

THE SCHOOL DISTRICT OF SOUTH ORANGE AND MAPLEWOOD, NEW JERSEY

STUDENTS

5751

Title IX Sexual Harassment & Non-Discrimination

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5751 TITLE IX SEXUAL HARASSMENT AND NON-DISCRIMINATION

SECTION 1: INTRODUCTION

1.1 Policy Statement: The School District of South Orange and Maplewood, New Jersey, and its Board of Education ("District") is committed to creating and maintaining a learning and working environment that is free from unlawful discrimination based on sex in accordance with Title IX, which prohibits discrimination on the basis of sex in education programs or activities and Title VII, which prohibits sex discrimination in employment. Sexual Harassment and Retaliation under this Policy will not be tolerated by the District and are grounds for disciplinary action, up to and including, permanent dismissal from the District and/or termination of employment.

The District will demonstrate its commitment to preventing sexual harassment and misconduct through updated educational programs for students and staff. The District will review its PE and Health curriculum annually to ensure sexual harassment, sexual assault, healthy relationships and consent are addressed as appropriate for each age group according to best practices. The District will provide "Responsible Employee" training staff development for staff regarding sexual harassment.

1.2 Purpose: The District takes all reported sexual misconduct and Sexual Harassment seriously. The District will promptly discipline any individuals within its control who are found responsible for violating this Policy. Additionally, reported sexual misconduct, harassment, and retaliation that does not meet the definitions and jurisdiction of this policy will be referred for review under the student Code of Conduct and applicable State Legal Guidelines/Statutes (6a & 16a) and District Policies.

1.3 Applicability: This Policy applies to students and employees as follows:

a. To Students: Where the Respondent is a student at the District at the time of the alleged conduct, the alleged conduct includes Sexual Harassment under this Policy, the alleged conduct occurs in the District's Education Program and Activity, the alleged conduct occurs against a person in the United States, and the Complainant is participating in or attempting to participate in the District's Education Program or Activity.

b. To Employees: Where the Respondent is an employee at the District at the time of the alleged conduct, where the alleged conduct includes Sexual Harassment under this Policy, the alleged conduct occurs in District's Education Program and Activity, the alleged conduct occurs against a person in the United States, and the Complainant is participating in or attempting to participate in the District's Education Program or Activity.

1.4 Title IX Coordinator and Key Title IX Officials: The Title IX Coordinator is the District's administrator who oversees the District's compliance with Title IX. The Title IX Coordinator is responsible for administrative response to reports and Formal Complaints of Sexual Harassment. The Title IX Coordinator is available to discuss the grievance process, coordinate supportive measures, explain the District's policies and procedures,

and provide education on relevant issues. The Title IX Coordinator may designate one or more Deputy Title IX Coordinators to facilitate these responsibilities.

Any member of the District's community may contact the Title IX Coordinator and/or Title IX Deputy Coordinator with questions. Title IX Coordinator and Deputy Title IX Coordinator contact information is available on the District's webpage.

- a. In addition to the Title IX Coordinator and Title IX Deputy Coordinator, the District appoints investigators, decision makers and informal resolution facilitators who have roles in the formal grievance process more fully explained in Sections 6 and 8 of this policy.
- b. The Title IX Coordinator, Deputy Title IX Coordinators, investigators, decision-makers, and informal resolution facilitators will receive annual training in compliance with Title IX. Staff members in these roles will not rely on or be influenced by stereotypes based on sex or gender identity and will provide impartial investigations and adjudications of Formal Complaints of Sexual Harassment. All materials used to train these administrators will be publicly made available on the District's website in accordance with Title IX requirements.
- c. The Title IX Coordinator, Deputy Title IX Coordinators, investigators, decision-makers, and informal resolution facilitators shall not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent.

1.5 Notification: The District will use the District's webpage for purposes of communication and notification under this Policy.

1.6 Dissemination of Policy: This Policy will be made available to all District administrators, faculty, staff, and students online at: <https://www.somds.k12.nj.us/board-of-education/policies/>

1.7 Effective Date: The effective date of this Policy is October 18, 2021.

1.8 Retaliation and False Statements Prohibited: Neither the District nor any other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this Policy or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy.

- a. Alleged violations of Retaliation will be referred to the student Code of Conduct and applicable State Legal Guidelines/Statutes (6a & 16a) and District Policies.
- b. The exercise of rights protected under the First Amendment does not constitute retaliation prohibited under this Policy.
- c. Charging an individual with a Code of Conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this Policy does not constitute Retaliation prohibited under this Policy. However, a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

1.9 Amnesty: The District strongly encourages students to report incidents violating the policy related to discrimination, harassment, sexual harassment, and related inappropriate conduct. The District’s primary concern is the safety of the members of the school district community, and it encourages behavior that demonstrates care and concern for members of the community. Accordingly, the District reserves the right to provide a reprieve from disciplinary actions for Complainants and other individuals who exhibit responsible and proactive behavior in reporting Sexual Harassment, sexual misconduct, sexual violence, or other prohibited conduct or for students acting as a witness during the formal grievance procedures. The District may provide referrals to counseling and may require educational options, rather than disciplinary sanctions, in such cases.

