

SEXUAL HARASSMENT AND RETALIATION (STUDENTS)

Code **JIAA-R** Issued **7/20**

The district has adopted the following procedures to promptly and fairly address reports of sexual harassment and retaliation.

Definitions

Complainant is an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

Respondent is an individual who is reported to be the perpetrator of conduct that could constitute sexual harassment.

Sexual harassment means unwelcome sexual advances, requests for sexual favors, sexually motivated physical conduct, or other verbal or physical conduct of a sexual nature under any of the following conditions:

- submission to such conduct is made either expressly or implicitly a term or condition of a student's education regarding aid, benefit, or service
- such conduct or communication is so severe, pervasive, and objectively offensive under the reasonable person standard that it effectively denies a person equal access to the education program or activity
- sexual assault, dating violence, domestic violence, or stalking as defined in federal law

Sexual harassment may include, but is not limited to, the following:

- sexually-oriented teasing, name-calling, abuse, or harassment
- unwelcome comments or conduct based on an individual's gender identity or nonconformity with gender stereotypes
- graphic or written statements including, but not limited to, text messages, typed or hand-written notes, derogatory cartoons, drawings, posters, or graffiti
- inquiries into one's sexual experiences or activities
- unwelcome touching including, but not limited to, pinching, patting, constant brushing against another's body, or physical interference with movement or work
- remarks with sexual or demeaning implications
- subtle or direct propositions for sexual favors

Note that such harassment does not have to be of a sexual nature and can include offensive remarks about a person's sex, sexual orientation, and/or gender identity or expression.

Sexual harassment is prohibited against members of the same sex as well as against members of the opposite sex.

Actual knowledge of sexual harassment means notice of sexual harassment or allegations of sexual harassment to the district's Title IX coordinator or any district staff member.

Supportive measures are non-disciplinary, non-punitive, individualized services and will be offered to the complainant and the respondent, as appropriate. These measures may include, but are not limited to, the following:

- counseling
- class modifications

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- schedule changes
- increased monitoring or supervision

The measures offered to the complainant and the respondent will remain confidential to the extent that maintaining such confidentiality would not impair the ability of the district to provide the supportive measures.

The *Title IX coordinator* is the district staff member(s) designated to receive and investigate complaints of alleged sexual harassment and retaliation. Additionally, this individual is available during regular work hours to discuss concerns related to sexual harassment and retaliation, as well as to assist students, parents/legal guardians, and others in navigating the complaint resolution process.

The following individual serves as Title IX coordinator for the district:

Mr. Cliff Warren, Assistant Superintendent of Human Resources and Operations
500 Forest Circle
Walterboro, SC 29488
Telephone: (843) 782-4527
Email: cwarren@colleton.k12.sc.us

Reporting

Members of the district community, including, but not limited to, staff, parents/legal guardians, and students, are encouraged to promptly report incidents of sexual harassment to the Title IX coordinator or building-level principal.

Reports may be made orally or in writing via mail, telephone, electronic mail, or in person meeting at any time, including non-business hours. All reports not made directly to the Title IX coordinator will be memorialized in writing and reported to the Title IX coordinator within two (2) business days.

Reports of prohibited conduct should be made as soon as possible after the alleged act or knowledge of the alleged act. Failure to promptly report may impair the district's ability to investigate and address the prohibited conduct.

Harassing or retaliatory behavior perpetrated against a student by a staff member and/or violations of policy GBEBB, *Staff Conduct with Students*, should be reported immediately to both the district Title IX coordinator and the superintendent. Informal complaint procedures will not be utilized to handle such complaints.

If a complaint involves allegations of child abuse, appropriate notifications to law enforcement and the Department of Social Services will be made in accordance with policy JLF, *Student Welfare*.

The parent/legal guardian of any student subject to sexual harassment or retaliation, or the student himself/herself if over the age of 18, may seek resolution through either the informal or formal procedures described below except as otherwise prohibited by this policy. When complaints involve two or more students, the parent/legal guardian of each student will be notified of and receive all correspondence related to such complaints.

