SEXUAL HARASSMENT REGULATION

This regulation is intended to create and preserve an educational and working environment free from unlawful sexual harassment on the basis of sex, gender and/or sexual orientation in furtherance of the district's commitment to provide a healthy and productive environment for all students, employees (including all staff, applicants for employment, both paid and unpaid interns, exempt and non-exempt status, part-time, seasonal and temporary workers, regardless of immigration status), officers of the district and “non-employees” (i.e., contractors, subcontractors, vendors, consultant and other persons providing services pursuant to a contract, or their employees) that promotes respect, dignity and equality.

Sexual Harassment Defined

"Sexual harassment" is a form of sex discrimination and is unlawful under federal, state and local law. Sexual harassment includes harassment on the basis of actual or perceived or self-identified sex, sexual orientation, gender identity, gender expression and transgender status.

Sexual harassment includes unwelcome conduct which is either of a sexual nature, or which is directed at an individual because of that individual’s sex, gender or sexual orientation, when:

1. submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of an employee's or “non-employee’s” employment or a student's education (including any aspect of the student's participation in school-sponsored activities, or any other aspect of the student's education); or

2. submission to or rejection of that conduct or communication by an individual is used as the basis for decisions affecting an employee's or “non-employee’s” employment or a student's education; or

3. the conduct or communication has the purpose or effect of substantially or unreasonably interfering with an employee's or “non-employee’s” work performance or a student's academic performance or participation in school-sponsored activities, or creating an intimidating, hostile or offensive working or educational environment, even if the complaining individual is not the intended victim of the sexual harassment.

Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, or verbal, nonverbal or physical aggression, intimidation or hostility that is based on actual or perceived gender and sexual stereotypes.

Unacceptable Conduct

School-related conduct that the district considers unacceptable and which may constitute sexual harassment includes, but is not limited to, the following:
1. rape, attempted rape, sexual assault, attempted sexual assault, forcible sexual abuse, hazing, and other sexual and gender-based activity of a criminal nature as defined under the State Penal Law;

2. unwelcome sexual advances or invitations or requests for sexual activity including but not limited to those in exchange for grades, promotions, preferences, favors, selection for extracurricular activities or job assignments, homework, etc., or when accompanied by implied or overt threats concerning the victim’s work or school evaluations, other benefits or detriments;

3. unwelcome and offensive public sexual display of affection, including kissing, making out, groping, fondling, petting, inappropriate touching of one's self or others, (e.g., pinching, patting, grabbing, poking), sexually suggestive dancing, and massages;

4. any unwelcome communication that is sexually suggestive, sexually degrading or derogatory or implies sexual motives or intentions, such as sexual remarks or innuendoes about an individual's clothing, appearance or activities; sexual jokes; sexual gestures; public conversations about sexual activities or exploits; sexual rumors and "ratings lists"; howling, catcalls, and whistles; sexually graphic computer files, messages or games, etc.;

5. unwelcome and offensive name calling or profanity that is sexually suggestive, sexually degrading or derogatory, implies sexual intentions, or that is based on sexual stereotypes or sexual preference;

6. unwelcome physical contact or closeness that is sexually suggestive, sexually degrading, or derogatory, or sexually intimidating such as the unwelcome touching of another's body parts, cornering or blocking an individual standing too close, spanking, pinching, following, stalking, frontal body hugs, etc.;

7. unwelcome and sexually offensive physical pranks or touching of an individual's clothing, such as hazing and initiation, "streaking," "mooning," "snuggies" or "wedgies" (pulling underwear up at the waist so it goes in between the buttocks), bra-snapping, skirt "flip-ups," "spiking" (pulling down someone's pants or swimming suit); pinching; placing hands inside an individual's pants, shirt, blouse, or dress, etc.;

8. unwelcome leers, stares, gestures, or slang that are sexually suggestive; sexually degrading or derogatory, or imply sexual motives or intentions;

9. clothing with sexually obscene or sexually explicit slogans or messages;

10. unwelcome and offensive skits, assemblies, and productions that are sexually suggestive, sexually degrading or derogatory, or that imply sexual motives or intentions, or that are based on sexual stereotypes;

