

**DISCRIMINATION AND HARASSMENT OF EMPLOYEES
AND CERTAIN NON-EMPLOYEES REGULATION**

This regulation is intended to create and preserve a working environment free from unlawful discrimination or harassment on the basis of sex, gender, and/or sexual orientation in furtherance of the District's commitment to provide a healthy and productive environment for all employees (including all staff, applicants for employment, both paid and unpaid interns, exempt and non-exempt status, part-time, seasonal, and temporary workers, regardless of immigration status) and "non-employees" (i.e., contractors, subcontractors, vendors, consultant and other persons providing services pursuant to a contract, or their employees) that promotes respect, dignity and equality.

NOTE: once a Formal Title IX Complaint is made under Policy No. 115, this policy DOES NOT apply. However, if the Formal Title IX Complaint is dismissed, the district may still choose to investigate the alleged discrimination or harassment under this policy, if the district determines that the alleged discrimination or harassment may potentially violate this policy.

Discrimination and Harassment

The Board of Education, its officers, and employees shall not discriminate against any employee or applicant on the basis of legally protected classes such as, but not limited to: race; color; national origin; creed; religion; marital status; sex (including pregnancy, childbirth or related medical condition); age; sexual orientation; disability (physical or mental); predisposing genetic characteristic; military work or status; domestic violence victim status; or use of a guide dog, hearing dog, or service dog, as applicable.

This policy prohibits discrimination and harassment of employees (including all staff, applicants for employment, both paid and unpaid interns, exempt and non-exempt status, part-time, seasonal, and temporary workers, regardless of immigration status) and certain "non-employees" (which includes contractors, subcontractors, vendors, consultant and other persons providing services pursuant to a contract, or their employees) on the basis of their protected status by others in the district's environment, including students.

Discrimination and harassment of students by others, including employees, is covered by Policy # 0115 and #0115-R Student Harassment and Bullying Prevention and Intervention, and/or the Formal Title IX Complaint, Policy No. 115.

Discrimination or harassment may occur on school grounds, school buses and at all school-sponsored activities, programs and events, including those that take place at locations outside the District, or outside the school setting if the harassment impacts the individual's employment in a way that violates their legal rights, including when employees or "non-employees" travel on District business, or when the harassment is done by electronic means (including on social media).

Sexual Harassment Defined

Sexual harassment is a form of sex discrimination and is unlawful under federal, state, and (where applicable) local law. Sexual harassment includes harassment on the basis of actual or perceived or self-identified sex, sexual orientation, gender identity, gender expression, and transgender status.

Sexual harassment includes unwelcome conduct which is either of a sexual nature, or which is directed at an individual because of that individual's sex, gender, or sexual orientation, when:

1. submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of an employee's or "non-employee's" employment; or
2. submission to or rejection of that conduct or communication by an individual is used as the basis for decisions affecting an employee's or "non-employee's" employment; or
3. the conduct or communication has the purpose or effect of substantially or unreasonably interfering with an employee's or "non-employee's" work performance, or creating an intimidating, hostile or offensive working or educational environment, even if the complaining individual is not the intended victim of the discrimination or harassment.

Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, or verbal, nonverbal or physical aggression, intimidation or hostility that is based on actual or perceived gender and sexual stereotypes.

Unacceptable Conduct School-related conduct that the District considers unacceptable and which may constitute sexual harassment includes, but is not limited to, the following:

