

	ABERDEEN SCHOOL DISTRICT	NEPN Code: JIAA-R
	POLICIES AND REGULATIONS	

STUDENT HARASSMENT/SEXUAL HARASSMENT

A. Definitions

1. **Harassment:** Harassment consists of physical or verbal conduct related to a person's race, color, creed, religion, ancestry, gender, national origin, disability, age, or other basis prohibited by law when the conduct is so severe, pervasive, and objectively offensive that it:
 - a. has the purpose of effecting or creating an intimidating, hostile or offensive work environment;
 - b. has the purpose or effect of substantially or unreasonably interfering with an individual's work performance.
2. **Sexual Harassment:** Conduct on the basis of sex that satisfies one or more of the following:
 - a. When an employee makes conditions to provide aid, benefit, or service based on an individual's participation in unwelcome sexual conduct;
 - b. 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 recipient's work; or
 - c. Sexual assault, dating violence, domestic violence, or stalking.

B. Additional Definitions

1. **Actual knowledge** means notice of harassment or allegations of harassment to the District's Title IX Coordinator or any official of the District who has authority to institute corrective measures on behalf of the District, or to any employee of an elementary and secondary school. Imputation of knowledge based solely on vicarious liability (when a person has a particular legal relationship to the person who acted negligently) or constructive notice (deeming notice of something to a person having been given, even though actual notice did not exist) is insufficient to constitute actual knowledge. This standard is not met when the only official of the recipient with actual knowledge is the respondent. The mere ability or obligation to report harassment or to inform a student about how to report harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the District.
2. **Complainant** means an individual who is alleged to be the victim of conduct that could constitute harassment.
3. **Dating violence** means violence committed by a person:
 - 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: length and type of relationship, and the frequency of interaction between the two persons.

4. **Decision-maker** means the school administrator who has primary responsibility and authority related to students and staff.

5. **Domestic violence** includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by 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 the jurisdiction.

6. **Formal complaint** means a document filed by a complainant or signed by the Title IX Coordinator alleging harassment against a respondent and requesting that the District investigate the allegation of harassment. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information listed on the District webpage.

7. **Informal Resolution** means both parties agree to resolve the situation before a formal investigation is completed. The District will provide notice to both parties if an informal resolution is made.

8. **Respondent** means an individual who has been reported to be the perpetrator of conduct that could constitute harassment.

9. **Sexual assault** means any nonconsensual sexual act proscribed by Federal, Tribal, or State law, including when the victim lacks capacity to consent.

10. **Stalking** means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others; or suffer substantial emotional distress.

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.

C. General Provisions

General response to harassment: Regardless of whether or not a formal complaint is filed, should the District have actual knowledge of harassment in the workplace, the District shall respond promptly in a manner that is not deliberately indifferent (i.e., if the District's response to harassment is clearly unreasonable in light of the known circumstances).

The Title IX Coordinator shall promptly contact the complainant to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint.

Response to a formal complaint: In response to a formal complaint, the District shall follow the grievance process as set forth in this policy.

Time frames: The timeframes set forth in the regulations shall be considered as a maximum length of time within which the related step is to be completed, however, the time frames may be extended for good cause upon written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause includes, but is not limited to, utilization of the informal resolution process, availability of an investigator if not a school employee, complexity of the investigation, absence of a party, a party's advisor, a witness, or decision-maker (including a person necessary for addressing an appeal), concurrent law enforcement activity, or the need for language assistance or accommodation of disabilities.

Emergency removal: Nothing in Title IX regulations or this policy prohibits the District from placing an employee on paid or unpaid administrative leave on an emergency basis, if it is determined that an immediate threat to the physical health or safety of other individual arising from the allegations of harassment. The employee will be provided notice and an opportunity to challenge the decision immediately following the removal. However, nothing in Title IX regulations or this policy may be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

D. Title IX Coordinator Designation and Dissemination of Policy

The Board will designate a District administrator to coordinate its efforts to comply with its responsibilities as set forth in 34 CFR Part 106, who shall be referred to as the "Title IX Coordinator." The District shall notify employees, students, parents or legal guardians of their Title IX obligations and this information will be made available through various means.

