

**R5145.5**

**R4118.112**

**R4218.112**

## **Personnel -- Certified/Non-Certified**

### **Students**

#### **Prohibition Against Sexual Harassment**

#### **Response to Reports of Sexual Harassment and Grievance Procedures for Formal Complaints**

##### **Scope**

This regulation shall govern reports and complaints of sexual harassment made by or against students and employees alike.

Only reports/complaints of sexual harassment in violation of Title IX are governed by this regulation. The grievance process required for formal sexual harassment complaints contained in this regulation does not apply to complaints alleging discrimination based on pregnancy, different treatment based on sex, or other forms of sex discrimination. Reports of sex discrimination other than sexual harassment shall be made and addressed in accordance with the New Haven Board of Education policies and regulations governing non-discrimination/sex discrimination.

##### **Responding to Sexual Harassment**

The District will respond to all incidents of sexual harassment: (a) of which it has actual knowledge, and (b) that occurs within the school's education program or activity and (c) occurs against a person in the United States.

**“Actual knowledge”** means notice of sexual harassment or an allegation of sexual harassment brought to the attention of the Title IX Coordinator, any official of the school who has authority to institute corrective measures on the behalf of the school as well as to any employee of an elementary and secondary school. Accordingly, any District employee with actual knowledge that sexual harassment is occurring shall notify the District's Title IX Coordinator.

Education program or activity includes locations, events, or circumstances over which the school exercises substantial control over both the respondent (perpetrator of sexual harassment) and the context in which the sexual harassment occurs. In addition to occurring on school grounds, sexual harassment may potentially occur off campus, in places or situations where athletic and extracurricular activities occur, on field trips, on the school bus, at school related conferences or through use of school technology depending upon whether the District exercises control over both the respondent and the context in which the sexual harassment occurs.

##### **Reporting Sexual Harassment**

## **Informal Reports**

Any person, including parent/guardians, students, employees and third parties, may report sexual harassment in the District's education program or activity. Reporting may be in person, by mail, telephone, or by electronic mail, using the contact information provided for the Title IX Coordinator. Reports may be made during non-business hours. Reports may be made anonymously. When a reporter fails to identify a specific complainant (victim of sexual harassment) or to identify him/herself as the reporter, the District's response may be limited. Informal reports will be accepted in any form; however, forms for making both informal reports and formal complaints are available on the District's website and may also be obtained from the Title IX Coordinator.

## **Formal Complaint**

While third parties may make informal reports of sexual harassment in the District's education program or activities, a formal complaint may only be made by a complainant or by the Title IX Coordinator, triggering an investigation and adherence to grievance procedures set forth herein. A formal complaint is a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment and requesting that an investigation commence.

While there is no time limit for making a report or filing a formal complaint of sexual harassment, reporters/complainants are encouraged to promptly report incidents of sexual harassment to avoid the potential loss of evidence, a lapse in the memories of parties or witnesses or the unavailability of persons key to an investigation. The District understands that a victim may decide not to report sexual harassment, to file a formal complaint and/or may decide to wait to come forward with a report/formal complaint for a variety of reasons. The District respects complainants' decisions. However, the Title IX Coordinator has discretion to sign a formal complaint that initiates the grievance process where necessary to avoid deliberate indifference to sexual harassment even without a formal complaint from the complainant.

Forms for making both informal reports and formal complaints are available on the District's website and from the Title IX Coordinator.

Supportive measures will be offered to a complainant with or without a formal complaint.

The Title IX Coordinator may consolidate formal complaints as to allegations against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations arise out of the same facts or circumstances.

## **Response Including Supportive Measures**

Upon actual knowledge of sexual harassment, the Title IX Coordinator will promptly contact the complainant to advise and discuss with the complainant (1) the availability of supportive measures (with or without a formal complaint), and consider the complainant's wishes with respect to supportive measures (2) the right to file a formal complaint, and (3) how to file a formal complaint. The complainant shall be provided with a copy of the Board's policy prohibiting sexual harassment and with a copy of this regulation containing the grievance procedure.

With or without the filing of a formal complaint, a complainant as well as a respondent shall be offered, free of charge, non-disciplinary, non-punitive individualized supportive measures. Supportive measures are designed to restore or preserve equal access to the education program or activity, protect the safety of all parties and the educational environment, and deter sexual harassment, without unreasonably burdening the other party.