1. rape, attempted rape, sexual assault, attempted sexual assault, forcible sexual abuse, hazing, and other sexual and gender-based activity of a criminal nature as defined under the State Penal Law;
2. unwelcome sexual advances or invitations or requests for sexual activity, including but not limited to those in exchange for promotions, preferences, favors, selection for extracurricular activities or job assignments, etc., or when accompanied by implied or overt threats concerning the victim's work evaluations, other benefits or detriments;
3. unwelcome and/or offensive public sexual display of affection, including kissing, hugging, making out, groping, fondling, petting, inappropriate touching of one's self or others (e.g., pinching, patting, grabbing, poking), sexually suggestive dancing, and massages;
4. any unwelcome communication that is sexually suggestive, sexually degrading or derogatory or implies sexual motives or intentions, such as sexual remarks or innuendoes about an individual's clothing, appearance or activities; sexual jokes; sexual gestures; public conversations about sexual activities or exploits; sexual rumors and "ratings lists;" howling, catcalls, and whistles; sexually graphic computer files, messages or games, etc;
5. unwelcome and offensive name calling or profanity that is sexually suggestive or explicit, sexually degrading or derogatory, implies sexual intentions, or that is based on sexual stereotypes or sexual orientation, gender identity or expression;
6. unwelcome physical contact or closeness that is sexually suggestive, sexually degrading or derogatory, or sexually intimidating such as the unwelcome touching of another's body parts, cornering or blocking an individual, standing too close, spanking, pinching, following, stalking,

- frontal body hugs, etc.;
7. unwelcome and sexually offensive physical pranks or touching of an individual's clothing, such as hazing and initiation, "streaking," "mooning," "snuggies" or "wedgies" (pulling underwear up at the waist so it goes in between the buttocks), bra-snapping, skirt "flip-ups," "spiking" (pulling down someone's pants or swimming suit); pinching; placing hands inside an individual's pants, shirt, blouse, or dress, etc.;
 8. unwelcome leers, stares, gestures, or slang that are sexually suggestive; sexually degrading or derogatory or imply sexual motives or intentions;
 9. clothing with sexually obscene or sexually explicit slogans or messages;
 10. unwelcome and offensive skits, assemblies, and productions that are sexually suggestive, sexually degrading or derogatory, or that imply sexual motives or intentions, or that are based on sexual stereotypes;
 11. unwelcome written or pictorial display or distribution (including via electronic devices) of pornographic or other sexually explicit materials such as signs, graffiti, calendars, objects, magazines, videos, films, Internet material, etc.;
 12. other hostile actions taken against an individual because of that person's sex, sexual orientation, gender identity or transgender status, such as interfering with, destroying or damaging a person's work or school area or equipment; sabotaging that person's work activities; bullying, yelling, or name calling; or otherwise interfering with that person's ability to work; and
 13. any unwelcome behavior based on sexual stereotypes and attitudes that is offensive, degrading, derogatory, intimidating, or demeaning, including, but not limited to:
 - a. disparaging remarks, slurs, jokes about or aggression toward an individual because the person displays mannerisms or a style of dress inconsistent with stereotypical characteristics of the person's sex;
 - b. ostracizing or refusing to participate in group activities with an individual during work activities because of the individual's sex, gender expression or gender identity;
 - c. taunting or teasing an individual because they are participating in an activity not typically associated with the individual's sex or gender.

For purposes of this regulation, action or conduct shall be considered "unwelcome" if the employee or non-employee did not request or invite it and regarded the conduct as undesirable or offensive.

Determining if Prohibited Conduct is Discrimination or Harassment

Complaints of discrimination or harassment will be thoroughly investigated to determine whether the totality of the behavior and circumstances meet any of the elements of the above definition of discrimination or harassment and should therefore be treated as discrimination or harassment. Not all unacceptable conduct may constitute discrimination or harassment. Discrimination or harassment is an unlawful discriminatory practice only when the alleged harassing conduct (1) subjects an individual to inferior terms, conditions or privileges of employment because of the individual's protected status, and (2) rises above the level of what a reasonable victim of discrimination with the same protected characteristic or characteristics would consider petty slights or trivial inconveniences. If the behavior doesn't rise to the level of discrimination or harassment, but is found to be objectionable behavior, the individual will be educated and counseled in order to prevent the behavior from continuing.

In evaluating the totality of the circumstances and making a determination of whether conduct constitutes discrimination or harassment, the individual investigating the complaint should consider:

1. the degree to which the conduct altered the conditions of the employee's or "non-employee's" working environment;
2. the type, frequency and duration of the conduct;
3. the identity of and relationship between the alleged harasser and the subject of the harassment (e.g., sexually based conduct by an authority figure is more likely to create a hostile environment than similar conduct by a student or a co-worker);
4. the number of individuals involved;
5. the age and sex of the alleged harasser and the subject of the harassment;
6. the location of the incidents and context in which they occurred; and
7. other incidents of gender-based conduct.

