POLICY GUIDE

1552 SEXUAL HARASSMENT – STAFF

The Board of Education (employer) recognizes that an employee's right to freedom from employment discrimination includes the opportunity to work in an environment untainted by sexual harassment. Sexually offensive speech and conduct are wholly inappropriate to the harmonious employment relationships necessary to the operation of the school district and intolerable in a workplace to which the children of the district are exposed.

A. Title VII of the Civil Rights Act of 1964 – 29 CFR 1604

1. Sexual Harassment – 29 CFR 1604.11

a. Definition of Sexual Harassment – Title VII

(1) Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

(a) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment,

(b) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or

(c) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

b. With respect to conduct between fellow employees, an employer is responsible for acts of sexual harassment in the workplace where the employer (or its agents or supervisory employees) knows or should have known of the conduct, unless the employer can show that it took immediate and appropriate corrective action.

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c. The employer may also be responsible for the acts of non-employees, with respect to sexual harassment of employees in the workplace, where the employer (or its agents or supervisory employees) knows or should have known of the conduct and fails to take immediate and appropriate corrective action.

d. The employer should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment under Title VII, and developing methods to sensitize all concerned.

(1) The employee may submit a complaint, under 29 CFR 1604 to the Affirmative Action Officer.

(2) Upon receipt of the complaint the employer shall initiate the grievance procedure in accordance with Regulation 1552.

e. Where employment opportunities or benefits are granted because of an individual's submission to the employer's sexual advances or requests for sexual favors, the employer may be held liable for unlawful sex discrimination against other individuals who were qualified for but denied that employment opportunity or benefit.

2. Job Opportunities Advertising – 29 CFR 1604.5

It is a violation of Title VII for a help-wanted advertisement to indicate a preference, limitation, specification, or discrimination based on sex unless sex is a bona fide occupational qualification for the particular job involved. The placement of an advertisement in columns classified by publishers on the basis of sex, such as columns headed "Male" or "Female," will be considered an expression of a preference, limitation, specification, or discrimination based on sex.



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3. Pre-Employment Inquiries as to Sex – 29 CFR 1604.7

A pre-employment inquiry may ask "Male....., Female....."; or "Mr. Mrs. Miss," provided that the inquiry is made in good faith for a nondiscriminatory purpose. Any pre-employment inquiry in connection with prospective employment which expresses directly or indirectly any limitation, specification, or discrimination as to sex shall be unlawful unless based upon a bona fide occupational qualification.

4. Fringe Benefits – 29 CFR 1604.9

a. "Fringe benefits," as used in 29 CFR 1604.9, Regulation 1552, and this Policy, includes medical, hospital, accident, life insurance and retirement benefits; profit-sharing and bonus plans; leave; and other terms, conditions, and privileges of employment.

b. It shall be an unlawful employment practice for the employer to discriminate between men and women with regard to fringe benefits.

c. Where the employer conditions benefits available to employees and their spouses and families on whether the employee is the "head of the household" or "principal wage earner" in the family unit, the benefits tend to be available only to male employees and their families. Due to the fact that such conditioning discriminatorily affects the rights of women employees, and that "head of household" or "principal wage earner" status bears no relationship to job performance, benefits which are so conditioned will be found a prima facie violation of the prohibitions against sex discrimination contained in Title VII of the Civil Rights Act of 1964 (Act).

d. It shall be an unlawful employment practice for the employer to make available benefits for the wives and families of male employees where the same benefits are not made available for the husbands and families of female employees; or to make available benefits for the wives of male employees which are not made available for female

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employees; or to make available benefits to the husbands of female employees which are not made available for male employees. An example of such an unlawful employment practice is a situation in which wives of male employees receive maternity benefits while female employees receive no such benefits.

e. It shall not be a defense under Title VII to a charge of sex discrimination in benefits that the cost of such benefits is greater with respect to one sex than the other.

f. It shall be an unlawful employment practice for the employer to have a pension or retirement plan which establishes different optional or compulsory retirement ages based on sex, or which differentiates in benefits on the basis of sex.

5. Employment Policies Relating to Pregnancy and Childbirth – 29 CFR 1604.10

a. A written or unwritten employment policy or practice which excludes from employment applicants or employees because of pregnancy, childbirth or related medical conditions is in prima facie violation of Title VII.

b. Disabilities caused or contributed to by pregnancy, childbirth, or related medical conditions, for all job-related purposes, shall be treated the same as disabilities caused or contributed to by other medical conditions, under any health or disability insurance or sick leave plan available in connection with employment. Written or unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement, and payment under any health or disability insurance or sick leave plan, formal or informal, shall be applied to disability due to pregnancy, childbirth or related medical conditions on the same terms and conditions as they are applied to other disabilities.



