

Public Schools of Edison Township

312 Pierson Avenue * Edison, New Jersey 08837
Telephone (732) 452-4948 Fax (732) 452-4977



R 5751 SEXUAL HARASSMENT OF STUDENTS

Statement of Purpose

The Edison School District and its Board of Education (“the District”) are committed to creating and maintaining a learning environment that is free from sexual harassment. The District will not tolerate sexual harassment of students by school employees, other students, or third parties. The District will demonstrate its commitment to a harassment-free educational environment through ongoing educational programming for both students and staff. The Health Curriculum will be reviewed and updated annually so that sexual harassment, sexual assault, healthy relationships and consent are addressed as appropriate to each age group, and in accordance with best educational practices. The District will provide annual sexual harassment training to its certificated and non-certificated staff.

The District will promptly investigate all reports of sexual harassment of students whether by school employees, other students, or third parties, and will do so in accordance Title IX regulations. 34 C.F.R. Part 106. In addition, and where appropriate, reports of sexual harassment will be investigated in accordance with New Jersey’s Anti-Bullying Bill of Rights Act and Board Policy 5512, and in accordance with Board and administrative policies and procedures relative to code of conduct violations.

These regulations, together with Board Policy 5751, will be prominently posted on the District website. All stakeholders will be notified that the District does not discriminate on the basis of sex in its educational programming.

Definitions

Key terms that are pertinent to the understanding and implementation of these regulations are defined as follows, and in accordance with 34 CFR §106.30:

- A. “Sexual harassment” means conduct on the basis of sex that satisfies one or more of the following:
- (1) An employee of the school district conditioning the provision of an aid, benefit, or service of the school district on a student’s participation in unwelcome sexual conduct;
 - (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a student equal access to the school district’s education program or activity; or
 - (3) “Sexual assault” as defined in 20 U.S.C. §1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. §12291(a)(10), “domestic violence” as defined in 34 U.S.C. §12291(a)(8), or “stalking” as defined in 34 U.S.C. §12291(a)(30).
 - (4) Sexual harassment may take place electronically or on an online platform used by the District, including but not limited to, computer and internet networks; digital platforms; and computer hardware or software owned or operated by, or used in the operations of the District.
- B. “Complainant” means a student who is alleged to be the victim of conduct that could constitute sexual harassment, regardless of whether that person made the complaint to the Title IX Coordinator directly.
- C. “Decision-Maker” means a staff member(s) who is not the Title IX Coordinator or the school staff member who conducted the investigation, and is tasked with objectively evaluating the relative evidence and reaching conclusions about whether the Respondent is responsible for the alleged sexual harassment.
- D. “Formal complaint” means a document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that the school district investigate the allegation of sexual harassment. As used in this definition paragraph, the phrase “document filed by a Complainant” means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the school district) that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the formal complaint.

- E. “Investigator” means a staff member who may be the Title IX Coordinator but who is not a Decision-Maker, and who is designated to investigate alleged sexual harassment in accordance with 34 CFR §106.
- G. “Respondent” means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

Key Title IX Officials

The District Title IX Coordinator is the District administrator charged with overseeing compliance with Title IX. The Title IX Coordinator is available to discuss the grievance process, coordinate supportive measures, explain and clarify District policies and procedures, and provide education to District personnel. The Title IX Coordinator will oversee the administrative response to reports of sexual harassment and to Formal Complaints of sexual harassment. Any member of the school community may contact the Title IX Coordinator with questions or concerns. The Title IX Coordinator may designate one or more deputies to facilitate these responsibilities. Contact information will be prominently posted on the District website and in any handbooks that the District makes available to the school community.

In addition, and as will be more fully explained below, District appointed investigators, Decision Makers, and informal resolution facilitators will have key roles in the formal grievance process.

All staff members who work to facilitate the Title IX investigatory process in the District will be trained annually in the procedural and substantive requirements of Title IX. In fulfilling their responsibilities, these staff members will not rely upon or be influenced by stereotypes based on sex or gender identity. Their work in investigating and adjudicating Formal Complaints of sexual harassment will be impartial and bias free. All materials used to train staff members will be made publicly available on the District website in accordance with Title IX requirements.