As mentioned above, if a complainant makes a Formal Title IX Complaint under Policy No. _____ [add number], this policy will not apply. Instead, Formal Title IX Complaints shall be addressed in accordance with the process outlined in District policy # _____, Formal Title IX Complaint Procedure. If a decision is made to dismiss a Formal Title IX Complaint, the district may still choose to investigate the alleged discrimination or harassment under this policy.

Reporting Complaints of Discrimination and Harassment

Any employee or non-employee who believes he or she has been the victim of discrimination or harassment by a student, District employee or "non-employee" or third party related to the school is encouraged to report complaints as soon as possible after the incident in order to enable the District to promptly and effectively investigate and resolve the complaint. Any person who witnesses or is aware of discrimination or harassment of an employee, or "non-employee" is also encouraged to report the incident or behavior to the District. Victims are encouraged to submit the complaint in writing; however, complaints may be filed verbally.

Complaints should be filed with the employee's supervisor, the relevant building principal, the Compliance Officer, or the Title IX Coordinator (INSERT CONTACT INFORMATION).

School employees receiving complaints of discrimination or harassment from employees and "non-employees" shall either direct the complainant to the building principal, Compliance Officer, or Title IX Coordinator, or may report the incident themselves. Supervisory and managerial personnel are required to report complaints of discrimination or harassment received by staff, and will be subject to discipline for failing to report suspected or reported discrimination or harassment, knowingly allowing discrimination or harassment to continue, or engaging in any retaliation.

In order to assist investigators, victims should document the harassment as soon as it occurs and with as much detail as possible including: the nature of the harassment; dates, times, places it has occurred; name of harasser(s); witnesses to the harassment; and the victim's response to the harassment.

Confidentiality

It is District policy to respect the privacy of all parties and witnesses to complaints of discrimination or harassment. To the extent possible, the District will not release the details of a complaint or the identity of the complainant or the individual(s) against whom the complaint is filed to any third parties who do not need to know such information. However, because an individual's need for confidentiality must be balanced with the District's legal obligation to provide due process to the accused, to conduct a thorough investigation, or to take necessary action to resolve the complaint, the District retains the right to disclose the identity of parties and witnesses to complaints in appropriate circumstances to individuals with a need to know. The staff member responsible for investigating complaints will discuss confidentiality standards and concerns with all complainants.

If a complainant requests that his/her name not be revealed to the individual(s) against whom a complaint is filed, the staff member responsible for conducting the investigation shall inform the complainant that:

1. the request may limit the District's ability to respond to his/her complaint;
2. District policy and federal law prohibit retaliation against complainants and witnesses;
3. the District will attempt to prevent any retaliation; and
4. the District will take strong responsive action if retaliation occurs.

If the complainant still requests confidentiality after being given the notice above, the investigator will take all reasonable steps to investigate and respond to the complaint consistent with the request as long as doing so does not preclude the District from responding effectively to the harassment and preventing the harassment of other students or employees.

Investigation and Resolution Procedure for Discrimination and Harassment Complaints

I. Initial (Building-level) Procedure

The building principal, Compliance Officer, or the Title IX Coordinator shall conduct a preliminary review when they receive a verbal or written complaint of discrimination or harassment, or if they observe discrimination or harassment. Except in the case of severe or criminal conduct, the building principal, Compliance Officer, or Title IX Coordinator should make all reasonable efforts to resolve complaints at the school level. The goal of investigation and resolution procedures is to end the harassment and obtain a prompt and equitable resolution to a complaint. All persons involved in an investigation (complainants, witnesses and alleged harassers) will be accorded due process to protect their rights to a fair and impartial investigation. This investigation shall be prompt and thorough, and shall be completed as soon as possible.

