Policy ACAA: SEXUAL HARASSMENT

Status: ADOPTED

Original Adopted Date: 01/01/2007 | **Last Revised Date:** 08/31/2020 | **Last Reviewed Date:** 08/31/2020

(The Federal Regulation upon which a specific policy provision is based is referenced within the policy. The District may opt to delete the regulatory reference when adopting the policy.)

I. Policy Statement

The District does not discriminate on the basis of sex in any education program or activity that it operates, including admission and employment. The District is required by Title IX of the Education Amendments of 1972 and the regulations promulgated through the U.S. Department of Education not to discriminate in such a manner. Inquiries about the application of Title IX to the District may be referred to the District's Title IX Coordinator, to the Assistant Secretary for Civil Rights of the Department of Education, or both. *(34 CFR § 106(b)(1))*

The District is committed to a school environment which is free from sexual harassment and conducive to all students' educational opportunities. Sexual harassment can inhibit a student's educational opportunities and an employee's work. Sexual harassment of students attending school in the District or students from other schools who are at a District activity, and sexual harassment of school employees, school volunteers, parents, guests, visitors and vendors of the District shall also not be tolerated and is strictly prohibited.

All students, school employees, school volunteers, parents, guests, visitors and vendors shall conduct themselves in a civil and responsible manner and in a manner consistent with school policies. This policy prohibiting sexual harassment shall apply to all students, school employees, school volunteers, parents, guests, visitors and vendors while on school property, while attending or participating in school activities, on school-owned property or on non-school property, while in any school-owned or leased vehicle, while at a school bus stop, or when in a private vehicle located on school property during school or during school activities.

Federal law (34 CFR § 106.30) defines "sexual harassment" as conduct on the basis of sex that satisfies one or more of the following: *(34 CFR § 106.30)*

1. An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient'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" a s defined in 34 U.S.C. 12291(a)(30).

Any person may report 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. 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. *(34 CFR § 106.8(a))*

Any student who believes that he or she has been or is being subjected to sexual harassment or has reason to suspect another person has been or is being subjected to sexual harassment may also report it to a teacher, guidance counselor, or school administrator. The report may be made verbally or in writing.

The District's response shall treat complainants and respondents equitably by offering supportive measures to a complainant, and by following a grievance process that complies with Title IX requirements before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent. *(34 CFR § 106.44(a))*

II. Designation of Title IX Coordinator

The Board has designated the following District employee to coordinate its efforts to comply with its responsibilities as set forth in 34 CFR Part 106, who shall be referred to as the "Title IX Coordinator." *(34 CFR § 106.8(a))*

Name or Title: _____
Office Address: _____
Email Address: _____
Telephone Number: _____

The District shall notify applicants for employment, students, parents or legal guardians of elementary and secondary school students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the District, of the name or title, office address, electronic mail address, and telephone number of the employee or employees designated as the Title IX Coordinator. *(34 CFR § 106.8(a))*

The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures. *(34 CFR § 106.30(a))*

III. Dissemination of Policy

The District shall notify persons entitled to the notification under Section I. above that the District does not discriminate on the basis of sex in the education program or activity that it operates, and that it is required by Title IX and this policy not to discriminate in such a manner. Such notification must state that the requirement not to discriminate in the education program or activity extends to admission and employment, and that inquiries about the application of Title IX to the District may be referred to the District's Title IX Coordinator, to the U.S. Assistant Secretary of Education, or both.

The District shall prominently display the contact information required to be listed for the Title IX Coordinator on its website, and in each handbook or catalog that it makes available to persons entitled to a notification pursuant to Section I. above. *(34 CFR § 106.8(b))*

IV. Adoption of Grievance Procedures

The District has adopted and published grievance procedures (ACAA-R(1), Sexual Harassment – Regulations) that provide for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by Title IX and this policy. The District shall provide to persons entitled to a notification under Section I above notice of the District's grievance procedures and grievance process, including how to report or file a complaint of sex discrimination, how to report or file a formal complaint of sexual harassment, and how the District will respond. *(34 CFR § 106.8(c))*

V. Definitions *(34 CFR § 106.30(a), except when otherwise indicated)*

a. "Actual knowledge" means notice of sexual harassment or allegations of sexual harassment to the District's Title IX Coordinator or any official of the District who has authority to institute corrective measures on behalf of the District, or to any employee of an elementary and secondary school. Imputation of knowledge based solely on vicarious liability (when a person has a particular legal relationship to the person who acted negligently) or constructive notice (deeming notice of something to a person having been given, even though actual notice did not exist) is insufficient to constitute actual knowledge. This standard is not met when the only official of the recipient with actual knowledge is the respondent. The mere ability or obligation to report sexual harassment or to inform a student about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the District.