1.10 Other District Policies: This Policy takes precedence over other District policies and procedures concerning Sexual Harassment under Title IX in the event of a conflict.

1.11 Modification and Review of this Policy: The District reserves the right to modify this Policy to take into account applicable legal requirements. The District will regularly review this Policy to determine whether modifications should be made.

1.12 Additional Code of Conduct or District Policy Violations: Alleged violations of the student Code of Conduct, HIB and applicable State Legal Guidelines/Statutes (6a & 16a) and District Policies that arise from the same events as alleged Sexual Harassment under this Policy will be investigated and resolved under the grievance process in this Policy unless the Sexual Harassment has been dismissed under Section 5.2 of this Policy.

1.13 Role of Parent or Guardian: Nothing in this Policy may be read in derogation of any legal right of a parent or guardian to act on behalf of a “Complainant,” “Respondent,” “party,” or other individual, subject to this Policy including but not limited to filing a Formal Complaint.

1.14 Role of Advisor: Both parties may be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney. However, neither party’s advisor will be permitted to question witnesses. Neither party’s advisor may participate in interviews or meetings in which the represented party is not a participant.

SECTION 2: DEFINITIONS

2.1 Definitions of Prohibited Conduct Under this Policy¹

2.1.1 Sexual Harassment means conduct on the basis of sex that satisfies one or more of the following:

1. An employee of the District conditioning the provision of an aid, benefit, or service of the District on an individual’s participation in unwelcome sexual conduct;

¹ See Section 13 of this Policy for New Jersey State Laws related to this Policy.

2. Unwelcome conduct determined by a Reasonable Person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the District's education program or activity²; or
3. Sexual Assault, Dating Violence, Domestic Violence or Stalking as defined in this Policy.

2.1.2 Sexual Assault means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation, including Rape, Fondling, Incest, and Statutory Rape as defined in this Policy.

2.1.3 Rape³ means the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the Consent of the victim.

2.1.4 Fondling⁴ means the touching of the private body parts of another person for the purpose of sexual gratification, without the Consent of the victim, including instances where the victim is incapable of giving Consent because of the individual's age or temporary or permanent mental Incapacity.

2.1.5 Incest⁵ means sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

2.1.6 Statutory Rape⁶ means sexual intercourse with a person who is under the statutory age of consent.

2.1.7 Dating Violence means violence committed by a person—

² A severe, pervasive, and objectively offensive assessment includes, but is not limited to, a consideration of the frequency of the offensive conduct, the nature of the unwelcome sexual acts or words, such as whether the harassment was physical, verbal or both; whether the harassment was merely an offensive utterance; and the number of victims involved and the relationship between the parties including, but not limited to, the ages of the harasser and the victim. In evaluating whether conduct is severe, pervasive, and objectively offensive, the District will look at the totality of the circumstances, expectations and relationships.

³ Rape as defined in the Uniform Crime Reporting Program (UCR) includes:

Forcible Rape: The carnal knowledge of a person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent due to temporary or permanent mental or physical incapacity.

Forcible Sodomy: Oral or anal sexual intercourse with another person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent due to age or temporary or permanent mental or physical incapacity.

Sexual Assault with an Object: —To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent due to age or temporary or permanent mental or physical incapacity.

⁴ Fondling is referred to as Forcible Fondling in the UCR.

⁵ Incest is a Nonforcible Offense in the UCR.

⁶ Statutory Rape is a Nonforcible Offense in the UCR.

- A. who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- B. where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - The length of the relationship,
 - The type of relationship,
 - The frequency of interaction between the persons involved in the relationship.

Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

2.1.8 Domestic Violence includes felony or misdemeanor crimes of violence committed by:

- a current or former spouse or intimate partner of the victim,
- a person with whom the victim shares a child in common,
- a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner,
- a person similarly situated to a spouse of the victim under the domestic or family violence laws of New Jersey, or
- any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of New Jersey.

2.1.9 Stalking means engaging in a Course of Conduct directed at a specific person that would cause a Reasonable Person to—

- fear for their safety or the safety of others; or
- suffer Substantial Emotional Distress.