Responsibilities of All District Staff

Each and every employee of the District who has actual knowledge of behavior that could constitute sexual harassment in a program or activity of the Board will promptly notify the Title IX Coordinator. Likewise, any complaint of sexual harassment will be promptly reported to the Title IX Coordinator. “Program or activity of the Board” includes any location, event or circumstances over which the District exercises substantial control over the Respondent. The obligation to report conduct of concern under this regulation does not abrogate the obligation of school personnel to report alleged conduct that implicates the Anti-Bullying Laws of New Jersey, or that requires reports to child welfare and/or law enforcement authorities.

Reporting Sexual Harassment

Any person may report sexual harassment to the Title IX Coordinator in person, by mail, by telephone, or by email, using the contact information listed for the Title IX Coordinator; or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time, including non-business hours.

Initial Response to a Report of Sexual Harassment

Upon receipt of a report of sexual harassment, the Title IX Coordinator will promptly contact the Complainant, regardless of whether the Complainant was the individual who initiated the report. During the initial contact, the Title IX Coordinator will:

- A. Explain the process for filing a formal complaint.
- B. Explain the grievance and investigatory process.
- C. Discuss the availability of "supportive measures" regardless of whether a formal complaint is filed.
 - a. "Supportive measures" are non-disciplinary, non-punitive, individualized services offered as appropriate and without fee or charge to the Complainant before or after the filing of a formal complaint or where no complaint has been filed.
 - b. Supportive measures will be offered even if the Respondent is no longer enrolled in the District or employed in the District.
- D. Consider the Complainant's wishes with regard to supportive measures.
- E. The Title IX Coordinator will maintain contact with the Complainant as appropriate to ensure the Complainant's safety, emotional and physical well-being are being addressed.

The Filing of a Formal Complaint

Consistent with the requirements of law, the District will treat Complainants and Respondents equitably by offering supportive measures to the Complainant and by

following a grievance process that complies with 34 CFR §106.45 before imposing any disciplinary sanctions on a Respondent.

A. The Formal Complaint

a. A formal complaint is one that alleges sexual harassment against a Respondent; requests that the District investigate the allegation; and is signed by a Complainant or the Title IX Coordinator.

- i. Nothing in these regulations will limit the right of a parent or legal guardian to act on the behalf of a Complainant that is a minor child. A parent or guardian may so act throughout all aspects of the Title IX grievance process.
- ii. At the time of filing a formal complaint, a Complainant must be participating in or attempting to participate in a District educational program or activity.
- iii. The District has formal complaint forms available on its website. These may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, or by using the contact information required to be listed for the Title IX Coordinator. Use of the District form is not required to initiate a complaint, but is offered only as a convenience.
- iv. The Title IX Coordinator will sign a formal complaint where appropriate to ensure that the District is responding to allegations of sexual harassment in a manner consistent with law and regulation. Doing so does not make the Title IX Coordinator a party in the grievance process.

b. Dismissal of a Complaint

- i. The complaint **must** be dismissed if the allegations would not constitute sexual harassment as defined by 34 C.F.R. §106.30 even if proved.
- ii. The complaint **must** be dismissed if the alleged conduct did not occur in a location, at an event or under circumstances over which the District exercises substantial control.
- iii. The complaint **must** be dismissed if the allegations did not occur against a person in the United States.

- iv. The complaint **may** be dismissed if the Complainant notifies the Title IX Coordinator in writing that they would like to withdraw the formal complaint or any of the allegations contained therein.
- v. The complaint **may** be dismissed if the Respondent is no longer enrolled in or employed by the District.
- vi. The complaint **may** be dismissed if specific circumstances prevent the District from gathering sufficient evidence to reach a determination as to the allegations of the formal complaint.
- vii. Dismissal may be appealed in accordance with the appeal procedures outlined below.