11. unwelcome written or pictorial display or distribution (including via electronic devices) of pornographic or other sexually explicit materials such as signs, graffiti, calendars, objects, magazines, videos, films, Internet material, etc.;

12. other hostile actions taken against an individual because of that person’s sex, sexual orientation, gender identity or transgender status, such as interfering with, destroying or damaging a person’s work or school area or equipment; sabotaging that person’s work or school activities; bullying, yelling or name calling; or otherwise interfering with that person’s ability to work or participate in school functions and activities; and

13. any unwelcome behavior based on sexual stereotypes and attitudes that is offensive, degrading, derogatory, intimidating, demeaning, including, but not limited to:

   a. disparaging remarks, slurs, jokes about or aggression toward an individual because the person displays mannerisms or a style of dress inconsistent with stereotypical characteristics of the person’s sex;
b. ostracizing or refusing to participate in group activities with an individual during class projects, physical education classes or field trips because of the individual’s sex, gender expression or gender identity;

c. taunting or teasing an individual because they are participating in an activity not typically associated with the individual’s sex or gender.

For purposes of this regulation, action or conduct shall be considered "unwelcome" if the student, employee or “non-employee” did not request or invite it and regarded the conduct as undesirable or offensive.

Sexual harassment may occur on school grounds, school buses and at all school-sponsored activities, programs and events, including those that take place at locations outside the district, or outside the school setting if the harassment impacts the individual’s education or employment in a way that violates their legal rights, including when employees or “non-employees” travel on district business, or when the harassment is done by electronic means (including on social media).

Determining if Prohibited Conduct is Sexual Harassment

Complaints of sexual harassment will be thoroughly investigated to determine whether the totality of the behavior and circumstances meet any of the elements of the above definition of sexual harassment and should therefore be treated as sexual harassment. Not all unacceptable conduct with sexual connotations may constitute sexual harassment. In many cases (other than quid pro quo situations where the alleged harasser offers academic or employment rewards or threatens punishment as an inducement for sexual favors), unacceptable behavior must be sufficiently severe, persistent or pervasive to be considered sexual harassment. If the behavior doesn’t rise to the level of sexual harassment, but is found to be objectionable behavior, the individual will be educated and counseled in order to prevent the behavior from continuing.

In evaluating the totality of the circumstances and making a determination of whether conduct constitutes sexual harassment, the individual investigating the complaint should consider:

1. the degree to which the conduct affected the ability of the student to participate in or benefit from his or her education or altered the conditions of the student's learning environment or altered the conditions of the employee's or “non-employee’s” working environment;
2. the type, frequency and duration of the conduct;
3. the identity of and relationship between the alleged harasser and the victim of the harassment (e.g., sexually based conduct by an authority figure is more likely to create a hostile environment than similar conduct by another student or a co-worker);
4. the number of individuals involved;
5. the age and sex of the alleged harasser and the subject of the harassment;
6. the location of the incidents and context in which they occurred;
7. other incidents at the school; and
8. incidents of gender-based, but non-sexual harassment.

Reporting Complaints

Any person who believes he or she has been the victim of sexual harassment (hereinafter referred to as “victim” and/or “complainant”) by a student, district employee, “non-employee” or third party related to the school is encouraged to report complaints as soon as possible after the incident in order to enable the district to promptly and effectively investigate and resolve the
complaint. Complainants are encouraged to submit the complaint in writing; however, complaints may be submitted verbally. Any person who witnesses or is aware of sexual harassment of a student, employee or “non-employee” is also encouraged to report the incident or behavior to the district.

Complaints should be submitted to the Principal or the Title IX Coordinator. In order to assist investigators, complainants should document the harassment as soon as it occurs and with as much detail as possible including: the nature of the harassment; dates, times, places it has occurred; name of the harasser(s); witnesses to the harassment; and the complainant’s response to the harassment.

Supervisory and managerial personnel are required to report complaints of sexual harassment received by staff, and will be subject to discipline for failing to report complaints of sexual harassment, knowingly allowing sexual harassment to continue, or engaging in any retaliation. Any school employee who receives a complaint of sexual harassment from a student shall inform the student of the employee's obligation to report the complaint to the school administration, and then shall immediately notify the Principal and/or Title IX Coordinator.