The building principal, Compliance Officer, or a designee, will promptly inform the Title IX Coordinator of any reports of suspected sexual harassment, including sexual assault or other serious behaviors that may fall within the scope of the Formal Title IX Complaint Policy. Investigation of suspected sexual harassment will be coordinated with the Title IX Coordinator. In some instances, where a Formal Title IX Complaint has been filed but some of the allegations may potentially violate this policy, the investigation under the Formal Title IX Complaint Policy and this policy may occur simultaneously. In such cases, interviews may be conducted with two investigators, with one investigator handling questions related to the Formal Title IX Complaint and another

investigator handling questions related to violations of this policy.

Immediately, but no later than two (2) working days following receipt of a complaint, the building principal, Compliance Officer, or Title IX Coordinator shall begin an investigation of the complaint according to the following steps:

1. Interview the victim and document the conversation. Instruct the victim to have no contact or communication regarding the complaint with the alleged harasser. Ask the victim specifically what action he/she wants taken in order to resolve the complaint. Refer the victim, as appropriate, to other appropriate school staff or appropriate outside agencies for counseling services.
2. Review any written documentation of the harassment prepared by the victim. If the victim has not prepared written documentation, ask the victim to do so. If the complainant refuses to complete a complaint form or written documentation, the building principal, Compliance Officer, or Title IX Coordinator shall complete a complaint form (see exhibit 0110-E) based on the verbal report.
3. Request, review, obtain and preserve relevant evidence of harassment (e.g., documents, emails, text messages, social media communications, phone records, etc.), if any exist.
4. Interview the alleged harasser regarding the complaint and inform the alleged harasser that if the objectionable conduct has occurred, it must cease immediately. Document the conversation. Provide the alleged harasser an opportunity to respond to the charges in writing.
5. Instruct the alleged harasser to have no contact or communication regarding the complaint with the victim and to not retaliate against the victim. Warn the alleged harasser that if he/she makes contact with or retaliates against the victim, he/she will be subject to immediate disciplinary action.
6. Interview any witnesses to the complaint. Caution each witness to keep the complaint and his/her participation in the investigation confidential. Employees may be required to cooperate as needed in investigations of suspected discrimination or harassment, in a manner that is consistent with any applicable collective bargaining agreement.
7. Review all documentation and information relevant to the complaint.
8. Where appropriate, suggest mediation as a potential means of resolving the complaint. In addition to mediation, use appropriate alternative methods to resolve the complaint, including but not limited to:
 - a. discussion with the accused, informing him or her of the District's policies and indicating that the behavior must stop;
 - b. suggesting counseling and/or sensitivity training;
 - c. conducting training for the department or school in which the behavior occurred, calling attention to the consequences of engaging in such behavior;
 - d. requesting a letter of apology to the complainant;
 - e. writing letters of caution or reprimand; and/or
 - f. separating the parties.
9. Parent/Student/Employee/"Non-Employee" Involvement and Notification
 - a. Parents of accused students shall be notified within one (1) school day of allegations that are serious or involve repeated conduct.
 - b. If the accused is a disabled student receiving special education services under an IEP or section 504/Americans with Disabilities Act accommodations, the committee on special

education may be consulted to determine the degree to which the student's disability either caused or is affected by the discrimination or policy violation. In addition, due process procedures required for persons with disabilities under state and federal law shall be followed.

- c. The investigator shall report back to both the victim and the accused, notifying them in writing, and also in person as appropriate regarding the outcome of the investigation and the action taken to resolve the complaint. The investigator shall instruct the target to report immediately if the objectionable behavior occurs again or if the alleged harasser retaliates against him/her.
 - d. The investigator shall notify the victim that if he/she desires further investigation and action, he/she may request a District level investigation by contacting the superintendent. The investigator shall also notify the victim of his/her right to contact the U.S. Department of Education's Office for Civil Rights and/or a private attorney. Employees may also contact the U.S. Equal Employment Opportunity Commission or the New York State Division of Human Rights.
10. Create a written report of the investigation, kept in a secure and confidential location, containing:
- a. A list of all documentation and other evidence reviewed, along with a detailed summary;
 - b. A list of names of those interviewed along with a detailed summary of their statements;
 - c. A timeline of events;
 - d. A summary of prior relevant incidents, reported or unreported;
 - e. A determination, based on a preponderance of the evidence, as to whether each incident of alleged conduct did or did not occur; and
 - f. The final resolution of the complaint, together with any corrective action(s).

