Stafford Township Board of Education Regulation

5751 SEXUAL HARASSMENT OF STUDENTS

The Board of Education will not tolerate sexual harassment of students by school employees, other students, or third parties. The school district shall investigate and resolve allegations of sexual harassment of students engaged in by school employees, other students, or third parties pursuant to 34 CFR §106.3(c) and Policy and Regulation 5751. In addition, reports of sexual harassment shall also be investigated in accordance with the requirements of New Jersey's Anti-Bullying Bill of Rights Act and Policy 5512.

A. Definitions

1. For the purpose of Policy and Regulation 5751 and in accordance with 34 CFR §106:

a. "Sexual harassment" (34 CFR §106.30(a)) means conduct on the basis of sex that satisfies one or more of the following:

(1) An employee of the school district conditioning the provision of an aid, benefit, or service of the school district on a student'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 student equal access to the school district's education program or activity; or

(3) "Sexual assault" as defined in 20 U.S.C. §1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. §12291(a)(10), "domestic violence" as defined in 34 U.S.C. §12291(a)(8), or "stalking" as defined in 34 U.S.C. §12291(a)(30).

b. "Complainant" (34 CFR §106.30(a)) means a student currently enrolled who is alleged to be the Complainant of conduct that could constitute sexual harassment.

(1) A parent may act on behalf of the Complainant in accordance with State law, court orders, child custody arrangements, or other sources granting legal rights to parents.

(2) A parent has a legal right to act on a Complainant's behalf, this right applies throughout all aspects of the

Title IX matter, including throughout the grievance process.

c. "Decision-maker" (34 CFR §106.45(b)(7)) means a staff member(s) who is not the Title IX Coordinator or the school staff member who conducted the investigation, designated by the Superintendent of Schools, to objectively evaluate the relative evidence and reach conclusions about whether the Respondent is responsible for the alleged sexual harassment in accordance with the provisions of 34 CFR. §106.

d. "Education program or activity" (34 CFR §106.44(a)) includes locations, events, or circumstances over which the school district exercises substantial control over both the Respondent and the context in which the sexual harassment occurs.

e. "Formal complaint" (34 CFR §106.30(a)) means a document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that the school district investigate the allegation of sexual harassment. As used in this definition paragraph, the phrase "document filed by a Complainant" means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the school district) that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the formal complaint.

f. "Investigator" (34 CFR §106.45(b)(5)) means a staff member or staff members who may be the Title IX Coordinator and who is not a decision-maker, designated by the Superintendent of Schools, to investigate alleged sexual harassment in accordance with 34 CFR §106. The investigator may be the school district's Affirmative Action Officer only if the Affirmative Action Officer is not the decision-maker.

g. "Program or activity" and "program" (34 CFR §106.2(h)(2)(ii)) means all of the operations of a local educational agency (as defined in 20 U.S.C. §8801), system of vocational education, or other school system.

h. "Respondent" (34 CFR §106.30(a)) means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

(1) A parent may act on behalf of the Respondent in accordance with State law, court orders, child custody arrangements, or other sources granting legal rights to parents.

(2) If a parent has a legal right to act on a Respondent's behalf, this right applies throughout all aspects of the Title IX matter, including throughout the grievance process.

i. "Title IX Coordinator" (34 CFR §106.8(a)) means an individual designated and approved by the Board to coordinate its efforts to comply with its responsibilities under 34 CFR §106 and this Policy. The individual must be referred to as the "Title IX Coordinator" and may also be the investigator but cannot be the decision-maker.

B. Reporting and Notification Requirements

1. Sexual harassment may take place electronically or on an online platform used by the school, including, but not limited to, computer and internet networks; digital platforms; and computer hardware or software owned or operated by, or used in the operations of the school.

2. In accordance with 34 CFR §106.8(a), any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.

a. 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.

3. A school district with "actual knowledge" of sexual harassment in the educational program or activity of the school district against a student, must respond promptly in a manner that is not "deliberately indifferent".

a. The school district has "actual knowledge" when an employee receives a complaint of sexual harassment or an employee is aware of behavior that could constitute sexual harassment.

(1) Any school employee who receives a complaint of sexual harassment or is aware of behavior that could constitute sexual harassment is required to report that information to the Title IX Coordinator in accordance with the provisions of B.1. above.

(2) In addition to the district's response in accordance with this Regulation, the district must report any potential child abuse to appropriate law enforcement and child welfare authorities in accordance with N.J.S.A. 18A:36-24; N.J.S.A. 18A:36-25; N.J.A.C. 6A:16-11.1; and Policy and Regulation 8462.

b. A school district is "deliberately indifferent" only if the response to sexual harassment is clearly unreasonable in light of the known circumstances, pursuant to 34 CFR §106.44(a).

4. The district is required to offer supportive measures to the Complainant even if the Respondent ceased being enrolled or employed by the district prior to the filing of a formal complaint.

a. If the Respondent ceases to be enrolled in or employed by the district after a formal complaint is filed, the district may dismiss the complaint, but must still offer supportive measures to the Complainant pursuant to 34 CFR §106.45(b)(3)(ii).