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c. Where the termination of an employee who is temporarily disabled is caused by an employment policy under which insufficient or no leave is available, such a termination violates the Act if it has a disparate impact on employees of one sex and is not justified by business necessity.

d. Any fringe benefit program implemented after October 31, 1978, must comply with the provisions of 29 CFR 1604.10(b) upon implementation.

B. Title IX of the Education Amendments of 1972 – 34 CFR 106

1. Definitions – Title IX – 34 CFR 106.2 and 34 CFR 106.30

a. "Sexual harassment" means conduct on the basis of sex that satisfies one or more of the following:

(1) An employee of the employer conditioning the provision of an aid, benefit, or service of the employer on an individual's participation in unwelcome sexual conduct;

(2) Unwelcome conduct determined by a reasonable individual to be so severe, pervasive, and objectively offensive that it effectively denies an individual equal access to the employer's education program or activity; or

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

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b. "Program or activity" and "program" means all of the operations of a local educational agency (as defined in 20 USC 8801), system of vocational education, or other school system.

c. "Title IX" means Title IX of the Education Amendments of 1972, Pub. L. 92-318, as amended by section 3 of Pub. L. 93-568, 88 Stat. 1855, except sections 904 and 906 thereof; 20 USC 1681, 1682, 1683, 1685, 1686.

2. Effect of Employment Opportunities – 34 CFR 106.7

The employer's obligation to comply with 34 CFR 106, Regulation 1552, and this Policy is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for members of one sex than for members of the other sex.

3. Designation of Title IX Coordinator and Notice to Employees – 34 CFR 106.8

a. The employer must designate and authorize at least one employee to coordinate its efforts to comply with its responsibilities under 34 CFR 106, which employee must be referred to as the "Title IX Coordinator."

b. The employer must notify applicants for employment, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the employer, of the name or title, office address, electronic mail address, and telephone number of the employee or employees designated as the Title IX Coordinator.

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(1) Any individual may report sex discrimination, including sexual harassment (whether or not the individual reporting is the individual 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 individual'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.

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

c. Dissemination of Policy

(1) Notification of Policy

(a) The employer must notify applicants for employment, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the employer, that the employer 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 34 CFR 106 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 employment, and that inquiries about the

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application of Title IX and 34 CFR 106 to such employer may be referred to the employer's Title IX Coordinator, to the Assistant Secretary for Civil Rights of the United States Department of Education, or both.

(2) Publications

(a) Each employer must prominently display the contact information required to be listed for the Title IX Coordinator and this Policy on its website, if any, and in each handbook or catalog that it makes available to applicants for employment, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the employer.

(b) The employer must not use or distribute a publication stating that the employer treats applicants for employment or employees differently on the basis of sex except as such treatment is permitted by Title IX or 34 CFR 106.

4. Discrimination on the Basis of Sex and Employment in Education Programs or Activities Prohibited – 34 CFR 106 Subpart E

a. Employment – 34 CFR 106.51

(1) General

(a) No individual shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment, or recruitment, consideration, or selection therefor, whether full-time or part-time, under any education program or activity operated by the



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employer which receives Federal financial assistance.

(b) The employer shall make all employment decisions in any education program or activity operated by such employer in a nondiscriminatory manner and shall not limit, segregate, or classify applicants or employees in any way which could adversely affect any applicant's or employee's employment opportunities or status because of sex.

(c) The employer shall not enter into any contractual or other relationship which directly or indirectly has the effect of subjecting employees or students to discrimination prohibited by 34 CFR 106 Subpart E, including relationships with employment and referral agencies, with labor unions, and with organizations providing or administering fringe benefits to employees of the employer.

(d) The employer shall not grant preferences to applicants for employment on the basis of attendance at any educational institution or entity which admits as students only or predominantly members of one sex, if the giving of such preferences has the effect of discriminating on the basis of sex in violation of 34 CFR 106.

(2) 34 CFR 106 Subpart E applies to:

(a) Recruitment, advertising, and the process of application for employment;



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(b) Hiring, upgrading, promotion, consideration for and award of tenure, demotion, transfer, layoff, termination, application of nepotism policies, right of return from layoff, and rehiring;

(c) Rates of pay or any other form of compensation, and changes in compensation;

(d) Job assignments, classifications and structure, including position descriptions, lines of progression, and seniority lists;

(e) The terms of any collective bargaining agreement;

(f) Granting and return from leaves of absence, leave for pregnancy, childbirth, false pregnancy, termination of pregnancy, leave for individuals of either sex to care for children or dependents, or any other leave;

(g) Fringe benefits available by virtue of employment, whether or not administered by the employer;

(h) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, selection for tuition assistance, selection for sabbaticals and leaves of absence to pursue training;

(i) Employer-sponsored activities, including those that are social or recreational; and

(j) Any other term, condition, or privilege of employment.



