

THE SCHOOL DISTRICT OF SOUTH ORANGE AND MAPLEWOOD, NEW JERSEY

PUPILS  
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Sexual Harassment  
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5751 SEXUAL HARASSMENT

The Board of Education will not tolerate sexual harassment of ~~pupils~~ students by school employees, other ~~pupils~~ students, or third parties. Sexual harassment of ~~pupils~~ students is a form of prohibited sex discrimination. School district staff will investigate and resolve allegations of sexual harassment of ~~pupils~~ students engaged in by school employees, other ~~pupils~~ students (peers), or third parties.

The Board is bound by Title IX of the Education Amendments of 1972 prohibiting sexual harassment of students. Title IX applies to all public school districts that receive Federal funds and protects students in connection with all the academic, educational, extra-curricular, athletic, and other programs of the school district, whether they take place in the school facilities, on the school bus, at a class or training program sponsored by the school in a school building or at another location inside the United States..

Definitions

For the purposes of Policy 5751:

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

- (1) An employee of the school district conditioning the provision of an aid, benefit, or service of the school district on a student's participation in unwelcome sexual conduct;
- (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a student equal access to the school district's education program or activity; or
- (3) "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

"Actual notice" exists when any school employee has notice that an incident of sexual harassment may have occurred. Notice to the Title IX Coordinator, or to any official with authority to institute corrective measures, constitutes actual knowledge.

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

"Decision-maker" means a staff member or staff members, who are not the Title IX Coordinator or the school staff member who conducted the investigation, designated by the Superintendent of Schools to objectively evaluate the relative evidence and reach conclusions about whether the respondent is responsible for the alleged sexual harassment in accordance with the provisions of 34 C.F.R. 106.

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

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

"Investigator" means a staff member or staff members who may but does not have to be the Title IX Coordinator responsible to investigate alleged sexual harassment in accordance with 34 C.F.R. 106.

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

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

"Supportive measures" means non-punitive and non-disciplinary individualized free services such as counseling, no-contact orders, and course/academic adjustments, extension of deadlines, modifications of schedules, providing an escort, and restrictions on contact.

"Title IX Coordinator" means an individual designated and authorized by the Board to coordinate its efforts to comply with its responsibilities under 34 C.F.R. 106 and this Policy. The individual must be referred to as the "Title IX Coordinator" in accordance with 34 CFR 106.8(a) and may also be the investigator.

This Policy protects all persons regardless of gender identity or expression from sexual harassment engaged in by school district employees, other students, or third parties. Sexual harassment is prohibited, regardless of the gender of the harasser or if the harasser and the student being harassed are members of the same gender. Harassing conduct of a sexual nature directed toward any student, regardless of the student's sexual orientation, may create a sexually hostile environment and therefore constitute sexual harassment. Non-sexual touching

or other non-sexual conduct which does not constitute sexual harassment may be prohibited by law and/or Board Policy or the Code of Conduct.

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

A school district with actual knowledge of sexual harassment in the educational program or activity of the school district against a person in the United States, must respond promptly in a manner that is not deliberately indifferent. A school district is deliberately indifferent only if the response to sexual harassment is clearly unreasonable in light of the known circumstances, pursuant to 34 CFR 106.44(a).

The Board has appointed a Title IX Coordinator. The contact information for the Title IX Coordinator, including name, title, email address and telephone number, will be prominently displayed on the District's website. This information, as well as this Policy, will also be provided to the parents/guardians of all students, all employees, all applicants for enrollment and employment, and the District's collective bargaining units, in accordance with 34 CFR 106.8(a).

The Title IX Coordinator, and any other individuals who will have informal resolution, investigative or decision-making responsibilities under this Policy will be appropriately trained in accordance with 34 CFR 106.45(b)(1)(iii).

Any time a formal complaint is filed as described in this Policy and in accordance with 34 CFR 106 the Title IX coordinator should cross reference Policy 5512 to ensure any implications of the Anti-bullying Bill of Rights Act are addressed appropriately.

The Title IX Coordinator will take steps to avoid any further sexual harassment and to prevent any retaliation against the student who made the complaint, was the subject of the harassment, or against those who provided the information or were witnesses. The school district staff can learn of sexual harassment through notice and any other means such as from a witness to an incident, an anonymous letter or telephone call.