School employees receiving complaints of sexual harassment from employees and “non-employees” should either direct the complainant to the Building Principal and/or the Title IX Coordinator, or they may report the incident themselves.

Confidentiality

It is district policy to respect the privacy of all parties and witnesses to complaints of sexual harassment. To the extent possible, the district will not release the details of a complaint or the identity of the complainant or the individual(s) against whom the complaint is filed to any third parties who do not need to know such information. However, because an individual's need for confidentiality must be balanced with the district's legal obligation to provide due process to the accused, to conduct a thorough investigation, or to take necessary action to resolve the complaint, the district retains the right to disclose the identity of parties and witnesses to complaints in appropriate circumstances to individuals with a need to know. The staff member responsible for investigating complaints will discuss confidentiality standards and concerns with all complainants.

If a complainant requests that his/her name not be revealed to the individual(s) against whom a complaint is filed, the staff member responsible for conducting the investigation shall inform the complainant that:

1. the request may limit the district's ability to respond to his/her complaint;
2. district policy and federal law prohibit retaliation against complainants and witnesses;
3. the district will attempt to prevent any retaliation; and
4. the district will take strong responsive action if retaliation occurs.

If the complainant still requests confidentiality after being given the notice above, the investigator will take all reasonable steps to investigate and respond to the complaint consistent with the request as long as doing so does not preclude the district from responding effectively to the harassment and preventing the harassment of other students, employees or “non-employees.”
Investigation and Resolution Procedure

The person(s) on behalf of the district to conduct investigations of complaints of sexual harassment may vary, depending on the complainant, the alleged harasser, the type of harassment reported, and other relevant factors.

A. Level 1 Procedure

The Principal or Title IX Coordinator shall conduct a preliminary review when they receive a verbal or written complaint of sexual harassment, or if they observe sexual harassment. Should the Principal be the person who receives the complaint or if he/she observes sexual harassment, the Principal will immediately notify the Title IX coordinator and they will promptly consult with each other to determine whether the investigation should be conducted by the Principal or Title IX coordinator. Should the Title IX coordinator be the person who receives the complaint or if he/she observes sexual harassment, the Title IX coordinator will promptly determine whether the investigation should be conducted by the Principal or Title IX coordinator. If a complaint received by the Principal or the Title IX coordinator contains evidence or allegations of serious or extreme harassment, such as employee to student harassment, criminal touching, quid pro quo (e.g., offering an academic or employment reward or punishment as an inducement for sexual favors), or acts which shock the conscience of a reasonable person, the complaint shall be immediately referred for a level 2 investigation to the Superintendent, who will promptly determine who should conduct the investigation. In any such situations, the Superintendent will use investigators who have received formal training in sexual harassment investigation or that have previous experience investigating sexual harassment complaints, which may include, but is not limited to, the Title IX coordinator. In addition, where the Principal or the Title IX coordinator has a reasonable suspicion that the alleged harassment involves criminal activity, he/she should immediately notify the Superintendent, who shall then contact appropriate child protection and law enforcement authorities. Where criminal activity is alleged or suspected by a district employee, the accused employee may be placed on administrative reassignment or suspended pending the outcome of the investigation, consistent with all contractual or statutory requirements. In the event the complaint of sexual harassment involves the Superintendent, the request for an investigation shall be filed with or referred to the Board President, who shall refer the complaint to a trained investigator not employed by the district for a level 2 investigation.

Except in the case of severe or criminal conduct, the Principal should make all reasonable efforts to resolve complaints informally at the school level. The goal of informal investigation and resolution procedures is to end the harassment and obtain a prompt and equitable resolution to a complaint.

All persons involved in an investigation (complainants, witnesses and alleged harassers) will be accorded due process to protect their rights to a fair and impartial investigation. This investigation shall be prompt and thorough, and shall be completed as soon as possible.