5. The Title IX Coordinator shall notify persons entitled to a notification pursuant to 34 CFR §106.8(a) that the school district does not discriminate on the basis of sex in the education program or activity it operates and it is required by Title IX and Policy and Regulation 5751 not to discriminate in such a manner in accordance with 34 CFR §106.8(b)(1).

6. The Title IX Coordinator shall prominently display the contact information required to be listed for the Title IX Coordinator pursuant to 34 CFR §106.8(b)(2)(i) on the school district's website and in each handbook or catalog the school district makes available to persons entitled to a notification in accordance with 4 CFR §106.8(a).

a. This Policy shall be prominently displayed on the district's website and accessible to anyone.

C. Supportive Measures

1. "Supportive measures" mean 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 pursuant to 34 CFR §106.30(a).

2. Supportive measures shall be available to the Complainant, Respondent, and as appropriate, witnesses or other impacted individuals.

3. The Title IX Coordinator shall maintain consistent contact with the parties to ensure that safety, emotional and physical well-being are being addressed.

4. Generally, supportive measures are meant to be short-term in nature and will be re-evaluated on a periodic basis.

   a. To the extent there is a continuing need for supportive measures after the conclusion of the resolution process, the Title IX Coordinator will work with appropriate school district resources to provide continued assistance to the parties.

D. Grievance Process

1. The school district will use the grievance process outlined in 34 CFR §106.45 and this Regulation to address formal complaints of sexual harassment.

2. Parents, students, unions and associations, and staff members shall receive notice of the grievance procedures and the Title IX Coordinator's name or title, office, address, email address, and telephone number in accordance with 34 CFR §106.8(a).

3. The school district's grievance process may, but need not, provide for a hearing pursuant to 34 CFR §106.45(b)(6)(ii).

4. The school district may not require as a condition of enrollment or continuing enrollment, or 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 34 CFR §106.45(b)(9).

5. The school district may not require the parties to participate in an informal resolution process regarding a Title IX claim and may not offer an informal resolution process unless a formal complaint is filed pursuant to 34 CFR §106.45(b)(9).

6. The Title IX Coordinator must promptly contact the Complainant in accordance with 34 CFR §106.44(a).

7. In response to a formal complaint, the school district will follow a grievance process that complies with 34 CFR §106.45.

    a. Upon receipt of a formal complaint, the Title IX Coordinator shall provide written notice to the parties who are known in accordance with 34 CFR §106.45(b)(2)(i).

    b. The Title IX Coordinator shall provide the investigator with a copy of the formal complaint if the Title IX Coordinator is not the investigator.

    c. The investigator shall investigate the allegations contained in a formal complaint pursuant to 34 CFR §106.45(b).

8. The investigator shall create an investigative report in accordance with the provisions of 34 CFR §106.45(b)(5)(vii).

    a. The investigator will attempt to collect all relevant information and evidence.

    b. While the investigator will have the burden of gathering evidence, it is crucial that the parties present evidence and identify witnesses to the investigator so that they may be considered during the investigation.

    c. While all evidence gathered during the investigative process and obtained through the exchange of written questions will be considered, the decision-maker may in their discretion grant lesser weight to last minute information or evidence introduced through the exchange of written questions that was not previously presented for investigation by the investigator.

    d. To the greatest extent possible, and subject to Title IX, the school will make reasonable accommodations in an investigation to avoid potential re-traumatization of a student.

e. The investigative report shall be provided to the decision-maker in accordance with the provisions of 34 CFR §106.45(b)(6)(ii).

9. The decision-maker, who cannot be the same person as the Title IX Coordinator or the investigator, shall issue a written determination regarding responsibility pursuant to 34 CFR §106.45(b)(7).

a. To reach this determination, the decision-maker will apply clear and convincing evidence standard, which shall be the same standard of evidence for formal complaints against students as for formal complaints against employees, including faculty, and apply the same standard of evidence to all formal complaints of sexual harassment pursuant to 34 CFR §106.45(b)(1)(vii).

b. The decision-maker will facilitate a written question and answer period between the parties.

(1) Each party may submit their written questions for the other party and witnesses to the decision-maker for review.

(2) The questions must be relevant to the case and the decision-maker will determine if the questions submitted are relevant and will then forward the relevant questions to the other party or witnesses for a response.

(3) The decision-maker shall then review all the responses, determine what is relevant or not relevant, and issue a decision as to whether the Respondent is responsible for the alleged sexual harassment.

(4) The decision-maker will issue a written determination following the review of evidence. The written determination will include:

(a) Identification of allegations potentially constituting sexual harassment as defined in Policy and Regulation 5751 and 34 CFR §106.30;

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

(c) Findings of fact supporting the determination, conclusions regarding the application of this formal grievance process to the facts; and

(d) A statement of and rationale for the result as to each allegation, including any determination regarding responsibility, any disciplinary sanctions the decision-maker imposed on the Respondent that directly relate to the Complainant, and whether remedies designed to restore or preserve equal access to the school's education program or activity will be provided to the Complainant; and procedures and permissible bases for the parties to appeal the determination.

(5) The written determination will be provided to the parties simultaneously.