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

c. "Dating violence" means violence committed by a person:

    1. who is or has been in a social relationship of a romantic or intimate nature with the victim; and
    2. where the existence of such a relationship shall be determined based on a consideration of the following factors:
        i. the length of the relationship.
        ii. the type of relationship.
        iii. the frequency of interaction between the persons involved in the relationship. *(34 U.S.C. 12291(a)(10))*

d. "Decision-maker" means the school administrator who has primary responsibility and authority related to

students, staff and attendance center where the alleged sexual harassment occurred, unless otherwise designated by the Board, and who has the authority to make a determination on the complaint as to responsibility of the respondent. *(ASBSD sample definition)*

e. "Domestic violence" includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction. *(34 U.S.C. 12291(a)(8))*

f. "Education program or activity" includes locations, events, or circumstances over which the District exercised substantial control over both the respondent and the context in which the sexual harassment occurs. *(34 CFR § 106.44(a))*

g. "Formal complaint" means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the District investigate the allegation of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the District. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX Coordinator, and by any additional method designated by the District.

h. "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 District) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. Should the Title IX Coordinator sign the formal complaint, the Title IX Coordinator is not a complainant or otherwise a party, and the Title IX Coordinator must comply with the Title IX requirements.

i. "Notice" includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator.

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

k. "Sexual assault" means any nonconsensual sexual act proscribed by Federal, Tribal, or State law, including when the victim lacks capacity to consent. *(20 U.S.C. 1092(f)(6)(A)(v))*

l. "Stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
   1. fear for his or her safety or the safety of others; or
   2. suffer substantial emotional distress. *(34 U.S.C. 12291(a)(30))*

m. "Supportive measures" means nondisciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the District's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the District's educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, escorting the complainant while on District property or while a District off-campus activity, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

VI. District's Response to Sexual Harassment *(34 CFR § 106.44)*

A. General response to sexual harassment. Regardless of whether or not a formal complaint is filed, should the District have actual knowledge of sexual harassment in a District educational program or activity against another person in the United States, the District shall respond promptly in a manner that is not deliberately indifferent (i.e., if the District's response to sexual harassment is clearly unreasonable in light of the known circumstances).

The Title IX Coordinator shall promptly contact the complainant to discuss the availability of supportive

measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint.

B. Response to a formal complaint. In response to a formal complaint, the District shall follow the grievance process as set forth in ACAA-R(1), Sexual Harassment – Regulations.

C. Time frames. The timeframes set forth in the regulations shall be considered as a maximum length of time within which the related step is to be completed, however, the time frames may be extended for good cause upon written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause includes, but is not limited to, utilization of the informal resolution process, availability of an investigator if not a school employee, complexity of the investigation, absence of a party, a party's advisor, a witness, or decision-maker (including a person necessary for addressing an appeal), concurrent law enforcement activity, or the need for language assistance or accommodation of disabilities.

D. Emergency removal. Nothing in Title IX regulations or this policy prohibits the District from removing a respondent from the District's education program or activity on an emergency basis, provided that the District undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal, however, nothing in Title IX regulations or this policy may be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act. Additionally, nothing in the Title IX regulations or this policy prohibits the District from placing an employee respondent on administrative leave during the pendency of a grievance process, however, nothing in Title IX regulations or this policy may be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.

VII. Informal Resolution *(34 CFR § 106.45(b)(9))*

A. The 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 this policy.

B. The District may not require the parties to participate in an informal resolution process under this policy and may not offer an informal resolution process unless a formal complaint is filed.

C. At any time prior to reaching a determination regarding responsibility the District may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that the District:

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

2. obtains the parties' voluntary, written consent to the informal resolution process; and

3. does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

VIII. District's Grievance Process for Formal Complaints of Sexual Harassment *(34 CFR § 106.45(b))*

A. For the purpose of addressing formal complaints of sexual harassment, the District's grievance procedure as set forth in ACAA-R(1), Sexual Harassment – Regulations, shall be followed. There must be compliance with the requirements of this section, and any provisions, rules, or practices other than those required by this section that the District adopts as part of its grievance process for handling formal complaints of sexual harassment must apply equally to both parties.

