in Title IX Investigation;
d. The specific allegations of sexual harassment including any additional information obtained by the Title IX Coordinator;
e. A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility will be made at the conclusion of the grievance process;
f. Notice that each party may have an advisor of their choice, who may be, but is not required to be an attorney;
g. Notice that each party is entitled to inspect and review evidence; and
h. A reference to the School District's Code of Conduct that prohibits knowingly making false statements or knowingly submitting false information.

2. The Title IX Coordinator will then examine the allegations in the Formal Complaint, to determine whether even if assumed true, the allegations are sufficient to sustain a finding of sexual harassment under this Policy.

3. The Title IX Coordinator will contact the Complainant to discuss and offer supportive measures. The Title IX Coordinator may contact the Respondent to discuss, and or impose, non-disciplinary supportive measures.

4. If the Formal Complaint fails to satisfy the definition of sexual harassment in this Policy, the Complaint will be dismissed by the Title Coordinator. If a Compliant is dismissed, the decision to dismiss the Compliant may be appealed in accordance with the procedures described in Section E. Appeals of this policy to the **Chief Operations Officer of the School District (COO) who will act as the Appeals Decision-Maker. The COO's office is located at 1205 Bluffs Parkway, Canton, GA 30114, general phone number (770) 479-1871**.

5. If the Formal Complaint is not dismissed or informally resolved, the Title IX Coordinator will designate a school-based Title IX Investigator (Title Investigator), to conduct an investigation into the allegations. The School Principal or his/her designee will serve as the Title Investigator.

C. Investigation.

1. The Title Investigator will:

   a. Provide an equal opportunity for the parties to present witnesses, and other inculpatory and exculpatory evidence;
   b. Provide the parties with the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice;
   c. Provide, to a party (e.g., Respondent, Complainant, parent/guardian, and/or advisor, as appropriate), written notice of the date, time, location, participants, and purpose of investigative interviews or other meetings, with sufficient time

for the party to prepare to participate within the timeframes established within this Policy; and,

d. Provide both parties an equal opportunity to inspect and review any evidence submitted and/or obtained as part of the investigation that is directly related to the allegations raised in a Formal Complaint.

2. The Title Investigator may collect relevant evidence, other information and may also interview parties and/or witnesses. In addition, a Complainant or Respondent may:

   a. Submit evidence to the Title Investigator;
   b. Submit a list of witnesses to be interviewed by the Title Investigator; and/or
   c. Request that the Title Investigator attempt to collect non-privileged information not accessible to the requesting Party.

3. At the conclusion of the investigation and response timeline, the Title Investigator will prepare a written investigative report.

4. The Title Investigator will provide the investigative report to the Title IX Coordinator, to each party, and each party's advisor, if any.

5. The Title Investigator will endeavor to complete the investigation and provide the Investigative Report within **one calendar month** of the date the Written Notice of Formal Complaint is sent to the Parties. With the Title IX Coordinator's express permission, this timeframe may be extended in complex matters or matters with multiple witnesses to give the Title Investigator enough time to gather relevant evidence and schedule witness interviews.

6. The Title IX Coordinator will forward the investigative report and all evidence collected by the Title Investigator to the Decision-Maker for consideration and decision.

D. Decision-Maker

1. The Decision-Maker is the individual with the responsibility of making determinations of responsibility with respect to formal complaints of sexual harassment in accordance with the Title IX Grievance Process. The Decision-Maker will have adequate training and will not be the Appeal Decision-Maker, the Title Investigator(s), or the Title IX Coordinator. Unless otherwise designated by the Superintendent and posted on the School District Title IX website notice, the School District's Title IX **Decision-Maker** will be the other **Executive Director of Administrative Leadership (EDAL II) whose office is located at 1205 Bluffs Parkway, Canton, GA 30114, general phone number (770) 479-1871.**

2. After the Title Investigator has concluded the collection of evidence and provided the Investigative Report, the Decision-Maker will afford each party **10 calendar days** to submit written, relevant questions to the Decision-Maker for any party or witness.

3. The Decision-Maker may omit any questions as not relevant. Should the Decision-Maker exclude a question, the Decision-Maker will explain to the party proposing the questions why the question(s) was not relevant.

4. Questions and answers considered by the Decision-Maker should be included in the Decision-Maker's Written Determination of Responsibility. Questions not posed as being irrelevant along with a rationale regarding the question's relevance will also be included in the Decision-Maker's Written Determination of Responsibility.

5. The Decision-Maker will then provide the relevant questions to the party/witness, with copies to each party, and provide no less than **10 calendar days** for written responses, likewise to be provided to each party.

6. The Decision-Maker will then provide **five calendar days** each for supplementary, limited follow-up questions and **five calendar days** for answers, and may provide for additional rounds of follow-up questions, as long as the provision is extended to both parties equally.

7. The standard of proof to be used for Formal Complaints in determining whether a violation has occurred and/or that the Respondent is responsible will be the preponderance of the evidence standard, which is only met when the Complainant convinces the Decision-Maker that there is a greater than 50% chance that the claim is true (i.e., more likely than not).

