

Section 3000 - Community Relations
Title Anti-Harassment, Non-Discrimination, & Title IX Policy For Students and Employees
Code 3420
Status Active
Adopted February 4, 2021
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**SUBJECT: ANTI-HARASSMENT, NON-DISCRIMINATION, & TITLE IX POLICY
FOR STUDENTS AND EMPLOYEES**

Overview

The District is committed to creating and maintaining an environment free from discrimination and harassment. This policy addresses complaints of discrimination and/or harassment, including sexual harassment, made under applicable federal and state laws and regulations, as well as any applicable District policy, regulation, procedure, or other document such as the District's *Code of Conduct*. It is just one component of the District's overall commitment to maintaining a discrimination and harassment-free educational and work environment.

In accordance with applicable federal and state laws and regulations, the District does not discriminate on the basis of any legally protected class or category in its educational programs and activities or when making employment decisions. Further, the District prohibits discrimination and harassment on the basis of any legally protected class including, but not limited to:

- a. Race;
- b. Color;
- c. Religion;
- d. Disability;
- e. National origin;
- f. Sexual orientation;
- g. Gender identity or expression;
- h. Military status;
- i. Sex;
- j. Age; or,
- k. Marital status.

The District adopts this policy as part of its effort to provide for the prompt and equitable resolution of complaints of discrimination and/or harassment. The District will promptly respond to reports of discrimination and/or harassment, ensure investigations are conducted within a

reasonably prompt time frame that provides due process protections, and imposes responsive measures and remedies whenever warranted.

Scope and Application

This policy outlines the District's general approach to addressing complaints of discrimination and/or harassment, including sexual harassment. This policy applies to the dealings between or among the following parties on school property and at school functions, or when it occurs off school property and creates, or could be expected to create, a risk of disruption within the school environment:

- a. Students;
- b. Employees;
- c. Applicants for employment;
- d. Paid or unpaid interns;
- e. Anyone who is (or is employed by) a contractor, subcontractor, vendor, consultant, or other person providing services pursuant to a contract in the workplace;
- f. Volunteers; and
- g. Visitors or other third parties.

Discrimination and/or harassment that occurs off school property and somewhere other than a school function can disrupt the District's educational and work environment. This conduct can occur in-person or electronically, including through phone calls, texts, emails, or social media. Accordingly, conduct or incidents of discrimination and/or harassment that create or is foreseeably likely to create a disruption within the District may be subject to this policy in certain circumstances.

Definitions

For purposes of this policy, the following definitions apply:

- a. "School property" means in or within any building, structure, athletic playing field, playground, parking lot, or land contained within the real property boundary line of any District elementary or secondary school, or in or on a school bus or District vehicle.
- b. "School function" means a school-sponsored or school-authorized extracurricular event or activity regardless of where the event or activity takes place, including any event or activity that may take place virtually or in another state.

What Constitutes Discrimination and Harassment

Determinations as to whether conduct or an incident constitutes discrimination and/or harassment will be made consistent with applicable federal and state laws and regulations, as well as any applicable District policy, regulation, procedure, or other document such as the District's *Code of Conduct*. These determinations may depend upon a number of factors, including, but not limited to: the particular conduct or incident at issue; the ages of the parties involved; the context in which the conduct or incident took place; the relationship of the parties to one another; the relationship of the parties to the District; and the protected class or characteristic that is alleged to have been the basis for the conduct or incident. The examples below are intended to serve as a general guide for individuals in determining what may constitute discrimination and/or harassment. These examples should not be construed to add or limit the rights individuals and entities possess as a matter of law.

Discrimination consists of the differential treatment of a person or group of people on the basis of their membership in a legally protected class. Discriminatory actions may include but are not limited to: refusing to promote or hire an individual on the basis of membership in a protected class; denying an individual access to facilities or educational benefits on the basis of membership in a protected class; or impermissibly instituting policies or practices that disproportionately and adversely impact members of a protected class.

Harassment consists of subjecting an individual, on the basis of membership in a legally protected class, to unwelcome verbal, written, or physical conduct which may include, but is not limited to: derogatory remarks, signs, jokes, or pranks; demeaning comments or behavior; slurs; mimicking; name calling; graffiti; innuendo; gestures; physical contact; stalking; threatening; bullying; extorting; or the display or circulation of written materials or pictures.