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b. Employment Criteria – 34 CFR 106.52

(1) The employer shall not administer or operate any test or other criterion for any employment opportunity which has a disproportionately adverse effect on individuals on the basis of sex unless:

(a) Use of such test or other criterion is shown to predict validly successful performance in the position in question; and

(b) Alternative tests or criteria for such purpose, which do not have such disproportionately adverse effect, are shown to be unavailable.

c. Recruitment – 34 CFR 106.53

(1) Nondiscriminatory Recruitment and Hiring

The employer shall not discriminate on the basis of sex in the recruitment and hiring of employees. Where the employer has been found to be presently discriminating on the basis of sex in the recruitment or hiring of employees, or has been found to have in the past so discriminated, the employer shall recruit members of the sex so discriminated against so as to overcome the effects of such past or present discrimination.

(2) Recruitment Patterns

The employer shall not recruit primarily or exclusively at entities which furnish as applicants only or predominantly members of one sex if such actions have the effect of discriminating on the basis of sex in violation of 34 CFR 106.53.

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d. Compensation – 34 CFR 106.54

(1) The employer shall not make or enforce any policy or practice which, on the basis of sex:

(a) Makes distinctions in rates of pay or other compensation;

(b) Results in the payment of wages to employees of one sex at a rate less than that paid to employees of the opposite sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.

e. Job Classification and Structure – 34 CFR 106.55

(1) The employer shall not:

(a) Classify a job as being for males or for females;

(b) Maintain or establish separate lines of progression, seniority lists, career ladders, or tenure systems based on sex; or

(c) Maintain or establish separate lines of progression, seniority systems, career ladders, or tenure systems for similar jobs, position descriptions, or job requirements which classify individuals on the basis of sex, unless sex is a bona-fide occupational qualification for the positions in question as set forth in 34 CFR 106.61.

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f. Fringe Benefits – 34 CFR 106.56

(1) For the purpose of 34 CFR 106, "fringe benefits" means: Any medical, hospital, accident, life insurance or retirement benefit, service, policy or plan, any profit-sharing or bonus plan, leave, and any other benefit or service of employment not subject to the provision of 34 CFR 106.54.

(2) The employer shall not:

(a) Discriminate on the basis of sex with regard to making fringe benefits available to employees or make fringe benefits available to spouses, families, or dependents of employees differently upon the basis of the employee's sex;

(b) Administer, operate, offer, or participate in a fringe benefit plan which does not provide either for equal periodic benefits for members of each sex, or for equal contributions to the plan by the employer for members of each sex; or

(c) Administer, operate, offer, or participate in a pension or retirement plan which establishes different optional or compulsory retirement ages based on sex or which otherwise discriminates in benefits on the basis of sex.

g. Marital or Parental Status – 34 CFR 106.57

(1) The employer shall not apply any policy or take any employment action:

(a) Concerning the potential marital, parental, or family status of an employee or applicant for employment which treats individuals differently on the basis of sex; or

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(b) Which is based upon whether an employee or applicant for employment is the head of household or principal wage earner in such employee's or applicant's family unit.

(2) The employer shall not discriminate against or exclude from employment any employee or applicant for employment on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.

(3) The employer shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom and any temporary disability resulting therefrom as any other temporary disability for all job-related purposes, including commencement, duration and extensions of leave, payment of disability income, accrual of seniority and any other benefit or service, and reinstatement, and under any fringe benefit offered to employees by virtue of employment.

(4) In the case of the employer which does not maintain a leave policy for its employees, or in the case of an employee with insufficient leave or accrued employment time to qualify for leave under such a policy, the employer shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom as a justification for a leave of absence without pay for a reasonable period of time, at the conclusion of which the employee shall be reinstated to the status which the employee held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.



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h. Effect of State or Local Law or Other Requirements – 34 CFR 106.58

(1) The obligation to comply with 34 CFR 106.58 is not obviated or alleviated by the existence of any State or local law or other requirement which imposes prohibitions or limits upon employment of members of one sex which are not imposed upon members of the other sex.

(2) The employer which provides any compensation, service, or benefit to members of one sex pursuant to a State or local law or other requirement shall provide the same compensation, service, or benefit to members of the other sex.

i. Advertising – 34 CFR 106.59

The employer shall not in any advertising related to employment indicate preference, limitation, specification, or discrimination based on sex unless sex is a bona-fide occupational qualification for the particular job in question.

j. Pre-Employment Inquiries – 34 CFR 106.60

(1) The employer shall not make pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is "Miss or Mrs."

(2) The employer may make pre-employment inquiry as to the sex of an applicant for employment, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by 34 CFR 106.

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k. Sex as a Bona-Fide Occupational Qualification – 34 CFR 106.61

The employer may take action otherwise prohibited by 34 CFR 106 Subpart E provided it is shown that sex is a bona-fide occupational qualification for that action, such that consideration of sex with regard to such action is essential to successful operation of the employment function concerned. The employer shall not take action pursuant to 34 CFR 106.61 which is based upon alleged comparative employment characteristics or stereotyped characterizations of one or the other sex, or upon preference based on sex of the employer, employees, students, or other individuals, but nothing contained in 34 CFR 106.61 shall prevent the employer from considering an employee's sex in relation to employment in a locker room or toilet facility used only by members of one sex.