Supportive measures may include, but are not limited to:

- Counseling
- Course adjustments
- Modification of work
- Modification of class schedules
- Escorts
- Increased monitoring
- Restrictions on contact

Supportive measures may be modified at any time as appropriate based upon changed or evolving circumstances and may be offered before or after the filing of a formal complaint or where no complaint has been filed at all. Supportive measures may also be part of any ultimate remedy. No disciplinary action for sexual harassment shall be taken against a respondent without first following the grievance procedures set out herein and a determination of responsibility has been made. If the respondent has engaged in conduct other than sexual harassment in violation of a code of conduct or similar restriction, the respondent may be disciplined for such action(s) notwithstanding an ongoing investigation.

### **Emergency Removal/Administrative Leave**

With or without the filing of a formal complaint, an emergency removal of a respondent from the education program or activity is permissible provided that the District conducts an individualized safety and risk analysis and determines that emergency removal is necessary in order to protect a student or other individual from an immediate threat to physical health or safety, and provides notice and an opportunity to challenge the decision. This does not modify any rights under the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act (ADA).

A non-student employee respondent may be placed on administrative leave during the pendency of an investigation.

### **Dismissals of Complaints**

#### **Mandatory Dismissal**

A complaint of sexual harassment must be dismissed if:

1. it fails to allege conduct that constitutes sexual harassment, even if proved;
2. the alleged conduct did not occur in a District activity or program or

3. the alleged conduct did not occur against a person in the United States.

### **Permissive Dismissal**

A complaint of sexual harassment may be dismissed if:

1. the complainant notifies the Title IX Coordinator that he/she wishes to withdraw the complaint or an allegation;
2. the respondent's enrollment or employment ends;
3. specific circumstances exist that prevent the District from gathering enough evidence to reach a determination i.e. significant passage of time between the formal complaint and the alleged conduct; failure of a complainant to cooperate with the grievance process.

The complainant and the respondent will promptly and simultaneously be provided written notice of the dismissal of a complaint or allegation including the reasons for the mandatory or discretionary dismissal and an explanation of appeal rights as set forth in this regulation.

### **Grievance Procedures (to be used for formal complaints only)**

Grievance Procedures consistent with the regulations under Title IX as promulgated by the U.S. Department of Education and the principles of due process, the New Haven Board of Education adopts the following Grievance Procedures responsive to formal complaints.

#### **a. Notice**

Written notice of the complaint shall be provided to the respondent prior to an initial interview with the respondent.

Written notice provided to the respondent shall include:

- notice of the Grievance Procedure, including any informal resolution process;
- notice of the allegations in sufficiently detail to allow the respondent to prepare a response; a statement that the respondent is presumed not responsible for sexual harassment and responsibility will be determined at the conclusion of the Grievance Process;
- notice of the right to have an advisor to inspect/review evidence; and
- notice of any provision in applicable codes of conduct that prohibit knowingly making false statements or providing false information in the grievance process.

Likewise, the complainant shall be provided with written notice of a formal complaint.

Additional written notice shall be provided to the parties in the event of additional or revised allegations of sexual harassment.

#### **b. Investigation**

The District will promptly investigate all formal complaints of sexual harassment in accordance with these grievance procedures.

The District will designate personnel to investigate formal complaints and such personnel shall be trained in accordance with this regulation. The person(s) designated as the investigator(s) may not be the same person as the Decision-maker(s).

The investigator will attempt to collect all relevant information and evidence. While the investigator, acting on behalf of the District, will have the burden of gathering evidence, it is crucial that the parties present evidence and identify witnesses to the investigator so that they may be considered during the investigation. The investigation may include, among other things, interviewing the complainant, the respondent, any witnesses; reviewing law enforcement investigation documents if applicable; reviewing relevant student or employment files (preserving confidentiality as required by law); and gathering and examining other relevant documents, social media, and evidence.

Until a determination is made, the respondent shall be entitled to a presumption of that they are not responsible for sexual harassment. Both parties are to be treated fairly throughout the investigation and shall be entitled to an unbiased investigator who has not prejudged the matter being investigated.

The burden of proof shall be by a preponderance of the evidence. Both parties shall be provided with an equal opportunity to present facts and witnesses and other inculpatory or exculpatory evidence. However, the burden of proof rests on the District not the parties.