This conduct may, among other things, have the purpose or effect of: subjecting the individual to inferior terms, conditions, or privileges of employment; creating an intimidating, hostile, or offensive environment; substantially or unreasonably interfering with an individual's work or a student's educational performance, opportunities, benefits, or well-being; or otherwise adversely affecting an individual's employment or educational opportunities. Petty slights or trivial inconveniences generally do not constitute harassing conduct.

What Constitutes Sexual Harassment

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 when:

- (1) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's education and/or employment;
- (2) Submission to, or rejection of, such conduct by an individual is used as the basis for educational and/or employment decisions affecting such individual (e.g., promotion, transfer, demotion, termination); or

- (3) Such gender-based conduct has the purpose or effect of unreasonably interfering with an individual's education or work performance, or of creating an intimidating, hostile or offensive educational or working environment, even if the reporting individual is not the intended target of the sexual harassment.

Who can be the target of sexual harassment?

Sexual harassment can occur between any individuals, regardless of their sex or gender. New York Law protects students, employees, paid or unpaid interns, and non-employees, including independent contractors, and those employed by companies contracting to provide services in the workplace. Harassers can be a student, superior, a subordinate, a coworker or anyone in the workplace including an independent contractor, contract worker, vendor, client, customer or visitor.

Where can sexual harassment occur?

Unlawful sexual harassment is not limited to District property. It can occur between students off District property. It can occur while employees are traveling for business or at employer sponsored events or parties. Calls, texts, emails, and social media usage can constitute unlawful harassment, even if they occur away from the District, on personal devices or during non-school or non-work hours.

Prohibited Behavior and Examples of Harassment, including Sexual Harassment

Specific forms of behavior the District considers harassment or sexual harassment are set forth below. Every conceivable example cannot be delineated herein, and thus the descriptions below should not be interpreted in any way as being all-inclusive.

- **Verbal:** Abusive verbal language including jokes, comments, teasing or threats related to a student's or employee's protected characteristic, sexual activity and/or body parts whether or not said in that person's presence including, but not limited to: sexual innuendos; slurs; suggestive, derogatory, or insulting comments or sounds; whistling; jokes; propositions; threats; comments on a person's appearance that make the person feel uncomfortable because of his or her protected characteristic; sex stereotyping, continuing to ask someone for dates or to meet after school/work after the person has made it clear that he or she does not want to go; comments about the person's anatomy or protected characteristic that are unwelcome, unreasonably interfere with an individual's educational or work performance, or create an intimidating, hostile or offensive school or work environment; and unwelcome advances or demands based on someone's protected characteristic.
- **Nonverbal:** Abusive written language showing or displaying pornographic or sexually explicit objects or pictures; graphic commentaries based on a protected characteristic; derogatory cartoons or caricatures; luring or obscene gestures in the workplace; staring at a person's body in a sexually suggestive manner; gestures or motions based on a protected characteristic; sending material through the District e-

mail system or other electronic communication devices (e.g. voice mail) or using the District's mail, computers or cell phones to view material that is demeaning or derogatory based on one's protected characteristic.

- **Physical:** Unwelcome physical conduct, including but not limited to: hitting, pushing, shoving, slapping, petting, pinching, grabbing, holding, hugging, kissing, tickling, massaging, displaying private body parts, coerced sexual intercourse, rape or assault or attempts to commit these assaults, persistent brushing up against a person's body, unnecessary touching and flashing or other unwelcome physical conduct.
- **Other:** Hostile actions taken against an individual because of an individual's sex, sexual orientation, gender identity and the status of being transgender or because of any other protected characteristic, such as: interfering with, destroying or damaging a person's education or work-station, tools, or equipment, or otherwise interfering with the individual's ability to obtain an education or perform the job; sabotaging an individual's work; bullying, yelling, or name-calling.

Any student or employee who feels discriminated against or harassed should report that occurrence so that any violation of this Policy can be corrected promptly. Any harassing conduct, even if a single incident, can be addressed under this Policy.

Title IX Discrimination

Title IX prohibits discrimination on the basis of sex in any education program or activity operated by a district that receives federal financial assistance. As required by Title IX, the District does not discriminate on the basis of sex in its education programs and activities, and/or when making employment decisions.