5. Effect of Other Federal Provisions – 34 CFR 106.6(a)

a. The obligations imposed by 34 CFR 106 are independent of, and do not alter, obligations not to discriminate on the basis of sex imposed by Executive Order 11246, as amended; sections 704 and 855 of the Public Health Service Act (42 USC 292d and 298b-2); Title VII of the Civil Rights Act of 1964 (42 USC 2000e et seq.); the Equal Pay Act (29 USC 206 and 206(d)); and any other Act of Congress or Federal regulation.

b. Nothing in 34 CFR 106 may be read in derogation of any individual's rights under Title VII of the Civil Rights Act of 1964, 42 USC 2000e et seq. or any regulations promulgated thereunder.

C. Grievance Procedures

1. Upon receiving a complaint alleging sexual harassment, the employer shall review the alleged conduct to determine whether to apply the grievance procedure for Title VII or Title IX outlined in Regulation 1552. When making this determination, the

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Superintendent or designee should consult with the Board Attorney to determine which definition of sexual harassment (Title VII, Title IX, or both), applies to the alleged conduct. If the alleged conduct is addressed by both definitions, the employer shall proceed with the grievance procedure outlined for Title IX in Section B. of Regulation 1552.

a. Title VII of the Civil Rights Act of 1964 – 29 CFR 1604

(1) Upon receipt of a complaint of sexual harassment under Title VII, the employer shall follow the grievance procedure outlined in Section A. of Regulation 1552.

b. Title IX of the Education Amendments of 1972 – 34 CFR 106

(1) Upon receipt of a complaint of sexual harassment under Title IX, the employer shall follow the grievance procedure outlined in Section B. of Regulation 1552.

(2) The employer must provide to applicants for employment, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the employer notice of the employer's Title IX 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 employer will respond.

29 CFR 1604
34 CFR 106

Adopted:

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REGULATION GUIDE

R 1552 SEXUAL HARASSMENT – STAFF

The Board of Education will not tolerate sexual harassment of employees by other school employees or third parties. The employer shall investigate and resolve allegations of sexual harassment pursuant to Title VII of the Civil Rights Act of 1964 (29 CFR 1604); Title IX of the of the Education Amendments of 1972 (34 CFR 106); Policy 1552; and this Regulation.

A. Title VII of the Civil Rights Act of 1964 – 29 CFR 1604

1. Sexual Harassment – 29 CFR 1604.11

a. Definition of Sexual Harassment – Title VII

(1) Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

(a) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment,

(b) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or

(c) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

b. With respect to conduct between fellow employees, an employer is responsible for acts of sexual harassment in the workplace where the employer (or its agents or supervisory employees) knows or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action.

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c. The employer may also be responsible for the acts of non-employees, with respect to sexual harassment of employees in the workplace, where the employer (or its agents or supervisory employees) knows or should have known of the conduct and fails to take immediate and appropriate corrective action.

d. The employer should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment under Title VII, and developing methods to sensitize all concerned.

(1) The employee may submit a complaint, under 29 CFR 1604 to the Affirmative Action Officer.

(2) Upon receipt of the complaint the employer shall initiate the grievance procedure in accordance with Regulation 1552.

e. Where employment opportunities or benefits are granted because of an individual's submission to the employer's sexual advances or requests for sexual favors, the employer may be held liable for unlawful sex discrimination against other individuals who were qualified for but denied that employment opportunity or benefit.

2. Grievance Procedure for Title VII Complaints

The following grievance procedure shall be used for an allegation(s) of sexual harassment:

a. Reporting of Sexual Harassment Conduct



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(1) Any individual with any information regarding actual and/or potential sexual harassment of an employee must report the information to the Principal, their immediate supervisor, the Title IX Coordinator, or the Affirmative Action Officer. The employer's Title IX Coordinator and the Affirmative Action Officer may be the same individual.

(2) The employer can learn of sexual harassment through other means such as from a witness to an incident, an anonymous letter, or a telephone call.

(3) The report may be made: in person; in writing; verbally by telephone; by mail to the office address; or by electronic mail. The report may be reported during business or non-business hours.

(4) A report to the Principal or an immediate supervisor will be forwarded to the Superintendent or designee and Affirmative Action Officer within one working day, even if the Principal or immediate supervisor feels sexual harassment conduct was not present.