2.2 Definitions Related to Sexual Harassment: Consent, Course of Conduct, Incapacitation, Reasonable Person, Substantial Emotional Distress

2.2.1 Consent is affirmative, conscious, voluntary, and revocable. Consent to sexual activity requires of each person an affirmative, conscious, and voluntary agreement to engage in sexual activity.

It is the responsibility of each person to ensure they have the affirmative Consent of the other to engage in the sexual activity. Lack of protest, lack of resistance, or silence do not, alone, constitute consent. Affirmative consent must be ongoing and can be revoked at any time during sexual activity. People under the age of 16 are not capable of granting consent.

The existence of a dating relationship or past sexual relations between the Complainant and Respondent will never by itself be assumed to be an indicator of consent (nor will subsequent sexual relations or dating relationship alone suffice as evidence of Consent to prior conduct).

The Respondent's belief that the Complainant consented will not provide a valid defense unless the belief was actual and reasonable. In making this determination, the decision-maker will consider all of the facts and circumstances the Respondent knew, or reasonably should have known, at the time. In particular, the Respondent's belief is not a valid defense where:

1. The Respondent's belief arose from the Respondent's own intoxication or recklessness;

2. The Respondent did not take reasonable steps, in the circumstances known to the Respondent at the time, to ascertain whether the Complainant affirmatively Consented; or
3. The Respondent knew or a reasonable person should have known that the Complainant was unable to Consent because the Complainant was incapacitated, in that the Complainant was:
 - asleep or unconscious,
 - unable to understand the fact, nature, or extent of the sexual activity due to the influence of drugs, alcohol, or medication, or
 - unable to communicate due to a mental or physical condition.

2.2.2 Course of Conduct means two or more acts, including, but not limited to, acts in which the individual directly, indirectly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person's property.

2.2.3 Incapacitation means that a person lacks the ability to actively agree to sexual activity because the person is asleep, unconscious, under the influence of alcohol or other drugs such that the person does not have control over their body, is unaware that sexual activity is occurring, or their mental, physical or developmental abilities render them incapable of making rational informed decisions. Incapacitated is a state beyond drunkenness or intoxication. A person is not necessarily incapacitated merely as a result of drinking, using drugs, or taking medication.

A person violates this policy when they engage in sexual activity with another person who is Incapacitated and a Reasonable Person in the same situation would have known that the person is Incapacitated. Incapacitation can be voluntary or involuntary. Signs of Incapacitation may include, without limitation: sleep; total or intermittent unconsciousness; lack of control over physical movements (e.g., inability to dress/undress without assistance; inability to walk without assistance); lack of awareness of circumstances or surroundings; emotional volatility; combativeness; vomiting; incontinence; unresponsiveness; and inability to communicate coherently. Incapacitation is an individualized determination based on the totality of the circumstances.

2.2.4 Reasonable Person means a reasonable person under similar circumstances and with similar identities to the victim.

2.2.5 Substantial Emotional Distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

2.3 Other Defined Terms

2.3.1 Actual Knowledge means Notice of Sexual Harassment allegations to any employee of the District (Officials with Authority), except that Actual Knowledge is not met when the only individual with Actual Knowledge is the Respondent.

- 2.3.2 **Business Day** means any weekday not designated by the District as a holiday or administrative closure day. When calculating a time period of Business Days specified in this Policy, the Business Day of the event that triggers a time period is excluded.
- 2.3.3 **Complainant** means an individual who is alleged to be the victim of conduct that could constitute sexual harassment, regardless of whether that person made the complaint to the Title IX (Deputy) Coordinator. Complainants and Respondents are referred to collectively as "parties" throughout this Policy.
- 2.3.4 **Disciplinary Sanctions** are imposed only after a finding of responsibility through the grievance process or an agreement through the informal resolution process.
- 2.3.5 **Education Program or Activity** includes locations, events, or circumstances over which the District exercises substantial control over both the Respondent and the context in which the Sexual Harassment occurs. This includes conduct that occurs on the District's property, during any District activity whether online or in person.
- 2.3.6 **Formal Complaint** means a document filed by a Complainant (or parent or guardian of the Complainant) or signed by the Title IX (Deputy) Coordinator alleging Sexual Harassment against a Respondent and requesting that the District investigate the allegation of Sexual Harassment.
- 2.3.7 **Official with Authority** means any employee of the District.
- 2.3.8 **Remedies** are designed to restore or preserve equal access to the District's Education Program or Activity. Remedies may include, but are not limited to, the same individualized services as Supportive Measures; however, Remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent.
- 2.3.9 **Respondent** means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment. Complainants and Respondents are referred to collectively as "parties" throughout this Policy.
- 2.3.10 **Retaliation** means intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or Sexual Harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or Formal Complaint of Sexual Harassment, for the purpose of interfering with any right or privilege secured by Title IX or this Policy.
- 2.3.11 **Supportive Measures** means 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.