8. The Decision-Maker must issue a Written Determination of Responsibility within **10 calendar days** after the close of the period for responses to the last round of follow-up questions.

9. The Decision-Maker may impose disciplinary sanctions and remedies if the Written Determination of Responsibility substantiates the allegations contained in the Formal Complaint.

E. Appeals

Either party may appeal the Decision-Maker's Written Determination of Responsibility or the dismissal of a Formal Complaint by notifying the Chief Operations Officer (COO) in writing ("written appeal") with a copy of the appeal to the Title IX Coordinator. The written appeal must be received by the COO within **10 calendar days** of the Decision-Maker issuing the Written Determination of Responsibility or the written notice of dismissal being communicated to the parties.

The Appeals Decision-Maker has the responsibility to decide any appeal with respect to formal complaints of sexual harassment in accordance with the Title IX Grievance Process. The Appeals Decision-Maker will have adequate training, be free from conflict of interest, and will not be the Decision-Maker, the Title Investigator(s) or the Title IX Coordinator.

For the purpose of this Policy, unless otherwise designated by the Superintendent and posted on the School District's Title IX website notice, the School District' **Appeals Decision-Maker** will be the **Chief Operations Officer (COO) whose office is located at 1205 Bluffs Parkway, Canton, GA 30114, general phone number (770) 479-1871.**

1. Within **three school days** of receipt of the written appeal, the Appeals Decision-Maker will provide a Notice of Appeal to each party and to the Title IX Coordinator, with a copy of the written appeal.

2. Each party will have **five school days** from the date the Notice of Appeal is delivered to the parties to submit a written statement ("appeal statement") in support of or challenging, the determination of responsibility or dismissal with copies to Title IX Coordinator and other party.

3. The Appeals Decision-Maker may refer an appealed issue back to a prior point in the grievance process for clarification and/or further investigation with written notice to the parties and the Title IX Coordinator.

4. The Appeals Decision-Maker will provide a written appeals decision within **10 calendar days** after considering the record and the parties' appeal statements.

F. Timeframe of Grievance Process.

The School District will make a good faith effort to conduct a fair, impartial grievance process in a timely manner designed to provide all parties with a prompt and equitable resolution. It is expected that in most cases, the School District will seek to complete the investigation and make a determination within 80 calendar days from the filing of a Formal Complaint. In any event, the School District will not compromise a thorough and fair process in order to meet the 80-day timeframe from the filing of a Formal Complaint to the conclusion of the investigation and determination of responsibility by the Decision-Maker. If any party chooses to appeal the outcome, the timeframes below provide for an additional 30-day period to submit, respond to, and for the Appeals Decision-Maker to make a decision regarding the appeal. If any deadline under the guidelines set forth below falls on a weekend or holiday, there will be an automatic extension to the next business day.

If the Parties elect to engage in an Informal Resolution, the timeframes below will be suspended during the pendency of that process.

A person may also file a complaint with the appropriate federal, state or local agency within the time frame required by law. Depending upon the nature of the complaint, the appropriate agency may be the Federal Equal Employment Opportunity Commission (EEOC), Office for Civil Rights (OCR) of the U.S Department of Education, the Department of Justice and/or the Georgia Department of Education.

Office for Civil Rights, Atlanta Office U.S. Department of Education 61 Forsyth Street S.W., Suite 19T10 Atlanta, GA 30303-8927 Telephone: (404) 974-9406 Facsimile: (404) 974-9471 Email: OCR.Atlanta@ed.gov	Equal Employment Opportunity Commission Atlanta District Office Sam Nunn Atlanta Federal Center 100 Alabama Street, SW, Suite 4R30 Atlanta, GA 30303 United States
U.S. Department of Justice Civil Rights Division 950 Pennsylvania Avenue, N.W. Housing and Civil Enforcement Section, NWB Washington, D.C. 20530	Georgia Department of Education 205 Jesse Hill Jr. Drive SE Atlanta, GA 30334 Local (404) 656-2800 Toll-Free: (800) 311-3627 (GA) Fax: (404) 651-8737 Email: askdoe@gadoe.org

Within any resolution process related to this Policy, the School District will provide reasonable accommodations to persons with disabilities and religious accommodations, when that accommodation is consistent with state and federal law.

This Policy will be distributed to all students annually. Additionally, the Title IX Investigator(s), Title IX Coordinator, Decision-Maker, and Appeals Decision-Maker and other employees designated by the Superintendent will receive appropriate training in investigating, remediating and analyzing complaints of sexual harassment on an annual basis.

Appropriate Federal agencies promulgate regulation from time-to-time to implement Federal Laws prohibiting discrimination in schools and the workplace. To the extent that this Policy is inconsistent with or conflicts with any of those regulations, the current regulation controls and the part or parts of this Policy inconsistent with or in conflict with those regulations will be rescinded.

APPROVED ON FIRST READING: October 15, 2020
Cherokee County Board of Education