(6) Notwithstanding a temporary delay of the grievance procedure or the limited extension of the grievance procedure time frames with good cause, the written determination shall be provided within sixty calendar days from receipt of the Complaint.

(a) The sixty calendar day time frame does not include the appeal process.

(7) Remedies and supportive measures that do not impact the Respondent should not be disclosed in the written determination; rather the determination should simply state that remedies will be provided to the Complainant.

E. Appeals

1. The school district will offer both parties an appeal from a determination regarding responsibility, and from the Title IX Coordinator's dismissal of a formal complaint or any allegations therein in accordance with 34 CFR §106.45(b)(8)(i).

2. As to all appeals, the school district will comply with the requirements of 34 CFR §106.45(b)(8).

3. The Superintendent shall designate an appeal officer for each appeal filed.

a. The appeal officer shall not be the same person as the decision-maker that reached the determination regarding responsibility or dismissal, the investigator, or the Title IX Coordinator in accordance with 34 CFR §106.45(b)(8)(iii)(B).

4. The Complainant and Respondent shall have an equal opportunity to appeal the policy violation determination and any sanctions.

5. The school district shall administer the appeal process, but is not a party and will not advocate for or against any appeal.

6. A party may appeal only on the following grounds and the appeal shall identify the reason(s) why the party is appealing:

   a. There was a procedural error in the hearing process that materially affected the outcome;

      (1) Procedural error refers to alleged deviations from school district policy, and not challenges to policies or procedures themselves;

   b. There is new evidence that was not reasonably available at the time of the hearing and that could have affected the outcome;

   c. The decision-maker had a conflict of interest or bias that affected the outcome;

   d. The determination regarding the policy violation was unreasonable based on the evidence before the decision-maker;

      (1) Appealing on this basis is available only to a party who participated in the hearing; and

   e. The sanctions were disproportionate to the hearing officer's findings.

7. The appeal must be submitted in writing to the Title IX Coordinator within ten calendar days following the issuance of the notice of determination.

8. The appeal must identify the ground(s) for appeal and contain specific arguments supporting each ground for appeal.

9. The Title IX Coordinator shall notify the other party of the appeal, and that other party shall have an opportunity to submit a written statement in response to the appeal, within ten calendar days.

10. The Title IX Coordinator shall inform the parties that they have an opportunity to meet with the appeal officer separately to discuss the proportionality of the sanction.

11. The appeal officer shall decide the appeal considering the evidence presented at the hearing, the investigation file, and the appeal statements of both parties.

12. In disproportionate sanction appeals, input the parties provided during the meeting may also be considered.

13. The appeal officer shall summarize their decision in a written report that will be sent to the Complainant and Respondent within twenty calendar days of receiving the appeal.

F. Remedies

1. The Title IX Coordinator shall be responsible for effective implementation of any remedies in accordance with 34 CFR §106.45(b)(7)(iv).

2. Following receipt of the written determination from the decision-maker, the Title IX Coordinator will facilitate the imposition of sanctions, if any, the provision of remedies, if any, and to otherwise complete the formal resolution process.

3. The appropriate school official designated by the Superintendent, after consultation with the Title IX Coordinator, will determine the sanctions imposed and remedies provided, if any.

    a. The imposition of sanctions or provisions of remedies will be revisited by the Title IX Coordinator following the appeal officer's decision, as appropriate.

4. The Title IX Coordinator must provide written notice to the parties simultaneously.

5. The school district must disclose to the Complainant the sanctions imposed on the Respondent that directly relate to the Complainant when such disclosure is necessary to ensure equal access to the school district's education program or activity.

6. It is important to note that conduct that does not meet the criteria under Title IX may violate other Federal or State laws or school district policies regarding student misconduct or may be inappropriate and require an immediate response in the form of supportive measures and remedies to prevent its recurrence and address its effects.

G. Parent Rights

1. Consistent with the laws of New Jersey, a student's parent must be permitted to exercise the rights granted to their child under Policy and Regulation 5751, whether such rights involve requesting supportive measures, filing a formal complaint, or participating in a grievance process.

2. A student's parent must also be permitted to accompany the student to meetings, interviews, and hearings, if applicable, during a grievance process in order to exercise rights on behalf of the student.

3. The student may have an advisor in addition to the parent.

H. Training

The Superintendent or designee shall ensure that Title IX Coordinators, investigators, decision-makers, appeal officers, and any person who facilitates an informal resolution process, receive training in accordance with 34 CFR §106.45(b)(1)(iii).

I. Compliance

The Superintendent or designee shall consult with the Board Attorney to ensure the school district's response to any allegations of sexual harassment and the school district's grievance process are in accordance with 34 CFR §106.44 and 34 CFR §106.45.

J. Requirements of New Jersey's Anti-Bullying Bill of Rights Act

Any time a report is made to the Title IX Coordinator or formal complaint is filed pursuant to Policy and Regulation 5751 and in accordance with 34 CFR §106, the Title IX Coordinator shall forward the report or complaint to the Principal of the school building attended by the alleged victim for the Principal to follow the requirements of New Jersey's Anti-Bullying Bill of Rights Act and Policy 5512.

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