What Constitutes Sex Discrimination Including Sexual Harassment under Title IX

Title IX prohibits in an educational setting, various types of sex discrimination including, but not limited to: sexual harassment; the failure to provide equal athletic opportunity; sex-based discrimination in a District's educational courses and programs; and discrimination based on pregnancy.

Under Title IX, sexual harassment includes conduct on the basis of sex that satisfies one or more of the following:

- a) An employee of the District conditioning the provision of an aid, benefit, or service of the District 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 District's educational program or activity;

- c) Sexual Assault, meaning an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation;
- d) Dating or domestic violence; or,
- e) Stalking.

A “formal complaint” may be filed by the complainant or the Title IX coordinator alleging sexual harassment, and requesting that the school investigate the allegation of sexual harassment. It may be a hard copy document or an electronic document submitted via email or an online portal. Whether it is a hard copy document or an electronic document, it must contain the complainant’s physical or digital signature or other indicate that the complainant is the person filing the formal complaint. If the complaint is filed by the Title IX coordinator, that individual may sign the complaint. A parent or guardian may also file a formal complaint on a minor student’s behalf.

If the allegations in a formal complaint do not meet the definition of sexual harassment under Title IX, or are deficient for some other reason under Title IX, the District may dismiss the complaint for the purposes of Title IX, but may still address the allegations in any manner the deems appropriate under the *Code of Conduct*, and/or a variety of other laws including, but not limited to, Title VII of the Civil Rights Act of 1964. These alternative methods of prosecuting sexual harassment allegations have different standards and obligations than those of Title IX which has a very structured process of handling sex harassment allegations. The Title IX coordinator and/or the CRCO and/or another designated representative of the District will explain the processes to the complainant at the time that the complaint is made.

Reporting Allegations of Discrimination and/or Harassment to the District – Title IX Coordinator

The District has designated the following District employee(s) to serve as its Title IX Coordinator(s):

Jodi A. Birch, Business Manager
25 Kniskern Avenue Mechanicville, NY 12118
jbirch@mechanicville.org
518-664-5727 ext. 1100

The Title IX Coordinator(s) will coordinate the District’s efforts to respond to sex-based discrimination and harassment under Title IX of the Education Amendments of 1972.

Civil Rights Compliance Officer

*The District has designated the following District employee(s) to serve as its CRCO(s):

Jodi A. Birch, Business Manager
25 Kniskern Avenue Mechanicville, NY 12118
jbirch@mechanicville.org
518-664-5727 ext. 1100

The CRCO(s) will coordinate the District's efforts to comply with its responsibilities under applicable non-discrimination and anti-harassment laws and regulations including, but not limited to: the Americans with Disabilities Act of 1990, Section 504 of the Rehabilitation Act of 1973, Title VI of the Civil Rights Act of 1964, and the Age Discrimination Act of 1975.

Where appropriate, the CRCO(s) and Title IX Coordinator(s) may seek the assistance of other District employees, or third parties in investigating, responding to, and remedying complaints of discrimination and/or harassment.

Filing a Report

Any person may report discrimination and/or harassment regardless of whether they are the alleged victim or not. Reports may be made in person, by using the contact information for the CRCO or Title IX Coordinator, or by any other means that results in the District receiving the person's oral or written report. This report may be made at any time (including during non-business hours).

Reports of discrimination and/or harassment may also be made to any other District employee including a supervisor or building principal. All reports of discrimination and/or harassment will be immediately forwarded to the appropriate District representative.

All District employees who witness or receive an oral or written report of discrimination and/or harassment must immediately inform their supervisor and/or the CRCO or Title IX Coordinator. Failure to immediately inform the District may subject the employee to discipline, up to and including, termination.

The Superintendent of Schools shall be empowered to develop regulations implementing this policy. Such implementing regulations shall be provided to the Board for its review to ensure consistency with this policy and the law.