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

1. Notice of the District's grievance process, including any informal resolution process.

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

C. The District shall treat complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent. Remedies may be disciplinary in nature. Such remedies may include the same individualized services identified as supportive measures. Remedies must be designed to restore or preserve equal access to the District's education program or activity. *(34 CFR § 106.45(b)(1)(i))*

D. The District shall follow the grievance process before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent. *(34 CFR § 106.44(a))*

E. Investigation of a formal complaint. When investigating a formal complaint and throughout the grievance process, the District:

1. shall have the burden of proof and the burden of gathering evidence sufficient to reach a determination, and the parties shall not have either burden; *(34 CFR § 106.45(b)(5)(i))*
2. cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the District obtains that party's voluntary, written consent to do so for a grievance process under this section. If a party is not an "eligible student," (i.e., student who has reached 18 years of age), the District must obtain the voluntary, written consent of a "parent," (i.e., natural parent, guardian, or an individual acting as a parent in the absence of a parent or a guardian; *(34 CFR § 106.45(b)(5)(i))*
3. shall provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence; *(34 CFR § 106.45(b)(5)(ii))*
4. shall not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence; provided, however, nothing in this provision prohibits the District from taking disciplinary action due to a party retaliating against any person due to that person having made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy. *(34 CFR § 106.45(b)(5)(iii))*
5. shall provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding; however, the District may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties. *(34 CFR § 106.45(b)(5)(iv))*

F. There shall be an objective evaluation of all relevant evidence, and credibility determinations may not be based on a person's status as a complainant, respondent, or witness. *(34 CFR § 106.45(b)(1)(ii))*

G. No individual designated by a recipient as a Title IX Coordinator, investigator, decision-maker, or any person designated by the District to facilitate an informal resolution process, may have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. *(34 CFR § 106.45(b)(1)(iii))*

H. The Title IX Coordinator, investigators, decision-makers, and any person who facilitates an informal resolution process, shall receive training on the definition of sexual harassment, the scope of the District's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. *(34 CFR § 106.45(b)(1)(iii))*

1. The decision-makers shall receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant.
2. The investigators shall receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.
3. No materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, may rely on sex stereotypes, and training materials must promote impartial investigations and adjudications of formal complaints of sexual harassment.

I. Until a determination regarding responsibility is made at the conclusion of the grievance process, the respondent is presumed to not be responsible for the alleged conduct. *(34 CFR § 106.45(b)(1)(iv); 34 CFR § 106.45(b)(2)(i)(B))*

J. The District's grievance procedure as set forth in ACAA-R(1), Sexual Harassment – Regulations, shall:

K. including reasonably prompt time frames for filing and resolving appeals and informal resolution processes if District offers informal resolution processes; *(34 CFR § 106.45(b)(1)(vi))*

L. include a process that allows for the temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities; *(34 CFR § 106.45(b)(1)(v))*

M. include the range of possible disciplinary sanctions and remedies or list the possible disciplinary sanctions and remedies that the District may implement following any determination of responsibility; *(34 CFR § 106.45(b)(1)(vi))*

N. state that for all formal complaints of sexual harassment filed against students and employees, the standard of evidence to be used to determine responsibility is the preponderance of the evidence standard. *(34 CFR § 106.45(b)(1)(vii))*

O. include the procedures and permissible bases for the complainant and respondent to appeal; *(34 CFR § 106.45(b)(1)(viii))*

P. describe the range of supportive measures available to complainants and respondents; *(34 CFR § 1045(b)(1)(ix))* and

Q. not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege. *(34 CFR § 106.45(b)(1)(x))*

K. If, in the course of an investigation, the District decides to investigate allegations about the complainant or respondent that are not included in the notice provided pursuant to provision B in this section, the District shall provide notice of the additional allegations to the parties whose identities are known. *(34 CFR § 106.45(b)(2)(ii))*

L. Any party whose participation is invited or expected, shall be given written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate. *(34 CFR § 106.45(b)(5)(v))*

M. All parties shall have equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the recipient does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. *(34 CFR § 106.45(b)(5)(vi))*

N. Prior to completion of the investigative report, the District must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 calendar days to submit a written response, which the investigator will consider prior to completion of the investigative report. *(34 CFR § 106.45(b)(5)(vi))*

O. The investigator shall create an investigative report that fairly summarizes relevant evidence and, at least 10 calendar days prior to a determination by a decision-maker regarding responsibility, send to each party and the

party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response. *(34 CFR § 106.45(b)(5)(vii))*

P. No adversarial hearing shall be held unless the determination of the Superintendent is appealed to the Board, or unless the Superintendent recommends the long term suspension or expulsion of a student, or the suspension without pay or termination of employment of an employee. *(34 CFR § 106.45(b)(6)(ii))*

Q. The Superintendent may make a recommendation to the Board that a student determined to have sexually harassed another person be suspended long-term or expelled (ARSD 24:07:01:01). The Superintendent may also make a recommendation to the Board that an employee determined to having sexually harassed another person be suspended without pay or the person's employment with the District be terminated. Should either recommendation be given by the Superintendent, a formal adversarial hearing shall be held before the Board as set forth in ACAA-R(1), Sexual Harassment – Regulations. *(34 CFR § 106.45(b)(8)(ii))*