Such measures are designed to restore or preserve equal access to the District's Education Programs or Activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the District's educational environment, or deter sexual harassment.

Supportive measures may include, but are not limited to, counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, escort services, mutual restrictions on contact between the parties, changes in work locations, leaves of absence, increased security and monitoring of certain areas of the property, and other similar measures.

SECTION 3: REPORTING SEXUAL HARASSMENT AND PRESERVATION OF EVIDENCE

3.1 Reporting to the District

3.1.1 Reporting to Title IX (Deputy) Coordinator: Reports of Sexual Harassment may be made to the Title IX (Deputy) Coordinator in any of the following ways: by anyone, at any time: in person, email, phone, online form, or mail. After Title IX Sexual Harassment has been reported to the Title IX (Deputy) Coordinator, the Title IX (Deputy) Coordinator will promptly offer supportive measures to the Complainant, regardless of whether the Complainant was the reporter of the Sexual Harassment.

3.1.2 Reporting to Employees of the District: If employees of the District are notified of Sexual Harassment, they shall promptly report such Sexual Harassment to the Title IX (Deputy) Coordinator who will take immediate action under this Policy.

3.1.3 Anonymous Reporting: Anonymous reports may be made in writing or electronically to the Title IX Coordinator and Deputy Title IX Coordinator. A decision to remain anonymous, however, may greatly limit the District's ability to stop the alleged conduct, collect evidence, or take action against parties accused of violating this Policy. Anonymous reports may be placed in a box located in each school's Guidance Suite.

3.2 Reporting to Law Enforcement: Reports may be filed with local law enforcement agencies. The Title IX (Deputy) Coordinator can assist with contacting law enforcement agencies. Law enforcement investigations are separate and distinct from the District's investigations.

Maplewood Police Department
1618 Springfield Avenue
Maplewood, NJ 07040

South Orange Police Department
201 S Orange Avenue
South Orange, NJ 07079

3.3 Reporting to Outside Agencies: Students and employees may report to external agencies:

Students: Office for Civil Rights
U.S. Department of Education
<http://www.ed.gov/about/offices/list/ocr/complaintintro.html>
32 Old Slip, 26th Floor
New York, NY 10005-2500
646.428.3800

ocr.newyork@ed.gov

[New Jersey Division on Civil Rights](#)

[1-833-NJDCR4U](#)

<https://www.njoag.gov/about/divisions-and-offices/division-on-civil-rights-home/division-on-civil-rights-file-a-complaint/>

Employees: [U.S. Equal Employment Opportunity Commission](#)

[Two Gateway Center](#)

[283-299 Market Street](#)

[Suite 1703](#)

[Newark, NJ 07102](#)

[1.800.669.4000](#)

Outside Agency Confidential Support and Resources

1. [National Sexual Assault Hotline: 800-656-HOPE \(4673\) or chat online at \[online.rainn.org\]\(http://online.rainn.org\)](#)
2. [SAVE of Essex County: https://familyserviceleague.org/save-of-essex-county](https://familyserviceleague.org/save-of-essex-county)
 - a. [Medical, legal, counseling services, 24/7 confidential hotline \(1-877-733-2273\)](#)
 - b. [Works directly with survivors and their families](#)
3. [The Rachel Coalition – counseling, prevention services, crisis intervention, support groups](#)
 - a. [570 West Mt. Pleasant Ave., Suite 106, Livingston, NJ 07039](#)
 - b. www.rachelcoalition.org
4. <https://nomore.org/learn/resources/>
5. [National Suicide Prevention Lifeline 1-800-273-8255](#)
6. [24/7 Crisis Text Line: Text HOME to 741741](#)

3.4 Time Limits on Reporting. [There are no time limits on reporting Sexual Harassment to the Title IX \(Deputy\) Coordinator or the District. If the Respondent is no longer subject to the District's Education Program or Activity or significant time has passed, the District will have limited ability to investigate, respond and/or provide disciplinary Remedies and Sanctions.](#)

SECTION 4: INITIAL RESPONSES TO REPORTED SEXUAL HARASSMENT:

[Upon receipt of a report of Sexual Harassment, the Title IX \(Deputy\) Coordinator will promptly contact the Complainant regardless of whether the Complainant was the individual who initiated the report. During the initial contact, the Title IX \(Deputy\) Coordinator will:](#)

- [Provide the Complainant with notice of the option to have an advisor;](#)
- [Explain the process for filing a Formal Complaint;](#)
- [Explain the Grievance Process;](#)
- [Discuss the availability of Supportive Measures regardless of whether a Formal Complaint is filed;](#)
- [Consider the Complainant's wishes with respect to Supportive Measures.](#)

SECTION 5: FORMAL COMPLAINT

The District will investigate all allegations of Sexual Harassment in a Formal Complaint.