(5) In the event the report alleges conduct by the Principal or the Affirmative Action Officer, the report shall be submitted to the Superintendent who will designate a school official to assume the Principal's or Affirmative Action Officer's responsibilities.

b. Affirmative Action Officer's Investigation

(1) Upon receipt of any report of potential sexual harassment conduct, the Affirmative Action Officer will begin an immediate investigation. The Affirmative Action Officer will promptly investigate all alleged complaints of sexual



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harassment, whether or not a formal grievance is filed, and steps will be taken to resolve the situation, if needed. This investigation will be prompt, thorough, and impartial. The investigation will be completed no more than ten working days after receiving notice.

(2) When an employee provides information about possible sexual harassment, the Affirmative Action Officer will initially discuss what actions the employee seeks in response to the sexual harassment.

(3) The investigation may include, but is not limited to, interviews with all individuals with potential knowledge of the alleged conduct, interviews with any employee(s) who may have been sexually harassed in the past by the employee, and any other reasonable methods to determine if sexual harassment conduct existed.

(4) The Affirmative Action Officer may request an employee involved in the investigation to assist in the investigation.

(5) The Affirmative Action Officer will provide a copy of Policy 1552 and this Regulation to all individuals who are interviewed with potential knowledge, upon request, and to any other individual the Affirmative Action Officer feels would be served by a copy of such documents.

(6) Any individual interviewed by the Affirmative Action Officer may be provided an opportunity to present witnesses and other evidence.

(7) The Affirmative Action Officer and/or Superintendent will contact law enforcement agencies if the conduct could potentially be criminal in nature.

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(8) The employer may take interim measures during an investigation of a complaint.

(9) The Affirmative Action Officer will consider particular issues of welcomeness based on the allegations.

c. Investigation Results

(1) Upon the conclusion of the investigation, but not later than ten working days after reported to the Affirmative Action Officer, the Affirmative Action Officer will prepare a summary of findings to the parties. At a minimum, this summary shall include the individual(s) providing notice to the employer and the employee(s) who was alleged to be sexually harassed.

(2) The Affirmative Action Officer shall make a determination whether sexual harassment conduct was present.

(3) If the Affirmative Action Officer concludes sexual harassment conduct was not, or is not present, the investigation is concluded.

(4) If the Affirmative Action Officer determines that sexual harassment has occurred, the employer shall take reasonable and effective corrective action, including steps tailored to the specific situation. Appropriate steps will be taken to end the harassment such as counseling, warning, and/or disciplinary action. The steps will be based on the severity of the harassment or any record of prior incidents or both. A series of escalating consequences may be necessary if the initial steps are ineffective in stopping the harassment.



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(5) In the event the Affirmative Action Officer determines a hostile environment exists, the Superintendent shall take steps to eliminate the hostile environment. The employer may need to deliver special training or other interventions to repair the educational environment. Other measures may include directing the harasser to apologize to the employee that was sexually harassed, dissemination of information, distribution of new policy statements or other steps to communicate the message that the employer does not tolerate sexual harassment and will be responsive to any employee that reports such conduct.

(6) In some situations, the employer may need to provide other services to the employee that was sexually harassed, if necessary, to address the effects of the sexual harassment on that employee. Depending on the type of sexual harassment found, these additional services may include an independent reassessment of the work performance of the employee that was sexually harassed, counseling, and/or other measures that are appropriate to the situation.

(7) The Superintendent will take steps to avoid any further sexual harassment and to prevent any retaliation against the employee who made the complaint, was the subject of the sexual harassment, or against those who provided the information or were witnesses.

(a) The Affirmative Action Officer will inform the employee that was sexually harassed to report any subsequent problems and will make follow-up inquiries to see if there have been any new incidents or retaliation.

(8) All sexual harassment grievances and accompanied investigation notes will be maintained in a confidential file by the Affirmative Action Officer.



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d. Affirmative Action Officer's Investigation Appeal Process

(1) Any individual found by the Affirmative Action Officer's investigation to be guilty of sexual harassment conduct, or any individual who believes they were sexually harassed but not supported by the Affirmative Action Officer's investigation, may appeal to the Superintendent.

(a) The Superintendent will make their determination within ten working days of receiving the appeal.

(2) Any individual who is not satisfied with the Superintendent's determination may appeal in writing to the Board.

(a) The Board will make its determination within forty-five calendar days of receiving an appeal from the Superintendent's determination.

3. United States Equal Employment Opportunity Commission (EEOC) Case Resolution

Individuals not satisfied with the resolution of a Title VII allegation of sexual harassment by the employer may request the EEOC to investigate the allegations.

a. Any alleged victim of sexual harassment may appeal a decision of the Affirmative Action Officer, Superintendent, or the employer to the EEOC.

b. Any individual may report an allegation of sexual harassment to the EEOC at any time. If the EEOC is asked to investigate or otherwise resolve incidents of sexual harassment of employees, the EEOC will consider whether:

(1) The employer has a policy prohibiting sexual harassment and a grievance procedure;

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(2) The employer has appropriately investigated or otherwise responded to allegations of sexual harassment; and

(3) The employer has taken immediate and appropriate corrective action responsive to quid pro quo or hostile environment sexual harassment.