IX. Appeal

A. Both parties have the right to appeal to the Board the Superintendent's determination regarding responsibility, and also from a dismissal of a formal complaint or any allegations therein, on the following bases:

1. Procedural irregularity that affected the outcome of the matter; *(34 CFR § 106.45(b)(8)(i)(A))*
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; *(34 CFR § 106.45(b)(8)(i)(B))* and
3. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter. *(34 CFR § 106.45(b)(8)(i)(C))*

B. As to all appeals, the Title IX Coordinator shall: *(34 CFR § 106.45(b)(8)(iii))*

1. notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
2. ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;
3. ensure that the decision-maker(s) for the appeal complies with the standard of evidence as required in this policy;
4. give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
5. ensure that a written decision is issued describing the result of the appeal and the rationale for the result, and provide the written decision simultaneously to both parties.

X. Consolidation of Formal Complaints

The District may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances. Where a grievance process involves more than one complainant or more than one respondent, references in this section to the singular "party," "complainant," or "respondent" include the plural, as applicable. *(34 CFR § 106.45(b)(4))*

XI. Dismissal of a Formal Complaint.

A. The District must investigate the allegations in a formal complaint. If the conduct alleged in the formal complaint would not constitute sexual harassment as defined in this policy even if proved, did not occur in the District's education program or activity, or did not occur against a person in the United States, then the District must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment, however the dismissal does not preclude action under another provision of the District's code of conduct. *(34 CFR § 106.45(b)(3)(i))*

B. The District may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing: *(34 CFR § 106.45(b)(3)(ii))*

1. a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;

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

C. Upon a dismissal required or permitted pursuant to Section A. or B. above, the District shall promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties. *(34 CFR § 106.45(b)(3)(iii))*

XII. Recordkeeping *(34 CFR § 106.45(b)(10))*

A. The District shall maintain for a period of seven years records of:

1. each sexual harassment investigation including any determination regarding responsibility, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the recipient's education program or activity;
2. any appeal and the result therefrom;
3. any informal resolution and the result therefrom; and
4. all materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. A recipient must make these training materials publicly available on its website, or if the recipient does not maintain a website the recipient must make these materials available upon request for inspection by members of the public.

B. For each response required under XII.A., the District shall create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment, document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the recipient's education program or activity. If the complainant is not provided with supportive measures, the District shall document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

XIII. Retaliation Prohibited *(34 CFR § 106.71)*

A. Neither the District or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy.

B. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by title IX or this policy, constitutes retaliation.

C. Complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination pursuant to the District's Nondiscrimination Policy.

D. The exercise of rights protected under the First Amendment does not constitute retaliation prohibited by this provision.

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

XIV. Confidentiality

A. The District shall keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by Family Educational Rights and Privacy Act (FERPA), or as required by law, or to carry out the purposes of Title IX (34 CFR part 106), including the conduct of any investigation, hearing, or judicial proceeding arising thereunder. *(34 CFR § 106.71(a))*

B. The District shall maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the District to provide the

supportive measures. *(34 CFR § 106.30(a))*

ASBSD sample policies are intended to be a guide for school districts. As is the case with any policy, a local school district's unique circumstances, challenges and opportunities need to be considered.

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Regulation ACAA-R(1): SEXUAL HARASSMENT - REGULATIONS

Status: ADOPTED

Original Adopted Date: 08/31/2020 | **Last Reviewed Date:** 08/31/2020

SECTION 1 - Policy Statement

The District is committed to a school environment which is free from sexual harassment and conducive to all students' educational opportunities. Sexual harassment can inhibit a student's educational opportunities and an employee's work. Sexual harassment of students attending school in the District or students from other schools who are at a District activity, and sexual harassment of school employees, school volunteers, parents, guests, visitors and vendors of the District shall also not be tolerated and is strictly prohibited.

All students, school employees, school volunteers, parents, guests, visitors and vendors shall conduct themselves in a civil and responsible manner and in a manner consistent with school policies. This policy prohibiting sexual harassment shall apply to all students, school employees, school volunteers, parents, guests, visitors and vendors while on school property, while attending or participating in school activities, on school-owned property or on non-school property, while in any school-owned or leased vehicle, while at a school bus stop, or when in a private vehicle located on school property during school or during school activities.

The District's policy prohibiting sexual harassment is ACAA. This regulation supplements that policy, and the policy and these regulations are consistent with the federal regulations set forth in 34 CFR Part 106.

Students who violate the policy prohibiting sexual harassment shall be subject to appropriate disciplinary action, up to and including expulsion. Employees who violate this policy shall be subject to appropriate disciplinary action, up to and including termination of employment. School volunteers, parents, guests, visitors, and vendors who violate this policy may be prohibited from being on school property.