**REGULATIONS: Anti-Harassment, Non-Discrimination, & Title IX Policy For Students and Employees
Code 3420R**

General Requirements for the Investigative Process

During the investigation of a formal complaint and throughout the grievance process, the District will ensure that:

- a) Complainants and respondents are treated equitably. This includes applying any provisions, rules, or practices incorporated into the District's grievance process, other than those required by law or regulation, equally to both parties.
- b) All relevant evidence is objectively evaluated, including both inculpatory and exculpatory evidence. Inculpatory evidence implicates or tends to implicate an individual in a crime or wrongdoing. Exculpatory evidence frees or tends to free an individual from blame or accusation.
- c) The Title IX Coordinator, the CRCO, investigator, and/or decision-maker involved in the grievance process, or any person designated by the District to facilitate any informal resolution process does not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.
- d) Respondents are presumed not to be responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
- e) The grievance process, including any appeals or informal resolutions, is concluded within a reasonably prompt time frame and that the process is only temporarily delayed or extended for good cause. Good cause includes, but is not limited to, considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. Whenever the time frame is temporarily delayed or extended, written notice will be provided to all complainants and respondents of the delay or extension and the reasons for the action.
- f) The range of possible disciplinary sanctions and remedies that may be implemented by the District following any determination regarding responsibility are described to any known party.
- g) The standard of evidence used to determine responsibility in all complaints is based upon the standard required by law.
- h) The procedures and permissible bases for an appeal are known to all complainants and respondents.

- i) The range of supportive measures available are known to all complainants and respondents.
- j) There is no requirement, allowance of, reliance on, or otherwise use of questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding the privilege has waived the privilege.
- k) The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the District and not on the parties.
- l) The Title IX Coordinator, the CRCO, the investigator, any decision-maker, or any other person participating on behalf the District does not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, 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 consent to do so for the grievance process. If the party is not an eligible student, as defined in FERPA as a student who has reached 18 years of age or is attending a post-secondary institution, the District will obtain the voluntary, written consent of a parent.
- m) The parties have an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
- n) Credibility determinations are not be based on a person's status as a complainant, respondent, or witness.
- o) The ability of either party to discuss the allegations under investigation or to gather and present relevant evidence is not restricted.
- p) The parties are provided 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 any 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.
- q) Written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, is provided to any party whose participation is invited or expected with sufficient time for the party to prepare to participate.
- r) The parties are provided with equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a complaint, including the evidence upon which the District does not intend to rely on 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.

- s) Any document sent to a minor or legally incompetent person is also sent to the party's parent or legal guardian.
- t) Any document sent to a party is also sent to the party's advisor, if known.

After a Report Has Been Made

After receiving a report of harassment, including sexual harassment, and/or discrimination has been made, the investigating officer will:

- a) Promptly contact the complainant to discuss and offer supportive measures;
- b) Inform the complainant both of the range of supportive measures available and that these measures are available regardless of whether a formal complaint is filed;
- c) Consider the complainant's wishes with respect to supportive measures; and
- d) Explain to the complainant the process for filing a formal complaint.

The District may also contact the respondent to discuss and/or impose supportive measures.

Requests for confidentiality or use of anonymous reporting may limit how the District is able to respond to a report.

Emergency Removal and Administrative Leave

At any point after receiving a report or formal complaint of harassment, including sexual harassment, and/or discrimination, the District may immediately remove a respondent from the District's education program or activity on an emergency basis, provided that the District:

- a) Undertakes an individualized safety and risk analysis;
- b) Determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations justifies removal; and
- c) Provides the respondent with notice and an opportunity to challenge the decision immediately following the removal.

The District should coordinate with special education staff when initiating an emergency removal of a student with a disability from an education program or activity as the removal could constitute a change of placement under the IDEA or Section 504.

The District may place a non-student employee respondent on administrative leave with or without pay during the pendency of the grievance process in accordance with law and regulation and any applicable District policy, procedure, collective bargaining agreement, or other document such as the District's *Code of Conduct*.

Written Notice of Allegations

Upon receipt of a complaint, as appropriate, the District will endeavor to send all known parties written notice of:

- a) The District's grievance process, including any informal resolution process; and
- b) The allegations of which will:
 1. Provide sufficient details known at the time and sufficient time to prepare a response. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting harassment and/or discrimination, and the date and location of the alleged incident, if known;
 2. State that the respondent is presumed not to be responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;
 3. Inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney;
 4. Inform the parties that they may inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised; and
 5. Include notice of any provision in any applicable District policy, procedure, collective bargaining agreement, or other document such as the District's *Code of Conduct* that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

If, in the course of an investigation, the District decides to investigate allegations about any complainant or respondent that were not included in the initial notice, the District will provide another notice of the additional allegations to the parties whose identities are known.

