

This regulation is intended to create and preserve an educational and working environment free from unlawful sexual harassment in furtherance of the District's commitment to provide a healthy and productive environment for all students, employees, applicants for employment, school volunteers, and non-employees (e.g., 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 (where applicable) 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 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 a factor in decisions affecting an 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 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.

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.;
3. unwelcome or offensive public sexual display of affection, including kissing, hugging, making out, groping, fondling, petting, inappropriate touching of one's self or others, 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 or explicit, sexually degrading or derogatory, implies sexual intentions, or that is based on sexual stereotypes or sexual orientation, gender identity or expression;
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 of pornographic or other sexually explicit materials such as magazines, videos, films, Internet material, etc.;
 12. any other unwelcome behavior based on sexual stereotypes or attitudes that are offensive, degrading, derogatory, intimidating, demeaning, or that is based on sexual stereotypes and attitudes.

For purposes of this regulation, action or conduct shall be considered "unwelcome" if the student, employee, school volunteer, 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, pervasive and objectively offensive to be considered sexual harassment.

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 working environment;
2. the type, frequency and duration of the conduct;
3. the identity of and relationship between the alleged harasser and the subject 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 by a student, District employee, non-employee or third party related to the school is strongly encouraged to report complaints as soon as possible after the incident in order to enable the District to effectively investigate and resolve the complaint. Complainants are encouraged to submit the complaint in writing; however, complaints may be filed verbally. Managers and supervisors are required to report any complaint that they receive, or any harassment that they observe to the Building Principal or the Title IX Coordinator.

Complaints should be filed with the Principal or the Title IX Coordinator. The Title IX Coordinator is Michael Bellarosa, Deputy Superintendent, 944 State Route 17K, Montgomery, NY 12549, (845)457-2400 x18885, michael.bellarosa@vcsdny.org.

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 the Title IX coordinator. School employees receiving complaints of sexual harassment from non-employees shall direct the complainant to the Building 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 harasser(s); witnesses to the harassment; and the complainant's response to the harassment.

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 or employees.

Investigation and Resolution Procedure

A. Level One Procedure

The Principal or the 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. Except in the case of severe or criminal conduct, the Principal or the Title IX coordinator 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.

As soon as possible but no later than three working days following receipt of a complaint, the Principal or Title IX Coordinator should begin an investigation of the complaint according to the following steps:

1. Interview the complainant and document the conversation. Documentation shall include, at a minimum, information such as name of interviewer and interviewee, date of interview, and topics discussed. (If the complainant is not the alleged victim, interview the alleged victim next.) Instruct the victim to have no contact or communication regarding the complaint with the alleged harasser. Ask the complainant specifically what action he/she would like to see taken in order to resolve the complaint. Refer the victim, 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 victim. If the complainant has not prepared written documentation, instruct the complainant to do so,

- providing alternative formats for individuals with disabilities and young children, who have difficulty writing and need accommodation.
3. Interview any witnesses to the complaint. Where appropriate, obtain a written statement from each witness.
 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. The alleged harasser should be notified of the specific charges against him/her, and shall be questioned about the specific allegations. Ask the alleged harasser to make a written statement.
 5. Instruct all parties not to retaliate against other individuals involved in the investigation. Warn all parties that if they retaliate against anyone involved in the investigation, they will be subject to immediate disciplinary action.
 6. Review all documentation and information relevant to the complaint.
 7. When reviewing cases involving non-employees, the investigator shall consider the extent of the District's control and any other legal responsibility the District may have with respect to the conduct of the accused.
 8. Where appropriate, suggest mediation as a potential means of resolving the complaint. In addition to mediation, use appropriate 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. suggesting counseling and/or sensitivity training;
 - c. conducting training for the department or school in which the behavior occurred, calling attention to the consequences of engaging in such behavior;
 - d. requesting a letter of apology to the complainant;
 - e. writing letters of caution or reprimand; and/or
 - f. separating the parties.
 9. Parent/Student/Employee/Volunteer/Non-Employee Involvement and Notification
 - a. Parents of student alleged victims and accused students shall be notified within two school days of allegations that are serious or involve repeated conduct. Any employee or third party will be notified within two school days of any allegations against them in accordance with all applicable collective bargaining agreements.
 - b. 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.
 - c. The Principal or Title IX Coordinator (i.e., the investigator) shall make a determination as to whether the complaint was founded or unfounded based on a preponderance of the evidence.
 - d. The investigator shall report back to both the complainant and the accused, notifying them in writing, and also in person as appropriate regarding the outcome of the investigation and any action taken to resolve the complaint, in accordance with FERPA and applicable law. The investigator shall instruct all parties to report immediately if the objectionable behavior occurs again or if anyone retaliates against them.
 - e. The investigator shall notify the complainant and the accused that if he/she would like to appeal the investigator's decision, he/she may request a review by the Superintendent of Schools. The investigator shall also notify the complainant of his/her right to contact the U.S. Department of Education's Office for Civil Rights. Employees may also contact the U.S. Equal Employment Opportunity Commission or the New York State Division of Human Rights.