E. Informal Resolution

1. The District may not require as a condition of employment, waiver of the right to an investigation and adjudication of formal complaints of harassment consistent with this policy.
2. The District may not require the parties to participate in an informal resolution process under this policy and may not offer an informal resolution process unless a formal complaint is filed.
3. At any time prior to reaching a determination regarding the harassment allegations, the District may facilitate an informal resolution process, such as mediation, that does not involve full investigation and adjudication, providing the District:
 - a. provides to the parties a written notice disclosing the allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint,

- and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;
- b. obtains the parties' voluntary, written consent to the informal resolution process; and
- c. does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

F. Formal Complaint Filed

1. Upon receipt of a formal complaint, the Title IX Coordinator shall provide the following written notice to the parties who are known:
 - a. Notice of the District's grievance process, including any informal resolution process.
 - b. Notice of the allegations of harassment potentially constituting sexual harassment as defined in this policy, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting harassment, and the date and location of the alleged incident, if known. The written notice must include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process. The written notice shall inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence. The written notice shall inform the parties that the District prohibits knowingly making or submitting false information during the grievance process.
2. The District shall treat complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility for harassment has been made against the respondent. Remedies may be disciplinary in nature. Such remedies may include the same individualized services identified as supportive measures.
3. The District shall follow the grievance process before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent.

G. Investigation

1. The District must investigate the allegations in a formal complaint. If the conduct alleged in the formal complaint would constitute harassment or sexual harassment as defined in this policy.
2. Unless the nature of the complaint and investigation dictate otherwise, the Investigation should be completed within sixty (60) calendar days of receipt of the complaint.
3. When investigating a formal complaint and throughout the grievance process, the District:
 - a. shall have the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility;
 - b. shall provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;

- c. shall not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence, provided, however, nothing in this provision prohibits the District from taking disciplinary action due to a party retaliating against any person due to that person having 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;
 - d. shall provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to 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, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding; however, the District may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties.
- 4. If, in the course of an investigation, the District decides to investigate allegations about the complainant or respondent that are not included in the notice provided, the District shall provide notice of the additional allegations to the parties whose identities are known.
- 5. Any party whose participation is invited or expected, shall be given written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.
- 6. All parties shall have equal opportunity to inspect and review any evidence obtained as part of the investigation, including the evidence upon which the recipient does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.
- 7. Prior to completion of the investigative report, the District must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least ten (10) calendar days to submit a written response, which the investigator will consider prior to completion of the investigative report. The District shall make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.
- 8. The investigator shall create an investigative report that fairly summarizes relevant evidence and, at least ten (10) calendar days prior to a determination by a decision-maker regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

H. Determination

1. The decision-maker shall not be the same person as the Title IX Coordinator.
2. After the Investigator has sent the investigative report to the parties, and 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. All parties shall have ten (10) calendar days from the date the investigatory report was sent to the parties to submit written, relevant questions to the decision-maker, who shall forward the questions to the other party following the ten (10) day period, unless all parties submitted questions prior to the end of the ten (10) day period and in such case the decision-maker shall forward the questions upon receipt of questions by all parties. All parties shall have (5) calendar days to submit to the decision-maker and the other parties any written responses to the questions.
3. The decision-maker shall have fourteen (14) calendar days, after the expiration of time frame set forth in the preceding paragraph, to issue a written determination.
4. For all formal complaints of harassment filed against students or staff, the standard of evidence to be used to determine responsibility is the preponderance of the evidence standard.
5. Following any determination of responsibility, the District may implement disciplinary sanctions and remedies that follows Policy GBEB, Code of Conduct.
7. The written determination shall include:
 - a. identification of the allegations potentially constituting harassment;
 - b. 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;
 - c. findings of fact supporting the determination;
 - d. conclusions regarding the application of the District's code of conduct to the facts;
 - e. a statement of, and rationale for, the result as to each allegation, determination regarding responsibility, any disciplinary sanctions the District imposes on the respondent, and whether remedies designed to restore or preserve equal access to the recipient'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.
8. The District shall provide the written determination to the parties simultaneously.