Investigation of a Complaint

The Title IX Coordinator and/or the CRCO will oversee the District's investigation of all complaints. During the investigation of a complaint, the Title IX Coordinator or the CRCO another District employee may serve as the District's investigator. The District may also outsource all or part of an investigation to appropriate third parties. The outsourcing of all or part of an investigation does not relieve the District from its obligation to comply with law and regulation.

It is anticipated that most investigations will be completed within a reasonably prompt time frame after receiving a formal complaint.

During the investigation of a complaint, the investigator will, as appropriate:

- a) Collect, review, and preserve all evidence including, but not limited to, any relevant documents, videos, electronic communications, and phone records.
- b) Interview all relevant persons including, but not limited to, any complainants, respondents, and witnesses. Interviews of complainants and respondents will be conducted separately. If a student is involved, the District will follow any applicable District policy, procedure, or other document such as the District's *Code of Conduct* regarding the questioning of students.
- c) Create written documentation of the investigation (such as a letter, memo, or email), which contains the following:
 1. A list of all documents reviewed, along with a detailed summary of relevant documents;
 2. A list of names of those interviewed, along with a detailed summary of their statements;
 3. A timeline of events; and
 4. A summary of prior relevant incidents, reported or unreported.
- d) Keep any written documentation and associated documents in a secure and confidential location.

Prior to completion of the investigative report, the District will 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. The parties will have at least ten (10) days to submit a written response, which the investigator will consider prior to completion of the investigative report.

At the end of the investigation, an investigative report will be created that fairly summarizes all relevant evidence.

At least ten (10) days prior to a hearing or other determination regarding responsibility, the investigative report will be sent to each party and the party's advisor, if any, in an electronic format or a hard copy, for their review and written response.

Informal Resolutions

Before reaching a determination regarding responsibility, the District may offer and facilitate the use of an informal resolution process, such as mediation, that does not involve a full investigation and adjudication of the formal complaint.

It is anticipated that most informal resolutions will be completed within a reasonably prompt time frame.

The District will not require that parties participate in an informal resolution process. The District will not offer or facilitate an informal resolution process to resolve allegations that an employee harassed, including sexually harassed, or discriminated against a student. Further, the District will not require the waiver of the right to an investigation and adjudication of complaints as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right.

If the District offers and facilitates the use of an informal resolution process, it will:

- a) Provide written notice to all known parties which details:
 1. The allegations in the complaint;
 2. The requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a 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;
 3. Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared; and
- b) Obtain the parties' voluntary, written consent to the informal resolution process.

Hearings and Determination Regarding Responsibility

The District will designate an individual decision-maker or a panel of decision-makers to issue a written determination regarding responsibility. A decision-maker can either be a District employee or, where appropriate, a third-party. They cannot be the same individual as either the Title IX Coordinator, CRCO, or the investigator(s).

The District's grievance process may, but is not required to, provide for a hearing. The determination as to whether a hearing will be provided will be made on a case-by-case basis. If a hearing is provided, the District will make all evidence subject to the parties' inspection and review available to give each party equal opportunity to refer to this evidence during the hearing, including for purposes of cross-examination.

With or without a hearing, before reaching a determination regarding responsibility, the decision-maker(s) will afford each party the opportunity to:

- a) Submit written, relevant questions that a party wants asked of any party or witness within five (5) business days after the parties have received the investigative report;
- b) Provide each party with the answers given by any party or witness within seven (7) business days of receiving the questions; and,
- c) Allow for additional, limited follow-up questions and responses from each party to occur within five (5) business days after the parties have received responses to their initial questions.

The decision-maker(s) will issue a written determination regarding responsibility to the Title IX Coordinator or CRCO, as applicable, the Superintendent, and all parties simultaneously within twenty (20) business days after all follow-up questions have been responded to or after the hearing, if one has been provided.