If the initial investigation results in a determination that sexual harassment did occur, the investigator will promptly notify the building principal or Superintendent, dependent upon the situation, of his/her recommendation, who may then take prompt corrective action in accordance with District policy, the applicable collective bargaining agreement or state law.

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 referred promptly to the Superintendent. 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 shall be suspended pending the outcome of the investigation, consistent with all contractual or statutory requirements.

If the complainant or the accused is not satisfied with the outcome of the Level One investigation, or with the proposed resolution of the grievance, they may request a Level Two review by submitting a written request for a Level Two review to the Superintendent within ten (10) days after being notified of the investigator's findings.

B. Level Two 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 or are appealed from Level One. 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 investigation.

The Superintendent of Schools will review all documentation from the Level One investigation. The Superintendent may request that the complainant, alleged harasser, the Title IX Coordinator, student, non-employee, or any member of the District's staff present a written statement setting forth any information that such person has relative to the complaint and the facts surrounding it or may, in his/her discretion, decide to speak with any individuals regarding the complaint.

When reviewing cases involving volunteers and non-employees, the investigator shall consider the extent of the District's control and any other legal responsibility the District may have with respect to the conduct of the accused.

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. No further internal appeals are available.

If a Level Two review results in a determination that sexual harassment did occur, prompt corrective action will be taken to end the harassment. Where appropriate, the Superintendent may suggest mediation as a means of exploring options of corrective action and informally resolving the complaint.

The District acknowledges that while it would like students and employees to raise issues of discrimination pursuant to this Regulation so that they can be addressed by it, any employee or student has the legal right to immediately make a complaint to the appropriate governmental entity.

An employee may file a complaint with the following agencies: Equal Employment Opportunity Commission (EEOC) at the New York District Office, 33 Whitehall Street, 5th Floor, New York, New York 10004; the New York State Division of Human Rights at 99 Washington Avenue, Albany, New York 12210; or the United States Department of Education, Office for Civil Rights at 32 Old Slip, 26th Floor, New York, New York 10005.

A student may file a complaint with the following agency: United States Department of Education, Office for Civil Rights at 32 Old Slip, 26th Floor, New York, New York 10005.

Please take notice that the failure to file a complaint with these agencies within the statutory period may result in the loss of your legal rights. Nothing in these regulations shall be construed to limit the right of the complainant to file a lawsuit in either state or federal court.

Retaliation Prohibited

Any act of retaliation against any person who opposes sexually harassing behavior, or who has filed a complaint, is prohibited and illegal, and therefore subject to disciplinary action. Likewise, retaliation against any person who has 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, any action that would keep a person from coming forward to make or support a sexual harassment claim, and any other form of harassment. 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 code of 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. Further, appropriate consequences will be enforced against supervisory or managerial personnel who knowingly allow harassing behavior to continue.

Volunteers: Penalties may range from a warning up to and including loss of volunteer assignment.

Non-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, on the District website, and student registration materials. 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.

Additionally, 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 employees shall receive a copy of this policy and regulation and shall be provided information regarding this policy and the District's commitment to a harassment-free learning and working environment on an annual basis. Training on sexual harassment prevention shall be given to all employees on an annual basis. Such training shall be consistent with New York and federal law and regulations.

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 victim.

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