Complaints based on nondiscrimination in federal programs, complaint against school employees, and complaints related to bullying are addressed through other school district policies and not through the policy prohibiting sexual harassment and this regulation.

SECTION 2 - Definitions

A. Sexual Harassment. Federal law (34 CFR § 106.30) defines "sexual harassment" as conduct on the basis of sex that satisfies one or more of the following:

1. An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient'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).

Sexually oriented words and actions which tend to annoy, alarm or be physically or verbally abusive toward another person and which serve no legitimate or valid purpose regardless of the intent of the person accused of the sexually harassing conduct, constitutes sexual harassment. Not all harassment falls within the definition of sexual harassment (i.e., harassment that is of a sexual nature). Other laws, regulations and policies also prohibit inappropriate conduct and provide a means for addressing inappropriate conduct should it occur.

Sexual harassment is a specific type of harassment which is prohibited under this policy. Examples of sexual harassment include, but are not limited to:

- Unwelcome sexual flirtations, advances or propositions;
- Verbal comments, jokes, or abuse of a sexual nature;
- Graphic verbal comments about an individual's body;
- Sexually degrading words used to describe an individual;
- Displaying pornographic material;
- Physical contact or language of a sexually suggestive nature.

B. Other definitions. Other definitions applicable to these Regulations are the definitions as set forth in Policy ACAA, Sexual Harassment, Section V.

SECTION 3 - Sexual Harassment Reporting Procedure

Any person may report 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. 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.

Any student who believes that he or she has been or is being subjected to sexual harassment or has reason to suspect another person has been or is being subjected to sexual harassment may also report it to a teacher, guidance counselor, or school administrator. The report may be made verbally or in writing.

The written complaint or Sexual Harassment - Complaint Report Form, ACAA-E(1), must include the following:

- the date the written Complaint was filed or the Sexual Harassment - Complaint Report Form was completed,
- the school employee receiving the Complaint (if applicable),
- the name of the person reporting the sexual harassment,
- the address/phone # of the person reporting the sexual harassment,
- the specific conduct or nature of the sexual harassment complaint including the person(s) alleged to have sexually harassed the complaining party or another person, the date(s) and location where the conduct occurred, witnesses, etc.,
- the date the school employee completed the form (if applicable),
- the date and signature of the person reporting the sexual harassment .

If the signed written complaint was given to a teacher, guidance counselor or administrator, or if the Sexual Harassment - Complaint Report Form was completed by a teacher, guidance counselor or administrator, the teacher, guidance counselor or administrator shall forward the complaint or Sexual Harassment - Complaint Report Form to the Title IX Coordinator.

Regardless of whether or not a formal complaint is filed, should the District have actual knowledge of sexual harassment in a District educational program or activity against another person in the United States, the District shall respond promptly in a manner that is not deliberately indifferent (i.e., if the District's response to sexual harassment is clearly unreasonable in light of the known circumstances).

SECTION 4 - Retaliation Prohibited

A. Neither the District or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy.

B. The prohibition against retaliation related to a sexual harassment complaint is set forth in full in Policy ACAA, Sexual Harassment, Section XIII, and by this reference incorporated herein as if set forth in full.

SECTION 5 - Procedure for Addressing Sexual Harassment Complaints

A. General Provisions.

1. The Title IX Coordinator shall promptly contact the complainant to discuss the availability of supportive measures (see Policy ACAA, V(m)) and consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint.

2. The timeframes set forth in these regulations shall be considered as a maximum length of time within which the related step is to be completed, however, the time frame may be within which the District is required to complete a step may be extended for good cause upon written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause includes, but is not limited to, utilization of the informal resolution process, availability of an investigator if not a school employee, complexity of the investigation, absence of a party, a party's advisor, a witness, or decision-maker (including a person necessary for addressing an appeal), concurrent law enforcement activity, or the need for language assistance or accommodation of disabilities;

3. Nothing in the policy or these regulations prohibit the District from removing a respondent from the District's education program or activity on an emergency basis, provided that the District undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal, however, nothing in the policy or regulations may be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act. Additionally, nothing in the policy or regulations prohibits the District from placing an employee respondent on administrative leave during the pendency of a grievance process, however, nothing in the policy or regulations may be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.

B. Confidentiality

1. The District shall keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by Family Educational Rights and Privacy Act (FERPA), or as required by law, or to carry out the purposes of Title IX (34 CFR part 106), including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

2. The District shall maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the District to provide the supportive measures.

C. Informal Resolution:

1. The 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 this policy, may not require the parties to participate in an informal resolution process under this policy, and may not offer an informal resolution process unless a formal complaint is filed.

2. Policy ACAA, Sexual Harassment, Section VII, is the section explaining informal resolution and by this reference incorporated herein as if set forth in full.