I. Appeal to Superintendent

1. Both parties have the right to appeal to the Board, the Superintendent's determination regarding responsibility, and from a dismissal of a formal complaint or any allegations therein, on the following bases:
 - a. Procedural irregularity that affected the outcome;
 - b. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome;
 - c. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome.
2. As to all appeals, the Title IX Coordinator shall:
 - a. notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
 - b. ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;
 - c. ensure that the decision-maker(s) for the appeal complies with the standard of evidence as required in this policy;
 - d. give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
 - e. ensure that a written decision is issued describing the result of the appeal and the rationale for the result, and provide the written decision simultaneously to both parties.
3. The following procedure shall be used to address an appeal of the decision-maker's determination to the Superintendent:
 - a. If a party is not satisfied with the decision-maker's determination, that party may appeal to the Superintendent. The appeal must be filed within ten (10) calendar days of receipt of the decision-maker's written decision, or ten (10) days of the deadline for the decision-maker's written decision, whichever comes first. The appealing party must attach the decision-maker's written determination.
 - b. Within fourteen (14) calendar days from the date the appeal was filed, the Superintendent shall render a decision in writing. All parties shall receive copies of the decision. The Superintendent shall uphold, reverse, modify the decision-maker's decision, or the Superintendent may refer the matter back to the decision-maker for further investigation and supplemental decision which decision may restate, modify or reverse the decision-maker's initial decision. A supplemental decision by the decision-maker after a referral back to the decision-maker may be appealed to the Superintendent.

J. Appeal to School Board

1. If a party is not satisfied with the Superintendent's decision, that party may appeal to the School Board by filing with the Business Manager, within ten (10) calendar days of receipt of the Superintendent's written decision, or ten (10) days of the deadline for the Superintendent's written decision, whichever comes first. The appeal shall be in writing and the appealing party must attach to the appeal the decision-maker's written decision, the appeal to the Superintendent, and the Superintendent's written decision or notice of the Superintendent's failure to render a written decision.
2. The following procedure shall be used by the Board to address an appeal of the Superintendent's decision on the merits related to a harassment complaint:
 - a. Upon receipt by the Board President, a copy of the appeal shall be provided to all parties.
 - b. Upon receipt of an appeal, the Board shall at its next meeting schedule a date, time and location for the appeal hearing.

K. Board Appeal Hearing

1. The following procedure shall be applicable at the appeal hearing before the Board:
 - a. The Board shall appoint a board member to a person who is not an employee of the school district as the hearing officer and within thirty (30) calendar days of an appeal being filed with the Board, conduct a hearing in executive session;
 - b. The Complainant, person alleged to have violated the harassment policy, and Superintendent each have the right to be present at the hearing;
 - c. The Board shall make a verbatim record of the hearing by means of an electronic or mechanical device or by court reporter. This record and any exhibits must be sealed and must remain with the hearing officer until the appeal process has been completed;
 - d. The issue on appeal is whether the Superintendent's decision should be upheld, reversed or modified;
 - e. All parties shall be given the opportunity to make an opening statement, with the appealing party being given the first opportunity, followed by the other party and Superintendent;
 - f. The appealing party shall present his or her case first. Both parties shall have the opportunity to ask questions of the other's witnesses. The hearing officer and board members may ask questions of any witness;
 - g. The Superintendent shall present the basis of his/her decision which led to the appeal. Both parties shall have the opportunity to ask the Superintendent questions, including board members and hearing officer;
 - h. Unless a witness is a party to the appeal, witnesses may be present only when testifying unless the hearing officer rules otherwise. All witnesses must take an oath or affirmation administered by the School Board president, hearing officer or other

person authorized by law to take oaths and affirmations;