B. The Grievance Process

- a. Notice to the Parties: Upon receipt of a formal complaint, the Title IX Coordinator will provide the following in writing to all known parties:
 - i. An explanation of the District's grievance process.
 - ii. An explanation of the District's informal resolution process.
 - iii. Notice of the allegations of sexual harassment
 - iv. Notice that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility will be made at the conclusion of the grievance process.
 - v. Notice that the parties may have an advisor of their choice, who may be but is not required to be an attorney.
 - vi. Where the Respondent is a minor child, the parents and/or guardian of the Respondent retain all rights to participate in the grievance process on their child's behalf.
 - vii. Notice that the District code of code of conduct prohibits the making of false statements during the investigatory process.
- b. Both parties may be accompanied to any related meeting or proceeding by the advisor of their choice. However, neither party's advisor will be permitted to question witnesses. Neither party's advisor may

participate in interviews or meetings in which the represented party is not a participant.

- c. The grievance process is designed to treat all parties equitably and will be conducted by an unbiased Investigator appointed by the District. A determination of responsibility for sexual harassment and a determination regarding the imposition of disciplinary sanctions will not be made until the conclusion of the grievance process. The following general requirements will apply to the grievance process:
 - i. The burden of gathering sufficient evidence to make a determination rests with the District and the Decision Maker will base his/her/their determination on a preponderance of the credible evidence.
 - ii. The Respondent is presumed to not be responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
 - iii. The District will strive to complete the grievance process within ninety (90) business days. Temporary delays or extensions of this timeframe may occur for good cause shown. Written notice will be provided to the parties of the delay and/or extension of time with an explanation of the reasons for the delay.
 - iv. The District will not access, consider, disclose or use any party's records that are maintained by a physician or other recognized professional, and which are made and maintained in connection with the provision of treatment to the party, unless the District obtains that party's voluntary written permission to do so.
 - v. The District will not require, allow or rely upon evidence that constitutes or seeks disclosure of information protected under a legally recognized privilege, unless the person holding the privilege has waived it.
 - vi. The range of disciplinary sanctions include those found in the District code of conduct and in the applicable provisions of the New Jersey School Law, Title 18A.
 - vii. Parties and witnesses will be provided adequate notice of any meeting or interview to allow sufficient time to prepare.

- viii. The notice of allegations will be updated if the investigatory process reveals the need to investigate allegations not initially included in the notice to the parties.

d. Investigation of the Formal Complaint – The District will conduct an investigation of all Formal Complaints as follows:

- i. Each party will be provided with an equal opportunity to provide documents and other information to the investigator and to present witnesses for the investigator to interview. This information can include exculpatory and inculpatory evidence.
- ii. Prior to the issuance of an investigatory report, each party will be given an opportunity to inspect and review any evidence obtained that is directly related to the allegations raised in the Formal Complaint. This information will be supplied in either electronic or paper format.
- iii. The parties will have ten (10) business days to review the evidence and submit a written response to the investigator.
- iv. Following the inspection and review process noted above, the investigator will create an investigative report that fairly summarizes relevant evidence obtained during the investigation.
- v. At least ten (10) business days prior to any determination of responsibility, the investigator will provide each party and the party's advisor, if any, with a copy of the investigative report for their review and written response. All written responses will be shared with the Decision Maker.
- vi. The investigation will be completed within sixty (60) business days of the filing of the complaint.

e. The Question and Answer Period and the Determination Regarding Responsibility

- i. The Decision Maker will afford the parties an opportunity to submit written relevant questions that a party wishes to ask of any party or witness.
- ii. The Decision Maker will share the answers received with the parties, and allow for an opportunity for follow-up questions.

iii. Prior to sharing any proposed questions, the Decision Maker will make a determination regarding the relevancy of those questions. The following inquiries are considered not to be relevant and/or are not disclosable:

1. Questions about the sexual predisposition or history of the Complainant unless the questions are offered to prove that someone other than the Respondent committed the conduct alleged in the complaint or concern interactions with the Respondent that are offered to prove consent.