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Grievance Process

Upon learning of an instance of alleged sexual harassment or retaliation, even if no formal complaint is filed, the Title IX coordinator will promptly contact the complainant to discuss the availability of supportive measures irrespective of the filing of a formal complaint and explain the process for filing a formal complaint.

The district will respect the confidentiality of the complainant and the respondent to the greatest extent possible, and information will only be disclosed to the appropriate individuals as necessary to investigate allegations of harassment and take disciplinary action.

Disciplinary consequences or sanctions will not be initiated against the respondent until the grievance process has been completed. Unless there is an immediate threat to the physical health or safety of any student arising from the allegation of sexual harassment that justifies removal, the respondent's placement will not be changed. The respondent will have the opportunity to challenge the decision immediately following a change in placement. If the respondent is a staff member, he/she may be placed on administrative leave during the pendency of the grievance process.

Formal complaint

The formal complaint process under Title IX does not apply to sexual harassment and retaliation occurring outside of the United States. However, the district will investigate all instances of sexual harassment and retaliation, including those that occur outside of the country (field trips, study abroad, etc.) in accordance with district policy. Should an investigation conclude that such actions took place, the respondent will be subject to discipline.

Forms for initiating a formal complaint may be found online as an exhibit to this administrative rule. Printed copies are available in the principal's office, the district office, and from the Title IX coordinator. All formal complaints must include the following information, to the extent it is available:

- identity of the individual believed to have engaged in harassing conduct (respondent)
- nature of the alleged conduct
- date and location of the alleged violation
- list of potential witnesses
- resolution sought by the complainant
- signature of complainant

The Title IX coordinator can initiate a formal complaint by alleging sexual harassment against a respondent and signing the complaint document. The Title IX coordinator is not the complainant in such circumstances.

Investigation

Upon receipt of a formal complaint, the Title IX coordinator will provide written notice of the grievance process to the parties to include the following information:

- statement of the allegations
- statement that the respondent is presumed not responsible for the allegations until a determination is made
- prohibition against making a false statement or knowingly submitting false information
- right to have an advisor, who may be an attorney, present during any subsequent meetings
- list of supportive measures available to both parties

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If the Title IX coordinator dismisses a complaint that does not meet the requirements of Title IX, after the complaint is withdrawn in writing, when the respondent moves out of the district or is no longer employed with the district, or for any other reason during the investigation process, written notice, including the reasons for dismissal, will be provided to both parties simultaneously. **This does not preclude the district from investigating the facts under another district policy (e.g. policy JIAB, *Discrimination, Harassment, or Retaliation* or JICFAA, *Intimidation, Harassment, or Bullying*) or the student/staff member code of conduct.** The dismissal of a formal complaint is subject to appeal.

The director of student services will serve as the investigator and will be responsible for investigating complaints in an equitable manner that involves an objective evaluation of all relevant evidence. Credibility determinations may not be based on an individual's status as a complainant, respondent, or witness. The burden for obtaining evidence sufficient to reach a determination regarding responsibility rests on the school district and not the complainant or respondent.

Once a complaint is received, the investigator will initiate an investigation within forty-eight (48) hours of receipt of the complaint. If an investigation is not initiated within forty-eight (48) hours, the investigator will provide the Title IX coordinator with appropriate documentation detailing the reasons why the investigation was not initiated within the required timeframe.

All investigations will be completed within thirty (30) calendar days from the receipt of the initial complaint. If the investigation is not complete within thirty (30) calendar days, the investigator will provide the Title IX coordinator with appropriate documentation detailing the reasons why the investigation has not been completed.