5.1 Filing a Formal Complaint: A Formal Complaint must:

1. Contain an allegation of Sexual Harassment against a Respondent;
2. Request that the District investigate the allegation; and
3. Be signed by the Complainant (or parent or guardian of the Complainant) or Title IX (Deputy) Coordinator.

In limited circumstances, if a Complainant does not sign a Formal Complaint, the Title IX (Deputy) Coordinator may sign a Formal Complaint. In determining whether to sign a Formal Complaint, the Title IX (Deputy) Coordinator will consider factors that include but are not limited to:

- Whether there have been other reports of Sexual Harassment or other relevant misconduct concerning the same Respondent whether or not the incidents occurred while the Respondent was the District student or employee;
- Whether the Respondent threatened further Sexual Harassment or other misconduct against the Complainant or others;
- Whether the alleged Sexual Harassment was committed by multiple perpetrators;
- The nature and scope of the alleged Sexual Harassment including whether the Sexual Harassment was perpetrated with a weapon;
- The ages and roles of the Complainant and the Respondent;
- Whether the District can pursue the investigation without the participation of the Complainant (e.g., whether there are other available means to obtain relevant evidence of the alleged Sexual Harassment such as security cameras or physical evidence);
- Whether the report reveals a pattern of perpetration (e.g., perpetration involving illicit use of drugs or alcohol) at a given location or by a particular group.

5.2 Dismissal of a Formal Complaint

5.2.1 Required Dismissal: The Title IX (Deputy) Coordinator will dismiss a Formal Complaint for purposes of Sexual Harassment if:

1. The conduct alleged in the Formal Complaint would not constitute Sexual Harassment as defined in this Policy even if proved;
2. The conduct alleged did not occur in the District's Education Program or Activity;
or
3. The Conduct alleged in the Formal Complaint did not occur against a person in the United States.

Dismissal of a Formal Complaint does not preclude action under other provisions of the District's policies and procedures. If a Formal Complaint is dismissed under one of the mandatory dismissal categories, the matter will be reviewed to determine whether the matter will be pursued under the District's student Code of Conduct and/or applicable State Legal Guidelines/Statutes (6a & 16a) and District Policies.

5.2.2 Permissive Dismissal: The Title IX (Deputy) Coordinator may dismiss a Formal Complaint or any allegations within the Formal Complaint, if at any time during the investigation or hearing:

1. A Complainant notifies the Title IX (Deputy) Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations within the Formal Complaint,
2. The Respondent is no longer enrolled or employed by the District, or
3. Specific circumstances prevent the District from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations within the Formal Complaint.

NOTE: The District may continue to investigate even if the respondent is no longer enrolled/employed

5.2.3 Appeal of Dismissal: Either party may appeal the dismissal of a Formal Complaint or any allegations therein. See Section 9 for bases and process for appeals.

5.3 Consolidation of Formal Complaints: The Title IX (Deputy) Coordinator may consolidate Formal Complaints as to allegations of Sexual Harassment against more than one Respondent or by more than one Complainant against one or more Respondents where the allegations arise out of the same facts or circumstances.

SECTION 6: GRIEVANCE PROCESS

The grievance process within this Policy is designed to treat Complainants and Respondents equitably. It will be conducted by an investigator who shall not be the Title IX (Deputy) Coordinator. Remedies are provided to a Complainant where a determination of responsibility for Sexual Harassment has been made against the Respondent and Disciplinary Sanctions are not imposed against a Respondent prior to the completion of the grievance process.

6.1: General Grievance Process Information

6.1.1 Burden of Proof and Burden of Gathering Evidence: All investigations and proceedings, including hearings, relating to Sexual Harassment will be conducted using a "preponderance of the evidence" (more likely than not) standard. The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the District, not the parties.

6.1.2 Presumption of Not Responsible: The Respondent is presumed to be not responsible for the alleged conduct until a determination regarding responsibility is made at the end of the grievance process.

6.1.3 Time Frames for Grievance Process: The District strives to complete the grievance process within one-hundred and twenty (120) Business Days. Temporary delays and/or extensions of the time frames within this Policy may occur for good cause. Written notice will be provided to the parties of the delay and/or extension of the time frames with explanation of the reasons for such action. Examples of good cause for delay/extensions include but are not limited to considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

6.1.4 Medical Records: The District will not access, consider, disclose, or otherwise use party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the District obtains that party's voluntary, written permission to do so for the grievance process within the Policy.