Immediately, but no later than two working days following receipt of a complaint, the Investigator shall begin an investigation of the complaint according to the following steps, as appropriate:

1. Interview the complainant and document the conversation. Instruct the complainant to have no contact or communication regarding the complaint with the alleged harasser. Ask the complainant specifically what action he/she wants taken in order to resolve the complaint.
Refer the complainant, as appropriate, to school social workers, school psychologists, crisis team managers, other school staff, or appropriate outside agencies for counseling services.

2. Review any written documentation of the harassment prepared by the complainant. If the complainant has not prepared written documentation, instruct the complainant to do so, providing alternative formats for individuals with disabilities and small children, who have difficulty writing and need accommodation. If the complainant refuses to complete a complaint form or written documentation, the Investigator shall complete a complaint form (see exhibit 0110-E) based upon the verbal report.

3. Request, review, obtain and preserve relevant evidence of harassment (e.g., documents, emails, phone records, etc.), if any exist.

4. Interview the alleged harasser regarding the complaint and inform the alleged harasser that if the objectionable conduct has occurred, it must cease immediately. Document the conversation. Provide the alleged harasser an opportunity to respond to the charges in writing.

5. Instruct the alleged harasser to have no contact or communication regarding the complaint with the complainant and to not retaliate against the complainant. Warn the alleged harasser that if he/she makes contact with or retaliates against the complainant, he/she will be subject to immediate disciplinary action.

6. Interview any witnesses to the complaint. Where appropriate, obtain a written statement from each witness. Caution each witness to keep the complaint and his/her statement confidential. Employees may be required to cooperate as needed in investigations of suspected sexual harassment.

7. Review all documentation and information relevant to the complaint.

8. If appropriate, use suitable informal methods to resolve the complaint, including but not limited to:
   
   a. discussion with the accused, informing him or her of the district's policies and indicating that the behavior must stop;
   b. meditation
   c. suggesting counseling and/or sensitivity training;
   d. conducting training for the department or school in which the behavior occurred, calling attention to the consequences of engaging in such behavior;
   e. requesting a letter of apology to the complainant;
   f. writing letters of counsel; and/or
   g. separating the parties.

8. Parent/Student/Employee/“Non-Employee” Involvement and Notification
   a. Parents of student complainants and accused students shall be notified within one school day of allegations that are serious or involve repeated conduct.
   b. If a student is a victim of sexual harassment, such student’s parents are welcome to be present in any interview of their child during the investigation.
   c. If either the complainant or the accused is a disabled student receiving special education services under an IEP or section 504/Americans with Disabilities Act accommodations, the committee on special education will be consulted to determine the degree to which the student's disability either caused or is affected by the discrimination or policy violation. In addition, due process procedures required for persons with disabilities under state and federal law shall be followed.
   d. The Investigator shall submit a copy of all investigation and interview documentation to the Superintendent. The Investigator shall also provide written
notification to the Superintendent of any complaints that are resolved using informal resolution efforts/methods.

e. The investigator shall report back to both the target and the accused, notifying them in writing, and also in person as appropriate regarding the outcome of the investigation and the action taken to resolve the complaint. The investigator shall instruct the target to report immediately if the objectionable behavior occurs again or if the alleged harasser retaliates against him/her.

f. The investigator shall notify the complainant that if he/she is not satisfied with the outcome of the investigation, he/she may request a review by contacting the Superintendent of Schools. The investigator shall also notify the complainant of his/her right to contact the following outside entities:
   i. For students: The U.S. Department of Education's Office for Civil Rights and/or a private attorney.
   ii. For employees and non-employees: The U.S. Equal Employment Opportunity Commission, the New York State Division of Human Rights, the local county human rights commission, as well as a private attorney.

9. Create a written documentation of the investigation, kept in a secure and confidential location, containing:
   a. A list of all documentation and other evidence reviewed, along with a detailed summary;
   b. A list of names of those interviewed along with a detailed summary of their statements;
   c. A timeline of events;
   d. A summary of prior relevant incidents, reported or unreported; and
   e. The final resolution of the complaint, together with any corrective action(s).

   No later than 30 days following receipt of the complaint, the investigator will notify the complainant and alleged harasser, in writing, of the outcome of the investigation. If additional time is needed to complete the investigation or take appropriate action, the investigator will provide all parties with a written status report within 30 days following receipt of the complaint.