D. Formal Complaint:

1. Upon receipt of a formal complaint, the Title IX Coordinator shall provide the following written notice to the parties who are known:

    a. Notice of the District's grievance process, including any informal resolution process.

    b. Notice of the allegations of sexual harassment potentially constituting sexual harassment as

defined in this policy, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known. The written notice must include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process. The written notice shall inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence. The written notice shall inform the parties of any provision in the District's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

2. The District shall treat complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent. Remedies may be disciplinary in nature. Such remedies may include the same individualized services identified as supportive measures. Remedies must be designed to restore or preserve equal access to the District's education program or activity.

3. The District shall follow the grievance process before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent.

E. Investigation of a Formal Complaint

1. The District must investigate the allegations in a formal complaint. If the conduct alleged in the formal complaint would not constitute sexual harassment as defined in this policy even if proved, did not occur in the District's education program or activity, or did not occur against a person in the United States, then the District must dismiss the formal complaint with regard to that does not preclude action under another provision of the District's code of conduct.

2. Unless the nature of the complaint and investigation dictate otherwise, the Investigation should be completed within sixty (60) calendar days of receipt of the complaint.

3. When investigating a formal complaint and throughout the grievance process, the District:

    a. shall have the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility;

    b. shall provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;

    c. shall not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence, provided, however, nothing in this provision prohibits the District from taking disciplinary action due to a party retaliating against any person due to that person having made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy;

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

4. If, in the course of an investigation, the District decides to investigate allegations about the complainant or respondent that are not included in the notice provided pursuant to provision D.1., the District shall provide notice of the additional allegations to the parties whose identities are known.

5. Any party whose participation is invited or expected, shall be given written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with

sufficient time for the party to prepare to participate.

6. All parties shall have equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the recipient does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.

7. Prior to completion of the investigative report, the District must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least ten (10) calendar days to submit a written response, which the investigator will consider prior to completion of the investigative report. The District shall make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

8. The investigator shall create an investigative report that fairly summarizes relevant evidence and, at least ten (10) calendar days prior to a determination by a decision-maker regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

F. Determination

1. The decision-maker shall not be the same person as the Title IX Coordinator or investigator(s).

2. After the Investigator has sent the investigative report to the parties, and before reaching a determination regarding responsibility, the decision-maker must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party. All parties shall have ten (10) calendar days from the date the investigatory report was sent to the parties to submit written, relevant questions to the decision-maker, who shall forward the questions to the other party following the ten (10) period, unless all parties submitted questions prior to the end of the ten (10) day period and in such case the decision-maker shall forward the questions upon receipt of questions by all parties. All parties shall have (5) calendar days to submit to the decision-maker and the other parties any written responses to the questions.

3. The decision-maker shall have fourteen (14) calendar days, after the expiration of time frame set forth in E.8. above, to issue a written determination as to the complaint.

4. The decision-maker shall not conduct an adversarial hearing unless the Board conducts a hearing following an appeal of the Superintendent's decision to the Board, or following the Superintendent's recommendation to the Board that a student determined to have sexually harassed another person be suspended long-term or expelled or recommend to the Board that an employee determined to having sexually harassed another person be suspended without pay or the person's employment with the District be terminated.

5. Standard of evidence. For all formal complaints of sexual harassment filed against students and employees, the standard of evidence to be used to determine responsibility is the preponderance of the evidence standard.

6. Upon recommendation of a decision-maker, on following an appeal of the decision-maker's determination, the Superintendent may make a recommendation to the Board that a student determined to have sexually harassed another person be suspended long-term or expelled (ARSD 24:07:01:01). The Superintendent may also make a recommendation to the Board that an employee determined to having sexually harassed another person be suspended without pay or the person's employment with the District be terminated. Should either recommendation be given by the Superintendent, a formal adversarial hearing shall be held before the Board.

7. Disciplinary sanctions. Following any determination of responsibility the District may implement disciplinary sanctions and remedies that include, but are not limited to:

    a. if a student:

i. loss of privileges;
ii. detention;
iii. in-school suspension;
iv. long-term suspension;
v. expulsion.

b. if an employee

i. written reprimand;
ii. written plan of improvement, which may include directive to obtain training related sexual harassment and the prohibition against sexual harassment;
iii. suspension without pay;
iv. termination of employment.

c. if a guest or vendor

i. restrict access to school property;
ii. deny access to school property.

8. The decision-maker must issue a written determination regarding responsibility. To reach this determination, the decision-make shall apply the preponderance of evidence standard of evidence.

9. The written determination shall include:

a. identification of the allegations potentially constituting sexual harassment;
b. a description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
c. findings of fact supporting the determination;
d. conclusions regarding the application of the District's code of conduct to the facts;
e. a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the District imposes on the respondent, and whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the District to the complainant; and
f. the District's procedures and permissible bases for the complainant and respondent to appeal.