Investigations will be conducted in the following manner:

- provide an equal opportunity for the parties to present witnesses and evidence
- not restrict the ability of either party to discuss the allegations under investigation or gather and present relevant evidence
- refrain from requiring, allowing, relying upon, or otherwise using questions or evidence that seek disclosure of information protected under a legally recognized privilege unless such privilege has been waived
- provide the parties with the same opportunities to have others present during any grievance proceeding
- provide to parties whose participation is requested written notice of the date, time, location, participants, and purpose of all investigative interviews, or other meetings, with sufficient time for the party to prepare to participate
- provide both parties an equal opportunity to inspect and review evidence directly related to the allegations in the formal complaint
- result in the creation of an investigative report that fairly summarizes relevant evidence
 - prior to the completion of the investigative report, the investigator will send to each party the evidence subject to inspection and review; all parties will have at least ten (10) days to submit a written response which will be taken into consideration in creating the final report

Within the parameters of the Family Educational Rights and Privacy Act (FERPA), the Title IX coordinator will keep the complainant and the respondent informed of the status of the investigation process. At the close of the investigation, a written final report on the investigation will be delivered to the parents/legal guardians of the complainant and the parents/legal guardians of the respondent.

Determination of responsibility

School District of Colleton County

(see next page)

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The respondent is presumed not to be responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process. The preponderance of the evidence standard will be used in making this determination. No hearing will be conducted at this level

The coordinator of safe schools will act as the decision-maker. He/She will receive the final report of the investigation and allow each party ten (10) business days to submit additional questions to be answered by the appropriate party with limited follow-up prior to determining responsibility.

The decision-maker will provide the written determination to the parties simultaneously along with information about how to file an appeal within fourteen (14) business days after the deadline for receiving all information from the parties.

The decision maker, who cannot be the investigator or the Title IX coordinator, will apply the district's preponderance of the evidence standard and issue a written determination of responsibility that:

- identifies the allegations that potentially constitute sexual harassment
- describes the district's procedural steps taken from the receipt of the complaint through the determination
- includes findings of fact supporting the determination
- includes conclusions regarding the application of the district's code of conduct to the facts
- includes a statement of, and a rationale for, the result as to each allegation, including a determination of responsibility, any disciplinary sanctions, and whether remedies to restore or preserve equal access to the district's education program or activity will be provided to the complainant
- includes procedures and permissible bases for the complainant and respondent to appeal. the written determination must be provided to the parties simultaneously

A substantiated complaint against a student may result in corrective or disciplinary action up to and including expulsion. A substantiated complaint against a staff member will result in disciplinary action up to and including termination.

After a determination of responsibility is made, the Title IX coordinator will work with the complainant to determine if further supportive measures are necessary. The Title IX coordinator will also determine whether any other actions are necessary to prevent reoccurrence of the harassment.

Appeals

The assistant superintendent of curriculum and instruction will hear appeals. If the complainant or respondent is not satisfied with the determination of the decision maker, he/she may request a review by the assistant superintendent of curriculum and instruction. Additionally, a complainant can request an appeal upon the dismissal of a formal complaint.

The request for appeal must be made in writing to the Title IX coordinator within ten (10) business days of receipt of the decision maker's determination or dismissal of the complaint. The appeal must include the original complaint form, a copy of the report and determination, and a written statement as to the reason for appeal.

Grounds for appeal will include one or more of the following factors:

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- procedural irregularity that affected the outcome of the case
- new evidence that was not reasonably available when the complaint was dismissed or a determination was made that could affect the outcome of the matter
- district staff member assigned to the matter had a conflict of interest or bias for or against the parties that affected the outcome of the matter

The assistant superintendent of curriculum and instruction will review the material submitted and provide both parties five (5) business days to submit a written statement outlining their position. Within fourteen (14) business days of the deadline to receive submissions from the parties, a written decision will be issued simultaneously to both parties stating whether the determination of the decision maker will be upheld, modified, or reversed along with the rationale.

The decision of the assistant superintendent of curriculum and instruction is final. The decision of the assistant superintendent of curriculum and instruction may be appealed to the board.