   If the investigation results in a determination that sexual harassment did occur, prompt corrective action will be taken to end the harassment. In addition, if the investigation results in a determination that sexual harassment did occur, the investigator will promptly notify the Superintendent, who shall then take prompt disciplinary action, as appropriate, in accordance with district policy, the applicable collective bargaining agreement or state law.

   Any party who is not satisfied with the outcome of the Level I investigation by the Principal may request that the Superintendent conduct a review of the investigation by submitting a written request for review to the Superintendent within 30 days.

   Upon receipt of the request for review, the Superintendent shall promptly obtain the written notifications to the complainant and alleged harasser of the outcome of the investigation along with all written statements and other materials concerning the investigation from the investigator. Such documents shall constitute the record of the investigation. The review should begin as soon as possible but not later than three working days following receipt of the request for review by the Superintendent.
If the Superintendent determines that, based upon his/her review, a supplemental investigation is necessary, the Superintendent shall conduct the investigation or use investigators who have received formal training in sexual harassment investigation or that have previous experience investigating sexual harassment.

The Superintendent shall make his/her determination based solely on the record and, if applicable, the supplemental investigation. There will be no opportunity for oral argument before the Superintendent concerning the request for review. The Superintendent may accept, reject or modify the investigator’s determination of the outcome of the investigation.

No later than 30 days following receipt of the request for review, the Superintendent will notify the complainant and alleged harasser, in writing, of the outcome of the review. If additional time is needed to complete the review or take appropriate action, the Superintendent or Board-appointed investigator will provide all parties with a written status report within 30 days following receipt of the request for review.

B. Level 2 Procedure

The Superintendent shall promptly investigate and resolve all sexual harassment complaints that are referred to him/her by a Principal or Title IX Coordinator. In the event the complaint of sexual harassment involves the Superintendent, the complaint shall be filed with or referred to the Board President, who shall refer the complaint to a trained investigator not employed by the district for a level 2 investigation.

The level 2 investigation should begin as soon as possible but not later than three working days following receipt of the complaint by the Superintendent or Board President.

In conducting the level 2 investigation, the district will use investigators who have received formal training in sexual harassment investigation or that have previous experience investigating sexual harassment complaints, which may include, but is not limited to, the Title IX Coordinator.

If a level 2 investigation results in a determination that sexual harassment did occur, prompt corrective action will be taken to end the harassment. If appropriate, district investigators may use suitable informal methods as a means of exploring options of corrective action and informally resolving the complaint.

No later than 30 days following receipt of the complaint, the Superintendent (or in cases involving the Superintendent, the Board-appointed investigator) will notify the complainant and alleged harasser, in writing, of the outcome of the investigation. If additional time is needed to complete the investigation or take appropriate action, the Superintendent or Board-appointed investigator will provide all parties with a written status report within 30 days following receipt of the complaint.

External Remedies

In addition, complainants have the right to register sexual harassment complaints with the U.S. Department of Education's Office for Civil Rights (OCR). The OCR can be contacted at (800) 421-3481, 400 Maryland Avenue SW, Washington, DC 20202-1100, or at https://www2.ed.gov/about/offices/list/ocr/docs/howto.html
Employee complainants also have the right to register complaints with the federal Equal Employment Opportunity Commission (EEOC) and the New York State Division of Human Rights (DHR) or local county human rights commissions. The EEOC can be contacted at (800) 669-4000, [https://www.eeoc.gov/employees/howtofile.cfm](https://www.eeoc.gov/employees/howtofile.cfm), info@eeoc.gov, or at 33 Whitehall Street, 5th Floor, New York, NY 10004. The DHR can be contacted at (888) 392-3644, [www.dhr.ny.gov/complaint](http://www.dhr.ny.gov/complaint), or at 1 Fordham Plaza, Fourth Floor, Bronx, NY 10458. Nothing in these regulations shall be construed to limit the right of the complainant to file a lawsuit in either state or federal court, or to contact law enforcement officials if the sexual harassment involves unwanted physical touching, coerced physical confinement or coerces sex acts, which may constitute a crime. No district contract or collective bargaining agreement entered into after July 11, 2018 may include a binding arbitration clause for sexual harassment requiring arbitration before bringing the matter to a court.