6.1.5 Privileged Information: The District will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding the privilege has waived the privilege.

6.1.6 Range of Disciplinary Sanctions: Sanctions that may be required if an individual is found responsible for violating this policy are provided in the Code of Conduct, and applicable State Legal Guidelines/Statutes (6a & 16a) and District Policies, which will be dealt with on an individual basis for employees.

6.1.7 Notice of Meetings, Interviews, and Hearings: Parties and witnesses will be provided notice of any meeting, interview, and/or hearing with sufficient time to prepare to participate. This notice will include the date, time, location, participants and purposes of the meeting, interview and/or hearing.

6.2 Notice of Allegations: Upon receipt of a Formal Complaint, the investigator will provide Notice of Allegations to the parties who are known. The Notice of Allegations will include:

1. Notice of the party's rights and options
2. Notice of the District's grievance process
3. Notice of the District's informal resolution process and options
4. Notice of the allegations of Sexual Harassment including:
5. Notice that the Respondent is presumed not responsible of the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
6. Notice that the parties may have an advisor of their choice, who may be, but is not required to be an attorney, and that the advisor may inspect and review evidence.
7. Notice of the District's Code of Conduct provision that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

The Notice of Allegations will be updated and written notice provided to the parties if at any time during the investigation, the District decides to investigate allegations about the Complainant or Respondent that are not included in the initial Notice of Allegations.

6.3 Investigation of Formal Complaint. The District will conduct an investigation following a Formal Complaint and Notice of Allegations. During all meetings and interviews the parties may be accompanied by an advisor of their choice, which can be, but is not required to be an attorney. The advisor's role is limited to assisting, advising, and/or supporting a Complainant or Respondent. An advisor is not permitted to speak for or on behalf of a Complainant or Respondent or appear in lieu of a Complainant or Respondent.

6.3.1 Opportunity to Provide Information and Present Witnesses: Each party will be provided an equal opportunity to provide information to the investigator and present witnesses for the investigator to interview. The information provided by the parties can include inculpatory and exculpatory evidence. The witnesses can include both fact witnesses and expert witnesses.

6.3.2 Opportunity to Inspect and Review Evidence: Each party will be provided an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including evidence upon which the District does not intend to rely upon in reaching a determination regarding responsibility. This review includes inculpatory and exculpatory evidence that is obtained by a party, witness, or other source. Each party and their advisor (if any) will be provided an electronic copy of the evidence for inspection and review. The parties will have ten (10) business days to review and submit a written response to the investigator. The investigator will consider the written responses prior to completing an investigative report. All evidence provided during the inspection and review phase will be available at any hearing for the parties to use during the hearing, including for purposes of cross examination.

6.3.3 Investigative Report: Following the opportunity to inspect and review evidence directly related to the allegations raised in the Formal Complaint, the investigator will create an investigative report that fairly summarizes relevant evidence obtained during the investigation.

6.3.4 Review of the Investigative Report: At least ten (10) Business Days prior to the determination of responsibility the investigator will provide each party and the party's advisor (if any) an electronic copy of the investigative report for their review and written response.

6.3.5 Investigation Timeframe: The investigation of a Formal Complaint will be concluded within 90 Business Days of the filing of a Formal Complaint. The parties will be provided updates on the progress of the investigation, as needed.

SECTION 7: QUESTION AND ANSWER PERIOD

After an investigation, the District will assign a panel of three (3) decision-makers who are not the Title IX or Title IX Deputy Coordinator of the District or Investigator. In each case, the panel will designate a panel Chair and will afford each party the opportunity to:

1. submit written, relevant questions that a party wants asked of any party or witness;
2. provide each party with the answers; and
3. allow for additional, limited follow-up questions from each party.

7.1 Evidence and Questions Excluded: The Chair will make determination regarding relevancy prior to sending questions to parties or witnesses. The following questions and evidence are considered not relevant:

- **Sexual Predisposition or Prior Sexual Behavior of the Complainant:** Questions and evidence about the Complainant’s sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant’s prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant’s prior sexual behavior with respect to the Respondent and are offered to prove Consent.
- **Privileged Information:** No person will be required to disclose information protected under a legally recognized privilege. The decision-maker must not allow into evidence or rely upon any questions or evidence that may require or seek disclosure of such information, unless the person holding the privilege has waived the privilege. This includes information protected by the attorney-client privilege.
- **Medical Records:** Evidence or records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional’s or paraprofessional’s capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, are not permitted to be used during a hearing unless the party provides voluntary, written permission to do so for the grievance process within this Policy.