B. Title IX of the of the Education Amendments of 1972 – 34 CFR 106

1. Definitions – 34 CFR 106.30

a. For the purpose of Section B. of this Regulation and in accordance with 34 CFR 106:

(1) "Sexual harassment" means conduct on the basis of sex that satisfies one or more of the following:

(a) An employee of the employer conditioning the provision of an aid, benefit, or service of the employer on an employee's participation in unwelcome sexual conduct;

(b) Unwelcome conduct determined by a reasonable individual to be so severe, pervasive, and objectively offensive that it effectively denies an individual equal access to the employer's education program or activity; or

(c) "Sexual assault" as defined in 20 USC 1092(f)(6)(A)(v), "dating violence" as defined in 34 USC 12291(a)(10), "domestic violence" as defined in 34 USC 12291(a)(8), or "stalking" as defined in 34 USC 12291(a)(30).

(2) "Complainant" means an employee currently employed by the employer who is alleged to be the victim of conduct that could constitute sexual harassment.

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

(4) "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 employer investigate the allegation of sexual harassment. The phrase "document filed by a complainant" means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the employer) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the individual filing the formal complaint.

(5) "Investigator" (34 CFR 106.45(b)(5)) means an employee(s) who may be the Title IX Coordinator and who is not a decision-maker designated by the Superintendent to investigate alleged sexual harassment in accordance with 34 CFR 106. The investigator may be the employer's Affirmative Action Officer only if the Affirmative Action Officer is not the Title IX decision-maker.

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

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

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

(8) "Title IX Coordinator" (34 CFR 106.8(a)) means an individual designated and approved by the employer to coordinate its efforts to comply with its responsibilities under 34 CFR 106, Policy 1552, and this Regulation. The individual must be referred to as the "Title IX Coordinator" and may also be the investigator but cannot be the decision-maker.

2. Employer's Response to Sexual Harassment – 34 CFR 106.44

a. The employer with actual knowledge of sexual harassment in an education program or activity of the employer against an individual in the United States, must respond promptly in a manner that is not deliberately indifferent.

(1) The employer has "actual knowledge" when an employee receives a complaint of sexual harassment or an employee is aware of behavior that could constitute sexual harassment.

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

(2) The employer is deliberately indifferent only if the employer's response to sexual harassment is clearly unreasonable in light of the known circumstances, pursuant to 34 CFR 106.44(a).

The United States Department of Education Office of Civil Rights may not deem the employer to have satisfied the employer's duty to not be deliberately indifferent under 34 CFR 106 based on the employer's restriction of rights protected under the United States Constitution, including the First Amendment, Fifth Amendment, and Fourteenth Amendment.

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b. Informal Resolution – 34 CFR 106.45

(1) The employer may not require as a condition of 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. Similarly, the employer may not require the parties to participate in an informal resolution process and may not offer an informal resolution process unless a formal complaint is filed. However, at any time prior to reaching a determination regarding responsibility, the employer may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that the employer:

(a) 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; and

(b) Obtains the parties' voluntary, written consent to the informal resolution process.

3. Grievance Process - 34 CFR 106.45

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



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

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

d. The Title IX Coordinator must promptly contact the complainant in accordance with 34 CFR 106.44(a).

e. In response to a formal complaint, the employer will follow a grievance process that complies with 34 CFR 106.45.

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

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

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

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

(1) The investigator will attempt to collect all relevant information and evidence.

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

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

(4) To the greatest extent possible, and subject to Title IX, the employer will make reasonable accommodations in an investigation to avoid potential re-traumatization of a complainant.

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

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

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

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

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

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

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

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

(i) Identification of allegations potentially constituting sexual harassment as defined in Policy and Regulation 1552 and 34 CFR 106.30;

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

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



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

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

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

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

4. Appeals – 34 CFR 106.45(b)(8)

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

b. As to all appeals, the employer will comply with the requirements of 34 CFR 106.45(b)(8).

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



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

(2) Ensure that the appeal officer complies with the standards set forth in 34 CFR 106.45(b)(1)(iii).

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

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

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

(1) There was a procedural error in the hearing process that materially affected the outcome;

(a) Procedural error refers to alleged deviations from employer policy, and not challenges to policies or procedures themselves;

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

(3) The decision-maker had a conflict of interest or bias that affected the outcome;

(4) The determination regarding the policy violation was unreasonable based on the evidence before the decision-maker:

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

(5) The sanctions were disproportionate to the hearing officer's findings.

(6) The employer may offer an appeal equally to both parties on additional bases.