If the initial investigation results in a determination that discrimination or harassment did occur, the investigator will promptly notify the superintendent, who shall then take prompt disciplinary action in accordance with District policy, the applicable collective bargaining agreement or state law.

If a complaint received by the building principal, Compliance Officer, or Title IX Coordinator contains evidence or allegations of serious or extreme harassment, such as sexual assault, criminal touching, quid pro quo (e.g., offering employment reward or punishment as an inducement for sexual favors), or acts which shock the conscience of a reasonable person, the complaint shall be referred promptly to the superintendent. In addition, where the building principal, Compliance Officer, or Title IX Coordinator has a reasonable suspicion that the alleged harassment involves criminal activity, he/she should immediately notify the superintendent, who shall then contact appropriate law enforcement authorities. Where criminal activity is alleged or suspected by a District employee, the accused employee shall be suspended or placed on administrative leave pending the outcome of the investigation, consistent with all contractual or statutory requirements.

Any party who is not satisfied with the outcome of the initial investigation by the building principal, Compliance Officer, or Title IX Coordinator may request a District-level investigation by submitting a written complaint to the superintendent within thirty (30) days.

The building principal, Compliance Officer, or Title IX Coordinator (i.e., the investigator) shall promptly submit a copy of all building-level investigation and interview documentation to the

superintendent, following the receipt of any request for a District-level investigation.

II. District-level Procedure

The superintendent shall promptly investigate and resolve all discrimination or harassment complaints that are referred to him/her by a building principal, Compliance Officer, or Title IX Coordinator, as well as those appealed to the superintendent following an initial investigation by a building principal, Compliance Officer, or Title IX Coordinator. In the event the complaint of discrimination or harassment involves the superintendent, the complaint shall be filed with or referred to the Board president. The Board, on its own initiative or at the request of the superintendent, may refer the complaint to a trained investigator not employed by the District for investigation.

The District level investigation should begin as soon as possible but not later than three (3) working days following receipt of the complaint by the superintendent or Board president.

In conducting the District level investigation, the District will use investigators who have received training in discrimination or harassment investigation or who have previous experience investigating discrimination or harassment complaints.

If a District investigation results in a determination that discrimination or harassment did occur, prompt corrective action will be taken to end the harassment. Where appropriate, District investigators may suggest mediation as a means of exploring options of corrective action and informally resolving the complaint.

No later than thirty (30) days following receipt of the complaint, the superintendent or the appointed investigator will notify the victim and alleged harasser, in writing, of the outcome of the investigation. If additional time is needed to complete the investigation or take appropriate action, the superintendent or investigator will provide all parties with a written status report within thirty (30) days following receipt of the complaint.

The victim and the alleged harasser have the right to be represented by a person of their choice, at their own expense, during discrimination or harassment investigations and hearings.

External Remedies

Victims have the right to register discrimination or harassment complaints with the U.S. Department of Education's Office for Civil Rights (OCR). The OCR can be contacted at (800) 421-3481, 400 Maryland Avenue SW, Washington, DC 20202-1100, or at <https://www2.ed.gov/about/offices/list/ocr/index.html>.

Employee victims also have the right to register complaints with the federal Equal Employment Opportunity Commission (EEOC) and the New York State Division of Human Rights (DHR). The EEOC can be contacted at (800) 669-4000, <https://www.eeoc.gov/employees/howtofile.cfm>, info@eeoc.gov, or at 33 Whitehall Street, 5th Floor, New York, NY 10004 or 300 Pearl Street, Suite 450, Buffalo, NY 14202. The DHR can be contacted at (888) 392-3644,

www.dhr.ny.gov/complaint, or at 1 Fordham Plaza, Fourth Floor, Bronx, NY 10458.