Each party shall have the opportunity to select an advisor of the parties "choice." The advisor may accompany the parties during any grievance proceeding at which the party's attendance is requested. The District may, in its discretion, establish certain restrictions regarding the extent to which an advisor may participate in the proceedings. If any such restrictions are established, they will be applied equally to all parties.

The school shall send written notice to both the complainant and respondent of any investigative interviews, or other meetings providing sufficient time for the party to prepare to participate.

Prior to the conclusion of the investigation and the issuing of a final investigative report, the complainant and respondent and their advisors, if applicable, shall be provided evidence directly related to the allegations (electronic or hard copy) with at least ten (10) calendar days to inspect, review and respond in writing to the evidence. The evidence provided shall include the evidence upon which the District does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source. Such evidence shall not be further disseminated by the parties. The parties and advocates shall not further disseminate such evidence and may be required to execute a non-disclosure agreement.

The complainant and respondent shall not be prohibited from discussing the allegations or gather evidence, i.e. no "gag" orders. All parties' First Amendment rights shall be honored.

Evidence of the complainant's prior sexual activity is not relevant and may not be introduced except to prove that someone other than the respondent committed the alleged misconduct or is offered to prove consent.

Supportive measures shall be offered to the complainant or respondent pending a final resolution after consultation with them.

### **c. Investigative Report**

The investigator shall create an investigative report that fairly summarizes the relevant evidence. The investigator shall provide the Decision-Maker the investigative report along with the evidence considered. The parties will be provided with a copy of the final investigative report shared with the Decision-Maker.

### **d. Decision-Maker**

The Superintendent of Schools will appoint a Decision-Maker(s), who shall be a District employee or third-party contractor and who shall be someone other than the Title IX Coordinator or investigator(s).

The parties may submit a written response to the Decision-Maker within ten (10) calendar days of receiving the investigative report from the investigator. The Decision-Maker may extend this deadline for good cause.

Before reaching a determination regarding responsibility, the Decision-Maker must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party. The Decision-Maker will determine if the questions submitted are relevant to the case and will then forward the relevant questions to the respective parties or witness for a response. The Decision-Maker will explain to the party proposing the questions any decision to exclude a question as not relevant. The Decision-Maker will provide the parties with the answers to their questions and allow for limited follow-up questions by the parties.

The Decision-Maker must review all the evidence; apply the preponderance of the evidence standard; and issue a written determination.

The written determination must include:

- a) an identification of the allegations potentially constituting sexual harassment.
- b) a description of 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.
- c) findings of fact supporting the determination.
- d) conclusions as to whether the conduct alleged occurred and whether the conduct violated the District's code of conduct,
- e) the rationale for the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions 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 complainant; and

f) the District's procedures and permissible bases for the complainant and respondent to appeal.

The Decision-Maker's written determination shall not be issued sooner than ten (10) calendar days from receipt of the investigative report, allowing minimally ten (10) calendar days for an opportunity for the parties to submit written responses and exchange questions and responses and for consideration of these by the Decision-Maker. While taking into consideration the District's overall obligation to respond promptly to sexual harassment complaints, there is no specified timeframe for issuing a written determination. The timeframe may vary on a case-by-case basis in light of the totality of the circumstances, the unique nature of each complaint, and the extent of the evidence to be considered.

The Decision-Maker shall send the written determination simultaneously to the parties along with an explanation of how to file an appeal. Appeal procedures shall apply equally for both parties.

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, on the date on which an appeal would no longer be considered timely.

## **Remedies**

Remedies will be provided to a complainant when a respondent is found responsible. Remedies shall be designed to maintain the complainant's equal access to education. The range of remedies in the case a violation is found can range from counseling to serious discipline, up to and including expulsion/termination.

The range of remedies depends on the circumstances but may include previously provided supportive measures, grade changes; the opportunity to retake a test or resubmit an assignment; reassignment of class; school-based counseling; and reinstatement to a team or activity as well as other appropriate measures.

The Title IX Coordinator shall oversee the effectiveness of the remedies toward ensuring no continued sexual harassment occurs.

## **Appeal**

A written appeal of the Decision-Maker's determination regarding responsibility or the Title IX Coordinator's dismissal of a complaint may be filed by either party with the Superintendent of Schools or other designated Appeal Decision-Maker ("ADM"), **only** for one or more of the following reasons:

- 1.) procedural irregularities
- 2.) newly discovered evidence that could affect the outcome

- 3.) the Title IX personnel (Title IX coordinator, investigator/Decision-Maker, etc.) had a conflict of interest or bias that altered the outcome.