The written notice of the determination regarding responsibility will include:

- a) Identification of the allegations potentially constituting harassment, including sexual harassment, and/or discrimination;
- b) A description of the procedural steps taken from the receipt of the 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 any applicable District policy, procedure, collective bargaining agreement, or other document such as the District's *Code of Conduct* to the facts;
- e) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the District is imposing on the respondent, and whether remedies 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.

Finality of Determination Regarding Responsibility

The determination regarding responsibility becomes final either on the date that the District provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

Where a determination regarding responsibility for harassment, including sexual harassment, and/or discrimination has been made against the respondent, remedies will be

provided to a complainant and disciplinary sanctions may be imposed on a respondent. Remedies and disciplinary sanctions will be implemented in accordance with applicable laws and regulations, as well as any District policy, procedure, collective bargaining agreement, or other document such as the District's *Code of Conduct*.

Appeals

Either party may file an appeal from a determination regarding responsibility or from the District's dismissal of a formal complaint or any of its allegations. Appeals must be submitted in writing to Kevin Kolakowski, Superintendent of Schools within thirty (30) days of the written notice of the determination regarding responsibility or dismissal of the formal complaint or any of its allegations.

An appeal may only be based upon one or more of the following bases:

- a) Procedural irregularity that affected the outcome of the matter;
- b) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- c) The 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 of the matter.

The bases on which a party is seeking an appeal should be specifically stated in the party's written appeal.

Upon receipt of an appeal, the District will:

- a) Notify the other party in writing that an appeal has been filed and implement appeal procedures equally for both parties;
- b) Ensure that any decision-maker for the appeal:
 1. Is not the same person as any decision-maker that reached the initial determination regarding responsibility or dismissal, the investigator, the Title IX Coordinator, or the CRCO;
 2. Does not have any conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent;
- c) Give all parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome. Parties will have to submit these written statements within thirty (30) days after the parties have been notified of the appeal;
- d) Issue a written decision describing the result of the appeal and the rationale for the result; and,

- e) Provide the written decision simultaneously to the Title IX Coordinator or CRCO as applicable the Superintendent, and all parties within thirty (30) days after receiving the parties written statements in support of, or challenging, the outcome.

Knowingly Makes False Accusations

Any employee or student who knowingly makes false accusations against another individual as to allegations of discrimination and/or harassment will face appropriate disciplinary action.

Prohibition of Retaliatory Behavior (Commonly Known as "Whistle-Blower" Protection)

The District prohibits retaliation against any individual because the individual made a report or complaint, testified, assisted, or participated or refused to participate in an investigation, proceeding, or hearing related to a complaint of discrimination and/or harassment.

Confidentiality

To the extent possible, all complaints will be treated as confidential. Disclosure may be necessary in certain circumstances such as to complete a thorough investigation and/or notify law enforcement officials. All disclosures will be in accordance with law and regulation.

Notification

Prior to the beginning of each school year, the District will issue an appropriate public announcement or publication which advises students, parents or legal guardians, employees, and other relevant individuals of the District's established grievance process for resolving complaints of discrimination and/or harassment. This announcement or publication will include the name, office address, telephone number, and email address of the CRCO(s). The District's website will reflect current and complete contact information for the CRCO(s).

A copy of this policy and its corresponding regulations and/or procedures will be available upon request and will be posted and/or published in appropriate locations and/or District publications.

Additional Provisions

Regulations and/or procedures will be developed for reporting, investigating, and remedying allegations of discrimination and/or harassment.

Legal Protections and External Remedies

Discrimination and harassment based on protected characteristics, including sexual harassment, are not only prohibited by the District but are also prohibited by state, federal, and, where applicable, local law.

Aside from the internal process at the District, employees may also choose to pursue legal remedies with the following governmental entities. While a private attorney is not required to file a complaint with a governmental agency, you may seek the legal advice of an attorney.

In addition to those outlined below, employees in certain industries may have additional legal protections.

State Human Rights Law (HRL)

The Human Rights Law (HRL), codified as N.Y. Executive Law, art. 15, § 290 et seq., applies to all employers in New York State with regard to sexual harassment and harassment based on other protected characteristics set forth in this Policy, and protects employees, paid or unpaid interns and non-employees, regardless of immigration status. A complaint alleging violation of the Human Rights Law may be filed either with the Division of Human Rights (DHR) or in New York State Supreme Court.