Nothing in these regulations shall be construed to limit the right of the complainant to file a lawsuit in either state or federal court, or to contact law enforcement officials if the discrimination or harassment involves unwanted physical touching, coerced physical confinement or coerced sex acts, which may constitute a crime. No District contract or collective bargaining agreement entered into after July 11, 2018 may include a binding arbitration clause for discrimination or harassment requiring arbitration before bringing a discrimination or harassment claim to a court.

Nondisclosure Agreements

The District may include nondisclosure agreements (to not disclose the underlying facts and circumstances of a discrimination or harassment complaint) in any discrimination or harassment settlement agreement or resolution only if it is the complainant's preference. Such preference must be memorialized in an agreement signed by all parties. Any such nondisclosure agreement shall be provided to all parties. Complainants shall have twenty-one (21) days to consider any such nondisclosure provision before it is signed by all parties, and shall have seven (7) days to revoke the agreement after signing. Nondisclosure agreements shall only become effective after this seven-day period has passed.

Retaliation Prohibited

Any act of retaliation against any person who opposes discriminating or harassing behavior, or who has filed a complaint in good faith, is prohibited and illegal, and therefore subject to disciplinary action. Likewise, retaliation against any person who has, in good faith, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing of a discrimination or harassment complaint is prohibited.

For purposes of this policy, retaliation includes but is not limited to: verbal or physical threats, intimidation, ridicule, bribes, destruction of property, spreading rumors, stalking, harassing phone calls, discipline, discrimination, demotion, denial of privileges, any action that would keep a reasonable person from coming forward to make or support a discrimination or harassment claim, and any other form of harassment. Such actions need not be job- or occur in the workplace, to constitute unlawful retaliation. Any person who retaliates is subject to immediate disciplinary action, up to and including suspension or termination.

Discipline/Penalties

Any individual who violates the discrimination or harassment policy by engaging in prohibited discrimination or harassment will be subject to appropriate disciplinary action. Disciplinary measures available to school authorities include, but are not limited to the following:

- **Students:** Discipline may range from a reprimand up to and including suspension or expulsion from school, to be imposed consistent with the student conduct and discipline policy and applicable law.
- **Employees:** Discipline may range from a warning up to and including termination, to be

- imposed consistent with all applicable contractual and statutory rights.
- **Volunteers:** Penalties may range from a warning up to and including loss of volunteer assignment.
 - **“Non-employees”** (i.e., contractors, subcontractors, vendors, consultant and other persons providing services pursuant to a contract, or their employees): Penalties may range from a warning up to and including loss of District business.
 - **Other individuals:** Penalties may range from a warning up to and including denial of future access to school property.

False Complaints

False or malicious complaints of discrimination or harassment may result in corrective or disciplinary action taken against the complainant.

Training

All employees shall be informed of this policy in employee handbooks and on the District website. A poster summarizing the policy shall also be posted in a prominent location at each school. The District shall provide all existing employees with either a paper or electronic copy of the District's discrimination or harassment policy and regulation.

All new employees shall receive copies of and training on this policy and regulation at new employee orientation or as soon as possible after starting their job. All other employees shall be provided with copies of this policy and regulation and training regarding this policy at least once a year in furtherance of the District's commitment to a harassment-free learning and working environment. Building principals, the Title IX Coordinator, and other administrative employees who have specific responsibilities for investigating and resolving complaints of discrimination or harassment shall receive yearly training on their responsibilities pursuant to this policy and regulation and related legal developments.

Annual employee training programs shall be interactive and include: (i) an explanation of discrimination or harassment consistent with guidance issued by the NYS Department of Labor and the NYS Division of Human Rights; (ii) examples of conduct that is unlawful discrimination or harassment; (iii) information on federal and state laws about discrimination or harassment and remedies available to victims of discrimination or harassment; (iv) information concerning employees' right to make complaints and all available forums for investigating complaints; and (v) address the conduct and responsibilities of supervisors.

Building principals in each school and program directors shall be responsible for informing staff on a yearly basis of the terms of this policy, including the procedures established for investigation and resolution of complaints, general issues surrounding discrimination or harassment, the rights and responsibilities employees, and the impact of discrimination or harassment on the victim.

Adoption Date: 1/13/21