10. The District shall provide the written determination to the parties simultaneously.

11. The determination regarding responsibility becomes final either on the date that the recipient provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

G. Appeal

1. Both parties have the right to appeal to the Board the Superintendent's determination regarding responsibility, and from a dismissal of a formal complaint or any allegations therein, on the following bases:

a. Procedural irregularity that affected the outcome of the matter;

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

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

2. As to all appeals, the Title IX Coordinator shall:

a. notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;

b. ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title

IX Coordinator;

c. ensure that the decision-maker(s) for the appeal complies with the standard of evidence as required in this policy;

d. give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;

e. ensure that a written decision is issued describing the result of the appeal and the rationale for the result, and provide the written decision simultaneously to both parties.

3. Appeal to the Superintendent. The following procedure shall be used to address an appeal of the decision-maker's determination to the Superintendent:

   a. If a party is not satisfied with the decision-maker's determination, or if the decision-maker's determination does not without good cause render a written decision within fourteen (14) calendar days of the expiration of time frame set forth in E.8., that party may appeal to the Superintendent by filing form ACAA-E(2), Sexual Harassment - Complaint Appeal to the Superintendent. The appeal must be filed within ten (10) calendar days of receipt of the decision-maker's written decision, or ten (10) days of the deadline for the decision-maker's written decision, whichever comes first. The appealing party must attach the decision-maker's written determination.

   b. Within fourteen (14) calendar days from the date the appeal was filed, the Superintendent shall render a decision in writing. All parties shall receive copies of the decision. The Superintendent shall uphold, reverse, modify the decision-maker's decision, or the Superintendent may refer the matter back to the decision-maker for further investigation and supplemental decision which decision may restate, modify or reverse the decision-maker's initial decision. A supplemental decision by the decision-maker after a referral back to the decision-maker may be appealed to the Superintendent.

4. Appeal to the School Board. If a party is not satisfied with the Superintendent's decision, or if the Superintendent does not without good cause render a written decision within fourteen (14) calendar days of the receipt of the appeal, that party may appeal to the School Board by filing with the Business Manager using Form ACAA-E(3), Sexual Harassment – Complaint Appeal to the School Board, within ten (10) calendar days of receipt of the Superintendent's written decision, or ten (10) days of the deadline for the Superintendent's written decision, whichever comes first. The appeal shall be in writing and the appealing party must attach to the appeal the decision-maker's written decision, the appeal to the Superintendent, and the Superintendent's written decision or notice of the Superintendent's failure to render a written decision.

The following procedure shall be used by the Board to address an appeal of the Superintendent's decision on the merits related to a sexual harassment complaint:

1. Upon receipt by the Board President/Chairperson of an appeal by the Complainant, a copy of the appeal shall be given to the person alleged to have violated the sexual harassment policy;

2. Upon receipt of an appeal, the Board shall at its next meeting schedule a date, time and location for the appeal hearing.

3. The following procedure shall be applicable at the appeal hearing before the Board:

   A. The Board shall appoint a board member or a person who is not an employee of the school district as the hearing officer;

   B. Within thirty (30) calendar days of an appeal being filed with the Board, the Board shall conduct a hearing in executive session;

   C. The Complainant, person alleged to have violated the sexual harassment policy, and Superintendent each have the right to be represented at the hearing;

   D. The Board shall make a verbatim record of the hearing by means of an electronic or

mechanical device or by court reporter. This record and any exhibits must be sealed and must remain with the hearing officer until the appeal process has been completed;

E. The issue on appeal is whether the Superintendent's decision should be upheld, reversed or modified;

F. All parties shall be given the opportunity to make an opening statement, with the appealing party being given the first opportunity, followed by the other party, and then the Superintendent;

G. The appealing party shall present his or her case first, and the other party shall then present his or her case. Both parties shall have the opportunity to ask questions of the other's witnesses. The hearing officer and board members may ask questions of any witness;

H. The Superintendent shall present the basis of his/her decision which led to the appeal. Both parties shall have the opportunity to ask the Superintendent questions. The hearing officer and board members may also ask questions of the Superintendent;

I. Unless a witness is a party to the appeal, witnesses may be present only when testifying unless the hearing officer rules otherwise. All witnesses must take an oath or affirmation administered by the School Board president, hearing officer or other person authorized by law to take oaths and affirmations;

J. The hearing officer shall admit all relevant evidence. The hearing officer may limit unproductive or repetitious evidence. The strict rules of evidence do not apply. Moran v. Rapid City Area School Dist., 281 N.W.2d 595. 602 (S.D. 1979).