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

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

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

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

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

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

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

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5. Supportive Measures – 34 CFR 106.30

a. "Supportive measures" mean non-disciplinary, non-punitive, individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed pursuant to 34 CFR 106.30(a).

b. The employer's response must treat complainants and respondents equitably by offering supportive measures as defined in 34 CFR 106.30 to a complainant, and by following a grievance process that complies with 34 CFR 106.45 before the imposition of any disciplinary sanctions or other actions that are not supportive measures as defined in 34 CFR 106.30, against a respondent.

c. The Title IX Coordinator must promptly contact the complainant to discuss the availability of supportive measures as defined in 34 CFR 106.30, 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.

(1) Supportive measures shall be available to the complainant, respondent, and as appropriate, witnesses or other impacted individuals.

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

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

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

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f. The employer is required to offer supportive measures to the complainant even if the respondent ceased being employed by the employer prior to the filing of a formal complaint.

(1) If the respondent ceases to be employed by the employer after a formal complaint is filed, the employer may dismiss the complaint, but must still offer supportive measures to the complainant pursuant to 34 CFR 106.45(b)(3)(ii).

6. Remedies - 34 CFR 106.45

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

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

(1) Emergency Removal

Nothing in 34 CFR 106 precludes the employer from removing a respondent from the employer's education program or activity on an emergency basis, provided that the employer undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any 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. This provision may not 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.



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(2) Administrative Leave

Nothing in 34 CFR 106 Subpart D precludes the employer from placing an employee on administrative leave during the pendency of a grievance process that complies with 34 CFR 106.45. This provision may not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.

c. The Superintendent or designee, after consultation with the Title IX Coordinator, will determine the sanctions imposed and remedies provided, if any.

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

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

e. The employer must disclose to the complainant the sanctions imposed on the respondent that directly relate to the complainant when such disclosure is necessary to ensure equal access to the employer's education program or activity.

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

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

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7. Recordkeeping – 34 CFR 106.45(b)(10)

a. The employer must maintain for a period of seven years records of:

(1) Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under 34 CFR 106.45(b)(6)(i), any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the employer'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 individual who facilitates an informal resolution process. The employer must make these training materials publicly available on its website, or if the employer does not maintain a website the employer must make these materials available upon request for inspection by members of the public.

b. For each response required under 34 CFR 106.44, the employer must 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. In each instance, the employer must 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 employer's education program or activity. If the employer does not provide a complainant with supportive measures, then the employer must document the reasons why such a response was not clearly unreasonable in light of the known

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circumstances. The documentation of certain bases or measures does not limit the employer in the future from providing additional explanations or detailing additional measures taken.

8. Compliance

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

9. Training

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

(1) The employer must ensure that decision-makers 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, as set forth in 34 CFR 106.45(b)(6).

(2) The employer also must ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence, as set forth in 34 CFR 106.45 (b)(5)(vii). Any materials used to train Title IX Coordinators, investigators, decision-makers, and any individual who facilitates an informal resolution process, must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.

Adopted:

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POLICY GUIDE

~~**[See POLICY ALERT No. 236]**~~

~~3362~~ SEXUAL HARASSMENT

~~The Board of Education recognizes that an employee's right to freedom from employment discrimination includes the opportunity to work in an environment untainted by sexual harassment. Sexually offensive speech and conduct are wholly inappropriate to the harmonious employment relationships necessary to the operation of the school district and intolerable in a workplace to which the children of this district are exposed.~~

~~Sexual harassment includes all unwelcome sexual advances, requests for sexual favors, and verbal or physical contacts of a sexual nature that would not have happened but for the employee's gender. Whenever submission to such conduct is made a condition of employment or a basis for an employment decision, or when such conduct is severe and pervasive and has the purpose or effect of unreasonably altering or interfering with work performance or creating an intimidating, hostile, or offensive working environment, the employee shall have cause for complaint.~~

~~The sexual harassment of any employee of this district is strictly forbidden. Any employee or agent of this Board who is found to have sexually harassed an employee of this district will be subject to discipline which may include termination of employment. Any employee who has been exposed to sexual harassment by any employee or agent of this Board is encouraged to report the harassment to an appropriate supervisor. An employee may complain of any failure of the Board to take corrective action by recourse to the procedure by which a discrimination complaint is processed. The employee may appeal the Board's action or inaction to the United States Equal Employment Opportunity Commission or the New Jersey Division of Civil Rights. Complaints regarding sexual harassment shall be submitted following the procedures outlined in Regulation No. 1530, Equal Employment Opportunity.~~

~~The _____ shall instruct all employees and agents of this Board to recognize and correct speech and behavior patterns that may be sexually offensive with or without the intent to offend.~~

~~29 C.F.R. 1604.11~~

~~Cross reference: Policy Guide No. 3211~~

~~Adopted:~~

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REGULATION GUIDE

~~**[See POLICY ALERT No. 236]**~~

~~R 3362~~ ~~SEXUAL HARASSMENT OF TEACHING STAFF MEMBERS COMPLAINT PROCEDURE~~

~~Sexual harassment of school staff members is prohibited by the Board of Education. The Superintendent and school district staff will use the following methods to investigate and resolve allegations of sexual harassment of school staff members.~~