SECTION 8: DETERMINATION REGARDING RESPONSIBILITY

After the question and answer period, the decision-makers will provide the Complainant and the Respondent with a written determination simultaneously. The determination regarding responsibility becomes final either on the date that the District provides the parties with the written determination of the result of the appeal, if an appeal is filed, or, if an appeal is not filed, the date on which an appeal would no longer be considered timely. The written notice will include:

- Identification of the allegations potentially constituting Sexual Harassment;
- A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- Findings of fact supporting the determination;
- Conclusions regarding the application of this Policy to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions that the District imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the District’s education program or activity will be provided by the District to the Complainant⁷; and
- The procedures and permissible bases for the Complainant and Respondent to appeal.

SECTION 9: APPEALS

Either party may appeal the determination regarding responsibility, or the dismissal of a Formal

⁷ The Title IX (Deputy) Coordinator is responsible for the implementation of any remedies.

Complaint or any allegations therein within three to five Business Days of the receipt of the determination regarding responsibility or dismissal. The appeals must be made in writing and sent to the Office of the Superintendent and the Title IX (Deputy) Coordinator.

9.1 Bases for Appeal: Appeals of the determination of responsibility or the dismissal of a Formal Complaint may be made on the following bases:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; or
- The Title IX (Deputy) Coordinator, investigator, or decision-maker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.

9.2 Appeal Procedures: If an appeal is submitted, the District will

1. Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties.
2. Ensure that the decision-maker for the appeal is not the same person as the decision-maker that reached the determination regarding responsibility or dismissal, the investigator or the Title IX (Deputy) Coordinator.
3. Provide the non-appealing party with five (5) Business Days from receipt of the notification of appeal to submit a written statement in support of the outcome of the determination or dismissal.
4. Issue a written decision describing the result of the appeal and the rationale for the result which can be one of the following:
 - Affirm the decision-maker's determination regarding the Respondent's responsibility and affirm the disciplinary sanctions and remedies, if applicable;
 - Affirm the decision-maker's determination regarding the Respondent's responsibility and amend the disciplinary sanctions and remedies, if applicable;
 - Remand the process back to the question and answer stage for the decision-maker to remedy any procedural irregularity or consider any new evidence;
 - Reverse the decision-maker's determination of the Respondent's responsibility and amend the disciplinary sanctions and remedies, if applicable; or
 - Affirm or amend the sanctions and/or remedies outlined in the determination issued under this Policy.
5. Provide the written decision simultaneously to both parties.

9.3 Appeal Timeframe: The appellate decision-maker will release the written decision within twenty (20) Business Days of receiving the appeal.

SECTION 10: INFORMAL RESOLUTION PROCESS

At any time after a Formal Complaint has been signed and before a determination regarding responsibility has been reached, the parties may voluntarily agree to participate in an informal resolution facilitated by the District, that does not involve a full investigation and adjudication. Types of informal resolution include, but are not limited to, mediation, facilitated dialogue, conflict coaching, and restorative justice and resolution by agreement of the parties.

10.1 Informal Resolution Notice: Prior to entering the informal resolution process, the District will provide the parties a written notice disclosing:

1. The allegations;
2. The requirements of the informal resolution process, including the right of any party to withdraw from the informal resolution process and resume the grievance process and the circumstances which preclude parties from resuming a Formal Complaint arising from the same allegations;
3. Consequences resulting from the informal resolution process, including that the records will be maintained for a period of seven (7) years but will not be used by investigators or decision-makers if the formal grievance process resumes.

10.2 Informal Resolution Agreement: Prior to entering the informal resolution process, both parties must voluntarily agree in writing to the use of the informal resolution process.

10.3 Informal Resolution Availability: The informal resolution process is not permitted to resolve allegations that an employee committed Sexual Harassment against a student.

10.4 Informal Resolution Timeframe: Informal resolutions of a Formal Complaint will be concluded within 45 days of notice to the District that both parties wish to proceed with the informal resolution process. Such notice that the parties wish to proceed with an informal resolution process will “pause” the counting of the timeframe to conclude the Grievance Process of this Policy, should the informal resolution process fail and the parties continue with the Grievance Process.

10.5 Informal Resolution Documentation: Any final resolution pursuant to the Informal Resolution process will be documented and kept for seven (7) years. However, no recording of the informal resolution process will be made and all statements made during the informal resolution process will not be used for or against either party (and the decision-maker and/or appellate decision-maker may not consider any such statement made during informal resolution) should the parties resume the grievance process. Failure to comply with an informal resolution agreement may result in disciplinary action.