### Nondisclosure Agreements

The district may include nondisclosure agreements (to not disclose the underlying facts and circumstances of a sexual harassment complaint) in any sexual harassment settlement agreement or resolution only if it is the complainant’s preference. Any such nondisclosure agreement shall be provided to all parties. Complainants shall have twenty-one days to consider any such nondisclosure provision before it is signed by all parties, and shall have seven days to revoke the agreement after signing. Nondisclosure agreements shall only become effective after this seven-day period has passed.

### Retaliation Prohibited

Any act of retaliation against any person who opposes sexually harassing behavior, or who has submitted a complaint in good faith, is prohibited and illegal, and therefore subject to disciplinary action. Likewise, retaliation against any person who has, in good faith, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing of a sexual harassment complaint is prohibited. For purposes of this policy, retaliation includes but is not limited to: verbal or physical threats, intimidation, ridicule, bribes, destruction of property, spreading rumors, stalking, harassing phone calls, discipline, discrimination, demotion, denial of privileges, any action that would keep a person from coming forward to make or support a sexual harassment claim, and any other form of harassment. Such actions need not be job- or education-related, or occur in the workplace or educational environment, to constitute unlawful retaliation. Any person who retaliates is subject to immediate disciplinary action, up to and including suspension or termination.

### Discipline/Penalties

Any individual who violates the sexual harassment policy by engaging in prohibited sexual harassment will be subject to appropriate disciplinary action. Disciplinary measures available to school authorities include, but are not limited to the following:

**Students:** Discipline may range from a reprimand up to and including suspension from school, to be imposed consistent with the student conduct and discipline policy and applicable law.

**Employees:** Discipline may range from a warning up to and including termination, to be imposed consistent with all applicable contractual and statutory rights.
Volunteers: Penalties may range from a warning up to and including loss of volunteer assignment.

“Non-employees” (i.e., contractors, subcontractors, vendors, consultant and other persons providing services pursuant to a contract, or their employees). Penalties may range from a warning up to and including loss of district business.

Other individuals: Penalties may range from a warning up to and including denial of future access to school property.

False Complaints

False or malicious complaints of sexual harassment may result in corrective or disciplinary action taken against the complainant.

Training

All students and employees shall be informed of this policy in student and employee handbooks and on the district website. A poster summarizing the policy shall also be posted in a prominent location at each school. All secondary school student body officers shall receive district training about the policy at the beginning of each school year. The district shall provide all existing employees with either a paper or electronic copy of the district’s sexual harassment policy and regulation, and shall provide same to new employees before the employee starts his/her new job.

In addition, age-appropriate curricular materials will be made available so that it can be incorporated in instruction K-12 to ensure that all students are educated to recognize and report sexual harassment.

All new employees shall receive training on this policy at new employee orientation or as soon as possible after starting their job, unless he/she can demonstrate that they have received equivalent training within the past year from a previous employer. All other employees shall be provided information at least once a year regarding this policy and the district's commitment to a harassment-free learning and working environment. Principals, Title IX coordinators, and other administrative employees who have specific responsibilities for investigating and resolving complaints of sexual harassment shall receive yearly training on this policy and related legal developments.

Annual employee training programs shall be interactive and include: (i) an explanation of sexual harassment consistent with guidance issued by the NYS Department of Labor and the NYS Division of Human Rights; (ii) examples of conduct that is unlawful sexual harassment; (iii) information on federal and state laws about sexual harassment and remedies available to victims of sexual harassment; (iv) information concerning employees' right to make complaints and all available forums for investigating complaints; and (v) address the conduct and responsibilities of supervisors.

Principals in each school and program directors shall be responsible for informing students and staff on a yearly basis of the terms of this policy, including the procedures established for investigation and resolution of complaints, general issues surrounding sexual harassment, the
rights and responsibilities of students and employees, and the impact of sexual harassment on the complainant.

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