~~A. Definitions~~

~~1. Gender-based Harassment - Gender-based harassment that includes acts of verbal, nonverbal, physical aggression, intimidation, or hostility based on gender, but not involving conduct of a sexual nature, may be a form of sex discrimination if it is sufficiently severe, persistent, or pervasive and directed at individuals because of their gender.~~

~~2. Hostile Environment Sexual Harassment – Sexual harassing conduct (which can include unwelcomed sexual advances, requests for sexual favors or other favors, or other verbal, nonverbal or physical conduct of a sexual nature) by a school staff member that is sufficiently severe, persistent, or pervasive to limit another staff member's ability to participate in a workplace environment or activity, or to create a hostile or abusive workplace environment.~~

~~3. Quid Pro Quo Harassment - When a school staff member explicitly or implicitly conditions another school staff member's conditions of employment on the staff member's submission to unwelcomed sexual advances, requests for sexual favors, or other favors, or other verbal, nonverbal or physical conduct of a sexual nature. Quid Pro Quo Harassment is equally unlawful whether the staff member resists and suffers the threatened harm or submits and thus avoids the threatened harm.~~

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POLICY GUIDE

~~SUPPORT STAFF MEMBERS~~
~~4352/page 1 of 1~~
~~Sexual Harassment~~
~~Dec 25~~
~~**M**~~

~~**[See POLICY ALERT No. 236]**~~

~~4352 SEXUAL HARASSMENT~~

~~The Board of Education recognizes that an employee's right to freedom from employment discrimination includes the opportunity to work in an environment untainted by sexual harassment. Sexually offensive speech and conduct are wholly inappropriate to the harmonious employment relationships necessary to the operation of the school district and intolerable in a workplace to which the children of this district are exposed.~~

~~Sexual harassment includes all unwelcome sexual advances, requests for sexual favors, and verbal or physical contacts of a sexual nature that would not have happened but for the employee's gender. Whenever submission to such conduct is made a condition of employment or a basis for an employment decision, or when such conduct is severe and pervasive and has the purpose or effect of unreasonably altering or interfering with work performance or creating an intimidating, hostile, or offensive working environment, the employee shall have cause for complaint.~~

~~The sexual harassment of any employee of this district is strictly forbidden. Any employee or agent of this Board who is found to have sexually harassed an employee of this district will be subject to discipline, which may include termination of employment. Any employee who has been exposed to sexual harassment by any employee or agent of this Board is encouraged to report the harassment to an appropriate supervisor. An employee may complain of any failure of the Board to take corrective action by recourse to the procedure by which a discrimination complaint is processed. The employee may appeal the Board's action or inaction to the New Jersey Division on Civil Rights or to the United States Equal Employment Opportunity Commission. Complaints regarding sexual harassment shall be submitted following the procedures outlined in Regulation 1530, Equal Employment Opportunity.~~

~~The _____ shall instruct all employees of this Board to recognize and correct speech and behavior patterns that may be sexually offensive with or without the intent to offend.~~

~~29 C.F.R. 1604.11~~

~~Adopted:~~

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REGULATION GUIDE

~~SUPPORT STAFF MEMBERS~~
~~R 4352/page 1 of 1~~
~~Sexual Harassment of Support Staff Members~~
~~Complaint Procedure~~
~~Dec 25~~

~~[See POLICY ALERT No. 236]~~

~~R 4352~~ SEXUAL HARASSMENT OF SUPPORT STAFF MEMBERS ~~COMPLAINT PROCEDURE~~

~~Sexual harassment of school staff members is prohibited by the Board of Education. The Superintendent and school district staff will use the following methods to investigate and resolve allegations of sexual harassment of school staff members.~~

ABOLISH

~~A. Definitions~~

~~1. Gender-based Harassment - Gender-based harassment that includes acts of verbal, nonverbal, physical aggression, intimidation, or hostility based on gender, but not involving conduct of a sexual nature, may be a form of sex discrimination if it is sufficiently severe, persistent, or pervasive and directed at individuals because of their gender.~~

~~2. Hostile Environment Sexual Harassment - Sexual harassing conduct (which can include unwelcomed sexual advances, requests for sexual favors or other favors, or other verbal, nonverbal or physical conduct of a sexual nature) by a school staff member that is sufficiently severe, persistent, or pervasive to limit another staff member's ability to participate in a workplace environment or activity, or to create a hostile or abusive workplace environment.~~

~~3. Quid Pro Quo Harassment - When a school staff member explicitly or implicitly conditions another school staff member's conditions of employment on the staff member's submission to unwelcomed sexual advances, requests for sexual favors, or other favors, or other verbal, nonverbal or physical conduct of a sexual nature. Quid Pro Quo Harassment is equally unlawful whether the staff member resists and suffers the threatened harm or submits and thus avoids the threatened harm.~~

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