K. All parties shall be given the opportunity to make a closing statement, with the appealing party having the first opportunity, followed by the other party, and then the Superintendent. The appealing party shall be given the opportunity for a brief rebuttal;

L. After the evidentiary hearing, the Board shall continue to meet in executive session for deliberations. No one other than the hearing officer may meet with the Board during deliberations. The Board may seek advice during deliberation from an attorney who has not represented any of the parties to the hearing. Consultation with any other person during deliberation may occur only if a representative of both parties and Superintendent are present. The Board may, in its sole discretion, continue the proceedings and make a final decision on the appeal at a later date. Within twenty (20) calendar days of the hearing, the Board shall render its decision and issue its written Findings of Fact, Conclusions of Law and Decision. The time frame for rendering a decision may be extended by the Board President for good cause and upon written notification to both parties and the Superintendent, and the notification shall identify the reason for the extension and the date on or before which the decision shall be rendered;

M. The decision of the School Board must be based solely on the evidence presented at the hearing and must be formalized by a motion made in open meeting. The Board will convene in open session and a motion to uphold, reverse, or modify the Superintendent's decision shall be made and voted upon. Findings of Fact, Conclusions of Law and Decision, consistent with the Board motion shall be in writing and approved by the Board. Both parties, the decision-maker and the Superintendent will receive copies after the Findings of Fact, Conclusions of Law and Decision are approved by the Board.

N. Following the Board hearing, should the Board determine there has been a violation of this policy prohibiting sexual harassment, Board action may include but is not limited to the following: (1) suspend or expel a student from any or all school programs, including but not limited to classes, extracurricular activities, or attendance at school activities; (2) pursuant to statute, reprimand, suspend without pay, or terminate the contract of an employee, or (3) prohibit a third person from being on school property or at school activities for such time as may be determined by the Board.

O. If either party is dissatisfied with the Board's decision, that party may appeal the decision by filing an appeal pursuant to law.

SECTION 6 - Miscellaneous

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

B. Dismissal of Complaint:

1. The District may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing:

    a. a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;
    b. the respondent is no longer enrolled in or employed by the District; or specific circumstances prevent the District from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

2. Upon a dismissal required or permitted pursuant to B.1. above, the District shall promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.

3. Any party whose participation is invited or expected, shall be given written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.

4. Both parties shall have equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the recipient does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.

SEXUAL HARASSMENT
COMPLAINT REPORT FORM

Date Form Completed: _____

Form Completed by: _____

Person Reporting the Sexual Harassment: _____

_____

Address/Phone # of the Person Reporting the Sexual Harassment:

_____

_____

_____

Nature of Complaint: (With specificity, identify the person(s) alleged to have sexually harassed, the conduct which is the basis of the sexual harassment complaint, when/where the conduct occurred, the person(s) alleged to have sexually harassed, witnesses, and any other pertinent information):

_____

_____

_____

_____

_____

_____

_____

_____ (use additional sheets if necessary).

_____ _____

Date School Employee Completing the Sexual Harassment Report Form

_____ _____

Date Person Reporting the Sexual Harassment

Adopted: 3/30/2015
Revised:
Reviewed:

ASBSD sample exhibits are intended to be a guide for school districts. As is the case with any exhibit, a local school district's unique circumstances, challenges and opportunities need to be considered.

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SEXUAL HARASSMENT
COMPLAINT APPEAL TO THE SUPERINTENDENT

I/We Appeal the Principal's Step 1 decision for the following reason(s): [With specificity, Complainant should state how or why the Complainant believes the Principal's decision is wrong]:

_____

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_____

ATTACH A COPY OF THE SEXUAL HARASSMENT REPORT AND THE PRINCIPAL'S DECISION.

_____ _____

Date Complainant

_____ _____

Date Received Superintendent

Adopted: 3/30/2015
Revised:
Reviewed:

ASBSD sample exhibits are intended to be a guide for school districts. As is the case with any exhibit, a local school district's unique circumstances, challenges and opportunities need to be considered.

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SEXUAL HARASSMENT
COMPLAINT APPEAL TO THE SCHOOL BOARD

I/We Appeal the Superintendent's Step 2 decision for the following reason(s): [With specificity, Complainant should state how or why the Complainant believes the Superintendent's decision is wrong]:

_____

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_____.

ATTACH A COPY OF THE SEXUAL HARASSMENT REPORT, PRINCIPAL'S DECISION, APPEAL TO THE SUPERINTENDENT (Exhibit ACAA-E(2)), EMPLOYEE'S STEP 2 WRITTEN RESPONSE, AND SUPERINTENDENT'S DECISION.

_____ _____

Date Complainant

_____ _____

Date Received Business Manager

Adopted: 3/30/2015
Revised:
Reviewed:

ASBSD sample exhibits are intended to be a guide for school districts. As is the case with any exhibit, a local school district's unique circumstances, challenges and opportunities need to be considered.

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