The ADM must **receive** the written appeal within ten (10) calendar days of the issuance of the Decision-Maker's determination regarding responsibility or notification of dismissal of the complaint. The appeal must specify the reasons the party is challenging the determination or dismissal. Upon receipt of the appeal, the ADM will send a copy to the other party. The non-appealing party may submit a statement in response to the appeal. The statement by the non-appealing party in response to the appeal must be submitted in writing to the ADM and must be **received** by the ADM within ten (10) calendar days after the ADM has provided the copy of the written appeal. Upon receipt, the ADM shall provide a copy of the statement to the appealing party for review. The appealing party shall not have a right to reply to the statement.

**All submissions shall be via email or fax and must be received by 11:59 p.m. on the date due to be considered timely.**

The Superintendent or other ADM shall determine any additional procedures for the appeal. The ADM shall render a decision within ten (10) calendar days following the non-appealing party's deadline for a written submission, whether or not a submission is made.

The Superintendent or other ADM may extend deadlines pertaining to the appeal process for good cause. However, the deadline to file the appeal may not be extended.

Both parties will be given a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome. The ADM shall consider the appeal and simultaneously notify the parties in writing of the decision on appeal describing the result of the appeal and the rationale for the result.

### **Retaliation**

Retaliation against any party, witness, or other participant to an investigation/grievance process is prohibited.

Any claim of retaliation may be filed in accordance with this Grievance Procedure. Discipline for filing or making a false statement shall not constitute retaliation absent evidence of such motivation.

### **Informal Resolution**

At any point in the formal complaint process, the District Title IX Coordinator, in their discretion, offer to facilitate an informal resolution option such as mediation or restorative justice.

Both parties must give voluntary, informed written consent.

Either party has a right to withdraw consent at any time, in which case the formal investigation shall proceed.

The informal resolution process shall not be available if the complainant/victim is a student and the respondent is an employee.



Informal resolution may encompass a broad range of conflict resolution strategies, including, but not limited to, arbitration, mediation or restorative justice.

### **Confidentiality**

The identities of the complainants, respondents and witnesses, except as provided herein or as required by law, including FERPA, shall not be disclosed.

**Record Keeping**The District must keep records related to reports of alleged sexual harassment for a minimum of seven years, including investigation records, disciplinary sanctions, remedies, appeals, and records of any action taken, including supportive measures. Additionally, District must also keep for a minimum of seven years any materials used to train Title IX Coordinators, investigators, Decision-Makers, any employee designated to facilitate an informal process.

**Alternate Complaint Procedures**In addition, or as an alternative to the filing of a sexual harassment complaint through the District's grievance procedure, a person may choose to file a complaint with the Office for Civil Rights of the United States Department of Education, any other state or federal agency designated to receive such complaints and/or to report an incident of sexual harassment to law enforcement.

### **Statement of Protected Rights**

Application of this policy and its grievance procedure shall not be interpreted to restrict rights protected under the U.S. Constitution, including the right to free speech, to be free from self-incrimination and to due process of law.

### **Mandated Reporters**

Nothing in the Board's sexual harassment policy or this regulation shall interfere with or alter a mandated reporter's responsibility to report child abuse or neglect or sexual assault to DCF or the police as may be required by law.

### **Training**

Training shall be provided to Title IX personnel, including, but not limited to, Title IX Coordinators, investigators, Decision-Makers, and any employee designated to facilitate an informal process in accordance with the regulation under Title IX as promulgated by the U.S. Department of Education, as it may be amended from time to time.

Training shall include, but is not limited to, explanation or instruction regarding:

- the definition of "sexual harassment"
- grievance procedures
- how to conduct an investigation
- how to prepare an investigative report
- training on any technology that might be needed to carry out responsibility for investigation or decision making e.g. recording device for live hearing
- issues of relevance including how to apply rape shield protections for complainants and application of legally recognized privilege

Training may additionally be provided to other school employees as deemed appropriate.

A record shall be kept reflecting the names of all employees who receive training along with the date and nature of the training.

Materials used to train personnel shall be posted to the District's website and maintained as required under the regulations under Title IX as promulgated by the U.S. Department of Education, as it may be amended from time to time.

**Regulation approved: DATE**

NEW HAVEN PUBLIC SCHOOLS  
New Haven, Connecticut