Informal Complaint Procedure (Mediation)

The district's informal complaint procedure may be initiated after a formal complaint has been made. The informal complaint process is designed to resolve complaints quickly, efficiently, and to the mutual satisfaction of all parties involved. Mediation is a voluntary process intended to allow the parties involved in a complaint to discuss their respective understandings of the incident with each other through the assistance of a trained mediator. Mediation is designed to encourage each person to be honest and direct with the other and to accept personal responsibility where appropriate. Where circumstances allow, and both parties agree to participate in writing, mediation will be initiated as soon as possible.

Mediation is only available in those circumstances where the district believes that the allegations are appropriate for resolution through an informal process, and both parties voluntarily agree to participate. Mediation is not appropriate in certain cases, such as alleged sexual assaults, even on a voluntary basis.

Participation in mediation does not waive an individual's right to participate in the formal complaint procedure or to pursue other remedies available by law, including the filing of a complaint with state or federal agencies, as appropriate. An individual may request suspension of the informal complaint procedure and initiation of the formal complaint procedure at any time.

Upon the written consent of all parties to the complaint, the Title IX coordinator will seek an outcome through mediation conducted by a qualified district mediator or an external professional engaged by the district. All parties to the complaint must mutually agree upon any resolution reached through the mediation process. The outcome of the mediation will be documented and maintained by the Title IX coordinator.

Emergency Removal/Administrative Leave

In cases in which an employee is a respondent, the district may place that staff member on administrative leave during the pendency of an investigation and grievance process.

In cases in which a student is a respondent, the district may remove, on an emergency basis, the respondent from the district's educational program or activity provided the district:

- undertakes an individualized safety and risk analysis and determines 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

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- provides the respondent with notice and an opportunity to challenge the decision immediately following the removal

This provision does not modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

Recordkeeping

The district will maintain records related to this policy for seven (7) years. Specifically, the district will maintain records pertaining to:

- each investigation and determination
- any disciplinary sanctions imposed on respondent
- any remedies provided to the complainant
- any appeal and the result thereof
- any informal resolution and result
- any materials used to train Title IX coordinators, investigators, decision makers, and any person who facilitates an informal resolution process

The district will make training records available on its website.

Retaliation

It is a separate and distinct violation of policy for any member of the district community to retaliate against any student who reports alleged sexual discrimination or harassment or against any student who testifies, assists, or participates in an investigation, proceeding, or hearing relating to such discrimination or harassment. It is possible that an individual may be found to have violated this anti-retaliation provision even if the underlying complaint of sexual harassment is not found to be a violation of district policy. An individual is not allowed to do anything that would discourage a student from resisting or complaining about sexual harassment. Retaliation includes, but is not limited to, any form of intimidation, reprisal, or harassment.

Students found to have engaged in retaliation will be subject to discipline and graduated consequences, up to and including expulsion, consistent with policy JICDA, *Code of Conduct*.

Staff found to have engaged in retaliation may be subject to disciplinary action, up to and including termination, consistent with district policy, including GBEB and GBEB.

False Reports

Because incidents of sexual harassment and retaliation frequently involve interactions between persons that are not witnessed by others, reports of such conduct cannot always be substantiated by additional evidence. Lack of corroborating evidence or “proof” should not discourage individuals from making a report under this policy. However, individuals who make reports that are later found to have been intentionally false or made maliciously without regard for truth may be subject to discipline and graduated consequences, up to and including expulsion consistent with policy JICDA and policy GBEB. This provision does not apply to reports made in good faith, even if the facts alleged in the report cannot be substantiated by subsequent investigation.

Training

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The district will provide training for all staff members serving as the Title IX coordinator, investigator, decision maker, or appellate authority for the informal or formal grievance process. Staff members will be trained on the following:

- definition of sexual harassment
- procedures of the grievance process
- impartiality required to prevent prejudgment of facts, conflicts of interest, and bias
- technology necessary for the grievance process
- relevance and summary of evidence
- determination of responsibility report

Materials used for training purposes may not rely on sex stereotypes, will promote impartial investigations and adjudication, and will be posted online.

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