2. Privileged information will not be disclosed.

3. Medical records will not be shared unless the party provides voluntary written consent.

iv. After the completion of the question and answer period the Decision Maker will simultaneously provide the parties with a written determination. The decision becomes final upon receipt of the result of an appeal if one is filed, or after the time for appeal expires.

v. The written determination will include:

1. Identification of the allegations potentially constituting sexual harassment.

2. A description of the procedural steps taken to reach the determination

3. Findings of fact that support the determination.

4. Conclusions reached via application of the facts to District policy and the applicable law.

5. A statement of the rationale for the findings as to each allegation.

6. A determination regarding disciplinary sanctions that will be imposed on the Respondent.

7. A determination whether remedies designed to restore or preserve equal access to the Complainant will be provided.

8. An explanation of the process for appeal.

C. Appeals

- a. Any party can appeal the Determination of Responsibility within five (5) business days. Appeals will be made in writing to the Title IX Coordinator.
- b. The following are permitted bases for appeal:
 - i. A procedural irregularity that affected the outcome.
 - ii. New evidence that could effect the outcome and was not reasonably available at the time the determination regarding responsibility or dismissal was made.
 - iii. The Title IX Coordinator, Investigator or Decision Maker had a conflict of interest or bias that effected the outcome of the matter.
- c. Once an appeal is filed, the District will notify the other party and implement appeal procedures designed to allow equal participation by both parties.
- d. All appeals will be heard by a designee who is neither the Decision Maker, investigator or Title IX Coordinator.
- e. The non-appealing party will be allowed five (5) business days to reply to the appeal via a written statement.
- f. The hearer of the appeal will issue a written decision which may reverse, affirm or amend either the finding of responsibility or the determinations as to sanctions or remedies. Additionally, the hearer of the appeal may determine to remand the matter to the Decision Maker to remedy any procedural irregularity or consider new evidence.
- g. The hearer of the appeal will issue his/her/their decision within twenty (20) business days.

The Informal Resolution Process

At any time after a Formal Complaint has been signed and before a determination regarding responsibility has been reached, the parties may voluntarily agree in writing to participate in an informal resolution process facilitated by the District that does not involve full investigation or adjudication. The District may not require such

participation, nor may it require a waiver of any rights to a full investigation as a condition of continued enrollment or employment. Prior to entering the resolution process the Title IX Coordinator will supply the parties with written notice to include:

- A. The allegations of the complaint.
- B. Notice of the right to withdraw from the process and resume the grievance procedure at any time.
- C. Notice of any consequences of resolving the matter informally, to include but not limited to, when such resolution would preclude resuming a formal complaint arising from the same allegations.

The Informal Resolution process cannot be used to resolve allegations that an employee committed sexual harassment against a student.

The Informal Resolution Process will conclude within forty-five (45) business days of receipt of written notice that the parties desire to participate in the process, and will pause the timelines for completion of the grievance process accordingly.

Emergency Removal

At any time after receiving notice of alleged sexual harassment, the District may remove a Respondent, either student or employee, on an emergency basis after:

- A. Undertaking an individualized safety and risk analysis.
- B. Determining that an immediate threat to the physical health or safety of any student or other individual justifies removal.
- C. Providing the Respondent with notice and an opportunity to challenge the decision within two (2) business days following removal via the Title IX Coordinator.

In the event that a student Respondent is classified, the Title IX Coordinator will confer with the Director of Special Services and the student's case manager to ensure that all rights under the IDEA are preserved, and that any action to change the student's placement is undertaken in compliance with state and federal procedural requirements.

In the case of employee Respondents, the District will ensure compliance with all procedures for removal outlined in the New Jersey School Laws.

Record Retention

The District will maintain all documentation related to reports, investigations, resolution sessions, determinations and appeals under this regulation for a period of seven (7) years.

Consultation with Board Attorney

The Superintendent or designee shall consult with the Board Attorney to ensure the school district's response to any allegations of sexual harassment and the school district's grievance process are in accordance with 34 CFR §106.44 and 34 CFR §106.45.