Complaints with DHR may be filed any time **within one year** of the harassment. If an individual did not file at DHR, they can sue directly in state court under the HRL, **within three years** of the alleged harassment, including sexual harassment. An individual may not file with DHR if they have already filed a HRL complaint in state court.

Complaining internally to the District does not extend your time to file with DHR or in court. The one year or three years is counted from the date of the most recent incident of harassment.

You do not need an attorney to file a complaint with DHR, and there is no cost to file with DHR.

DHR will investigate your complaint and determine whether there is probable cause to believe that sexual or other illegal harassment has occurred. Probable cause cases are forwarded to a public hearing before an administrative law judge. If sexual or other illegal harassment is found after a hearing, DHR has the power to award relief, which varies but may include requiring your employer to take action to stop the harassment, or redress the damage caused, including paying of monetary damages, attorney's fees (in sex discrimination and sexual harassment cases only) and civil fines.

DHR's main office contact information is: NYS Division of Human Rights, One Fordham Plaza, Fourth Floor, Bronx, New York 10458. You may call (718) 741-8400 or visit: www.dhr.ny.gov.

Contact DHR at (888) 392-3644 or visit dhr.ny.gov/complaint for more information about filing a complaint. The website has a complaint form that can be downloaded, filled out, notarized and mailed to DHR. The website also contains contact information for DHR's regional offices across New York State.

Civil Rights Act of 1964

The United States Equal Employment Opportunity Commission (EEOC) enforces federal anti-discrimination laws, including Title VII of the 1964 federal Civil Rights Act (codified as 42 U.S.C. § 2000e et seq.). An individual can file a complaint with the EEOC anytime within 300 days from the discrimination or harassment. There is no cost to file a complaint with the EEOC. The EEOC will investigate the complaint, and determine whether there is reasonable cause to believe that discrimination has occurred, at which point the EEOC will issue a Right to Sue letter permitting the individual to file a complaint in federal court.

The EEOC does not hold hearings or award relief, but may take other action including pursuing cases in federal court on behalf of complaining parties. Federal courts may award remedies if discrimination is found to have occurred. In general, employers must have at least 15 employees to come within the jurisdiction of the EEOC.

An employee alleging discrimination at work can file a "Charge of Discrimination." The EEOC has district, area, and field offices where complaints can be filed. Contact the EEOC by calling 1-800-669-4000 (TTY: 1-800-669-6820), visiting their website at www.eeoc.gov or via email at info@eeoc.gov.

If an individual filed an administrative complaint with DHR, DHR will file the complaint with the EEOC to preserve the right to proceed in federal court.

Local Protections

Many localities enforce laws protecting individuals from sexual harassment and discrimination. An individual should contact the county, city or town in which they live to find out if such a law exists.

Contact the Local Police Department

If the harassment involves unwanted physical touching, coerced physical confinement or coerced sex acts, the conduct may constitute a crime. Contact the local police department.

References:

- Age Discrimination in Employment Act of 1967 29 U.S.C. §§621 et seq.
- Americans with Disabilities Act, 42 U.S.C. §§12101 et seq.

- Title VI, Civil Rights Act of 1964, 42 U.S.C. §§2000d et seq. (nondiscrimination based on race, color, and national origin in federally assisted programs)
- Title VII, Civil Rights Act of 1964, 42 U.S.C. §§2000e et seq. (nondiscrimination based on race, color, and national origin in employment)
- Title IX, Education Amendments of 1972, 20 U.S.C. §§1681 et seq. (nondiscrimination based on sex)
- §504, Rehabilitation Act of 1973, 29 U.S.C. §794
- Individuals with Disabilities Education Law, 20 U.S.C. §§1400 et seq.
- Genetic Information Nondiscrimination Act of 2008 P.L. 110-233
- 34 C.F.R. §§ 100.6; 104.8; 106.9; 110.25
- Executive Law §§290 et seq. (New York State Human Rights Law)
- Education Law §§10-18 (The Dignity for All Students Act)
- Education Law §§313(3); 3201; 3201-a
- ADA Best Practices Tool Kit for State and Local Governments, Website Accessibility Under Title II of the ADA (see Chapter 5 and Chapter 5 Addendum checklist), www.ada.gov/pcatoolkit/toolkitmain.htm