SECTION 11: EMERGENCY REMOVAL AND ADMINISTRATIVE LEAVE

11.1 Emergency Removal: At any time after the Title IX (Deputy) Coordinator is on notice of Sexual Harassment, the District may remove a Respondent (student or staff member) on an emergency basis. The District will only conduct an emergency removal after:

1. Undertaking an individualized safety and risk analysis,
2. Determining that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Sexual Harassment justifies removal, and
3. Providing the Respondent with notice and an opportunity to challenge the decision to the Title IX (Deputy) Coordinator, within two (2) Business Days following the removal.

11.2 Administrative Leave: The District may place an employee Respondent on administrative leave during the pendency of the grievance process in this Policy.

SECTION 12: RECORD KEEPING

The District will maintain all documentation related to reports of Sexual Harassment, Formal Complaints, the grievance process, and information resolution process for seven years in accordance with state and federal records, laws and requirements. The documentation of all records are private and confidential to the extent possible under law. Student records of the grievance process are disciplinary records under Family Education Rights and Privacy Act (FERPA). Employee records of the grievance process are subject to the Freedom of Information Act (FOIA) and applicable state laws and included in the employee's official employment record.

SECTION 13: ADDITIONAL CONDUCT VIOLATION RELATED TO THIS POLICY

Alleged violations of the terms in this section will be sent to the building principal of the respective school for student Respondents or the Director of Human Resources for employee Respondents for investigation and adjudication under the District student Code of Conduct and/or and applicable State Legal Guidelines/Statutes (6a & 16a) and District Policies.

1. Retaliation
2. False Information
3. Interference with Grievance Process
4. No Contact Directive Violations

SECTION 14: APPLICABLE NEW JERSEY LAWS

N.J.S.A 2C:14-2 Sexual Assault

2C:14-2. Sexual assault. a. An actor is guilty of aggravated sexual assault if he commits an act of sexual penetration with another person under any one of the following circumstances:

1. The victim is less than 13 years old;
2. The victim is at least 13 but less than 16 years old; and
 - a. The actor is related to the victim by blood or affinity to the third degree, or
 - b. The actor has supervisory or disciplinary power over the victim by virtue of the actor's legal, professional, or occupational status, or
 - c. The actor is a resource family parent, a guardian, or stands in loco parentis within the household;
3. The act is committed during the commission, or attempted commission, whether alone or with one or more other persons, of robbery, kidnapping, homicide, aggravated assault on another, burglary, arson or criminal escape;
4. The actor is armed with a weapon or any object fashioned in such a manner as to lead the victim to reasonably believe it to be a weapon and threatens by word or gesture to use the weapon or object;
5. The actor is aided or abetted by one or more other persons and the actor uses physical force or coercion;
6. The actor uses physical force or coercion and severe personal injury is sustained by the victim;

7. The victim is one whom the actor knew or should have known was physically helpless or incapacitated, intellectually or mentally incapacitated, or had a mental disease or defect which rendered the victim temporarily or permanently incapable of understanding the nature of his conduct, including, but not limited to, being incapable of providing consent.

Aggravated sexual assault is a crime of the first degree.

Except as otherwise provided in subsection d. of this section, a person convicted under paragraph (1) of this subsection shall be sentenced to a specific term of years which shall be fixed by the court and shall be between 25 years and life imprisonment of which the person shall serve 25 years before being eligible for parole, unless a longer term of parole ineligibility is otherwise provided pursuant to this Title.

- a. An actor is guilty of sexual assault if he commits an act of sexual contact with a victim who is less than 13 years old and the actor is at least four years older than the victim.
- b. An actor is guilty of sexual assault if he commits an act of sexual penetration with another person under any one of the following circumstances:
- (1) The actor uses physical force or coercion, but the victim does not sustain severe personal injury;
- (2) The victim is on probation or parole, or is detained in a hospital, prison or other institution and the actor has supervisory or disciplinary power over the victim by virtue of the actor's legal, professional or occupational status;
- (3) The victim is at least 16 but less than 18 years old and:
- a. The actor is related to the victim by blood or affinity to the third degree; or
- b. The actor has supervisory or disciplinary power of any nature or in any capacity over the victim; or
- c. The actor is a resource family parent, a guardian, or stands in loco parentis within the household;
- (4) The victim is at least 13 but less than 16 years old and the actor is at least four years older than the victim.

Sexual assault is a crime of the second degree.

N.J.S.A. 2C: 25-19 Domestic Violence

Domestic violence means the occurrence of one or more of the following criminal offenses upon a person protected under the "Prevention of Domestic Violence act of 1991," P.L. 1991, c.261 (C.2C:25-17 et al.) including:

- A person with whom the victim has a child in common
- A person with whom the victim anticipates having a child in common, if one of the parties is pregnant.
- A person with whom the victim has had a dating relationship

First Reading: September 20, 2021

Second Reading: October 18, 2021

Adopted: _____