- j. The hearing officer shall admit all relevant evidence, and may limit unproductive or repetitious evidence.
- k. All parties shall be given the opportunity to make a closing statement, with the appealing party having the first opportunity, followed by the other party, and the Superintendent. The appealing party shall be given the opportunity for a brief rebuttal;
- l. After the evidentiary hearing, the Board shall continue to meet in executive session for deliberations. No one other than the hearing officer may meet with the Board during deliberations. The Board may seek advice during deliberation from an attorney who has not represented any of the parties to the hearing. Consultation with any other person during deliberation may occur only if a representative of both parties and Superintendent are present. The Board may, in its sole discretion, continue the proceedings and make a final decision on the appeal at a later date. Within twenty (20) calendar days of the hearing, the Board shall render its decision and issue its written Findings of Fact, Conclusions of Law and Decision. The time frame for rendering a decision may be extended by the Board President for good cause and upon written notification to both parties and the Superintendent, and the notification shall identify the reason for the extension and the date on or before which the decision shall be rendered;
- m. The decision of the School Board must be based solely on the evidence presented at the hearing and must be formalized by a motion made in open meeting. The Board will convene in open session and a motion to uphold, reverse, or modify the Superintendent's decision shall be made and voted upon. Findings of Fact, Conclusions of Law and Decision, consistent with the Board motion shall be in writing and approved by the Board. Both parties, the decision-maker and the Superintendent will receive copies after the Findings of Fact, Conclusions of Law and Decision are approved by the Board.
- n. Following the Board hearing, should the Board determine there has been a violation of this policy prohibiting harassment, Board action may include but is not limited to the following: (1) suspend or expel a student from any or all school programs, including but not limited to classes, extracurricular activities, or attendance at school activities.
- o. If either party is dissatisfied with the Board's decision, that party may appeal the decision by filing an appeal pursuant to law.

L. Dismissal of Complaint

- 1. The District may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing:
 - a. a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;

- b. the respondent is no longer enrolled in or specific circumstances prevent the District from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.
2. Upon a dismissal required or permitted pursuant to reasons set forth above, the District shall promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.

M. Confidentiality

1. The District shall keep confidential the identity of any individual who has made a report or complaint of discrimination, including any individual who has made a report or filed a formal complaint of harassment. Exceptions to this would be to obtain information to carry out an investigation, hearing, or judicial proceeding arising thereunder.
2. The District shall maintain as confidential any supportive measure provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the District to provide the supportive measures.

N. Retaliation Prohibited

1. No individual 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.
2. Complaints alleging retaliation may be filed according to the grievance procedures outlined in Board Policy AC, Equal Opportunity/Non-Discrimination Policy.
3. 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 by this policy, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

O. Recordkeeping

1. The District shall maintain for a period of seven years records of:
 - a. each harassment investigation including any determination regarding responsibility, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the recipient's education program or activity; any appeal and the result, any information resolution and results and;
 - b. all materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. Such training materials will be available on the school webpage for inspection.

LEGAL REFERENCES:

Title VII of the Civil Rights Act of 1964

Title IX of the Education Amendments of 1972

Title II of the Americans with Disabilities Act of 1990

Section 504 of the Rehabilitation Act of 1973

Genetic Information Non-discrimination Act of 2008

CFR Title 34 Part 106: Nondiscrimination on the basis of sex

USC Title 20 §1092(f)(6)(A)(v): Definition of sexual assault

USC Title 20 §1681-1688: Nondiscrimination on the Basis of Sex in Education Programs and Activities

USC Title 34 §12291(a) (10): Definition of dating violence

USC Title 34 §12291(a) (30): Definition of stalking

DISTRICT POLICY REFERENCES:

AC Equal Opportunity/Nondiscrimination

AC-R Equal Opportunity/Nondiscrimination Regulations

ACE Section 504 Compliance Plan

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