~~The Board shall establish a grievance procedure through which school district staff and/or pupils students can report alleged sexual discrimination, including sexual harassment which may include quid pro quo harassment and hostile environment.~~

#### Definitions

~~1. ——— Quid pro quo harassment occurs when a school employee explicitly or implicitly~~

~~conditions a pupil's student's participation in an educational program or activity or bases an educational decision on the pupil's student'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 pupil student resists and suffers the threatened harm or submits and thus avoids the threatened harm.~~

- ~~2. Hostile environment sexual harassment is sexually harassing conduct (which can include unwelcome sexual advances, requests for sexual favors, or other favors, or other verbal, nonverbal, or physical conduct of a sexual nature) by an employee, by another pupil student, or by a third party that is sufficiently severe, persistent, or pervasive to limit a pupil's student's ability to participate in or benefit from an educational program or activity, or to create a hostile or abusive educational environment.~~

~~This Policy protects all persons regardless of gender identity or expression any "person" from sex discrimination; accordingly both male and female pupils are protected from sexual harassment engaged in by school district employees, other pupils students, or third parties. Sexual harassment is prohibited, regardless of the gender of the harasser or, even if the harasser and the pupil student being harassed are members of the same gender is prohibited. Harassing conduct of a sexual nature directed toward any pupil student, regardless of the pupil's student's sexual orientation, may create a sexually hostile environment and therefore constitute sexual harassment. Non-sexual touching or other non-sexual conduct does not constitute sexual harassment, but may be prohibited by law and/or board policy.~~

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### Investigation/Grievance Process

The Board of Education will use the grievance process outlined in 34 CFR 106.45 to address formal complaints of sexual harassment.

The District may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, any waiver of the right to an investigation and adjudication of formal complaints of sexual harassment consistent with 34 CFR 106.45(b)(9).

The Title IX Coordinator must promptly contact the Complainant in accordance with 34 CFR 106.44(a). The Title IX Coordinator must offer supportive measures to the Complainant regardless of whether the Complainant files a formal complaint.

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).

The formal complaint will be reviewed to determine whether the complaint must be dismissed (mandatory dismissal: does not describe conduct that meets the definition of sexual harassment; the allegations did not occur in the school's own education program or activity, or in the United States) or may be dismissed (discretionary dismissal: if a complainant notifies the Title IX coordinator in writing that they wish to withdraw the complaint; if the respondent is no longer enrolled or employed by the school; if specific

circumstances prevent the school from gathering evidence to reach a determination) in accordance with 34 CFR 106.45(b)(3).

When a formal complaint is filed, where the Complainant and the Respondent are both students, the District must offer but may not require the parties to participate in an informal resolution process. The District cannot offer an informal resolution process when the Respondent is not a student.

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

The investigator shall investigate the allegations contained in a formal complaint pursuant to 34 CFR 106.45(b). The investigator shall create an investigative report in accordance with the provisions of 34 CFR 106.45(b)(5)(vii).

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

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). To reach this determination, the decision-maker must apply the PREPONDERANCE OF THE EVIDENCE OR A CLEAR AND CONVINCING EVIDENCE STANDARD [CHOOSE ONE], which shall be the same standard of evidence to be applied for all formal complaints whether against students or 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).

The grievance process WILL/WILL NOT [CHOOSE ONE] provide for a hearing pursuant to 34 CFR 106.45(b)(6)(ii).

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

Both parties must be afforded the opportunity to file 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). As to all appeals, the District will comply with the requirements of 34 CFR 106.45(b)(8). The decision-maker for all appeals shall not be the same person as the decision-maker for 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).

#### Record-Keeping

For each District response to sexual harassment required under 34 CFR 106.44, the District shall create, and maintain for a period of seven years, records in accordance with 34 CFR 106.45(b)(10).

Grievance Procedure

~~The Superintendent is directed to establish regulations to implement this policy, including a reporting and grievance procedure. The regulation and grievance procedure shall provide a mechanism for discovering sexual harassment as early as possible and for effectively correcting problems.~~

~~In the event of a complaint, the Superintendent, or designee, will take steps to avoid any further sexual harassment and to prevent any retaliation against the pupil student who made the complaint, was the subject of the harassment, or against those who provided the information or were witnesses. The school district staff can learn of sexual harassment through notice and any other means such as from a witness to an incident, an anonymous letter or telephone call.~~

THE SCHOOL DISTRICT OF SOUTH ORANGE AND MAPLEWOOD, NEW JERSEY

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Sexual Harassment

This Policy ~~and regulation~~ on sexual harassment of pupils students shall be published and distributed to pupils students and employees to ensure all pupils students and employees understand the nature of sexual harassment and that the Board will not tolerate it. The Board shall provide training for all staff and age-appropriate classroom information for pupils students to ensure the staff and the pupils students understand what type of conduct ~~can is~~ cause sexual harassment and that the staff know the School District Policy ~~and regulation~~ on how to respond.

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~~In addition, if the Board accepts Ffederal funds, the Board shall be bound by Title IX of the Education Amendments of 1992 1972 prohibiting sexual harassment of pupilsstudents. Title IX applies to all public school districts that receive fFederal funds and protects pupils students in connection with all the academic, educational, extra-curricular, athletic, and other programs of the school district, whether they take place in the school facilities, on the school bus, at a class or training program sponsored by the school in a school building or at another location.~~

~~United States Department of Education—Office of Civil Rights Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties (1997)~~

Legal References: Title IX of the Education Amendments of 1972, 20 U.S.C. 1681

Title IX Regulations, 34 C.F.R. 106

Cross References: 3362, 4352

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