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| Book         | Ogdensburg City School District             |
| Section      | 0000 Philosophy, Goals and Objectives       |
| Title        | SEXUAL HARASSMENT GRIEVANCES UNDER TITLE IX |
| Code         | 0111                                        |
| Status       | First Reading                               |
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### **(X) Required**

- ( ) Local  
(x) Notice

Under federal regulations implementing Title IX, sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

1. A district employee conditioning the provision of an aid, benefit, or service of the district on an individual'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 person equal access to the 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).

Federal Title IX regulations only address complaints of discrimination or harassment occurring against a person in the United States.

If contacted by a person alleging sexual harassment under Title IX, the Title IX Coordinator will explain the process for filing a formal complaint, which initiates an investigation into the Title IX sexual harassment allegations.

If any district employee is notified of alleged sexual harassment, they must inform the Title IX Coordinator.

Complaints of discrimination on the basis of sex under federal Title IX regulations are addressed in the manner provided by policy 0100, Non-Discrimination and Equal Opportunity. If alleged discrimination or sexual harassment is not covered by Title IX regulations, it may be covered by state laws, addressed in district policies 0100, Non-Discrimination and Equal Opportunity; 0110.2, Sexual Harassment in the Workplace; 0115, Student Harassment and Bullying Prevention and Intervention; and 5300, Code of Conduct.

### **Supportive Measures**

Once the district has notice of sexual harassment or allegations of sexual harassment, the Title IX Coordinator will promptly contact the complainant of sexual harassment under Title IX and discuss the availability of supportive measures regardless of whether the complainant chooses to file a formal complaint under Title IX or not. Potential supportive measures offered to both complainants and respondents include:

- Counseling,
- Extensions of deadlines or other course-related adjustments,
- Modifications of work or class schedules,
- Campus escort services,

- Mutual restrictions on contact between the parties,
- Changes in work locations,
- Leaves of absence,
- Increased security and monitoring of certain areas.

The Title IX coordinator will discuss and determine the complainant's wishes with respect to supportive measures.

### **Formal Complaints**

A formal complaint is a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment under Title IX against an individual and requesting that the district investigate the allegation of sexual harassment under Title IX. The formal complaint must be a written document but need not be in any specific form. At the time a formal complaint is filed, the complainant must be participating or attempting to participate in the district's education program or activity.

The formal complaint investigation and process will only be triggered when the complainant files a formal complaint of sexual harassment under Title IX.

The district will investigate the complaint and make determinations regarding a complaint's allegations using a preponderance of evidence standard.

The Title IX Coordinator, investigator, decision-maker or facilitator of an informal resolution process, if applicable, must not have a conflict of interest or bias for or against complainants or respondents. All individuals with conflicts of interest or bias must recuse themselves.

The roles of Title IX Coordinator, investigator, and decision-maker will be held by different persons.

### **District Responsibilities**

Throughout the Title IX process the district will, among other things:

- Treat complainants and respondents equitably.
- Perform an objective evaluation of all available evidence.
- Presume that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
- Ensure that no information protected by a legal privilege such as the attorney-client privilege may be used for any purpose or be sought through disclosure unless the person holding the privilege has waived such privilege.

### **Timeframes**

The district has established reasonably prompt approximate time frames for the conclusion of the grievance process and informal resolution process, unless delayed or extended. Written notice of a formal complaint to known parties will be given approximately 5 calendar days following receipt of a complaint. Investigations of complaints will begin approximately 5 calendar days following receipt of a complaint. Determinations will be made approximately 7 calendar days following starting an investigation. Informal resolution will begin approximately 7 calendar days following acceptance of both parties in writing, and will conclude in approximately 7 calendar days.

The time frames for appeals are set forth in the section below on Appeals.

The district has also established a process that allows for a temporary delay or limited extension of timeframes for good cause with notice to the parties that includes the reason for the delay.

- Good cause may include 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.
- The Title IX Coordinator will evaluate the request for an extension of timeframes and make a prompt determination to either extend the timeframes, or take or recommend other action to be able to meet the timeframes.
- If an extension is granted, the Title IX Coordinator will notify the parties in writing of the reason(s) for the delay, and the estimated date the stages in the timeframe will be complete.

### **Notice**

Upon receipt of a formal complaint of sexual harassment under Title IX, the district will provide written notice to the complainant and respondent(s) in sufficient time to allow the parties who are known to prepare a response before an initial interview.

The notice to the complainant and respondent will include, among other items:

- Information regarding the grievance process and the informal resolution process.
- The conduct allegedly constituting sexual harassment under Title IX, and if known, the identities of the parties involved in the incident, as well as the date and location of the alleged incident.
- A statement that the respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
- Notification that the parties may inspect and review evidence.
- Policies regarding knowingly making false statements or submitting false information during the grievance process.
- Notification that after commencing an investigation of a formal complaint, the district may decide to also investigate allegations that were not included in the initial notice to the parties. In that case, the district will provide notice of the additional allegations to the parties.

#### **Optional section: Informal Resolution**

In lieu of resolving a formal complaint through the district's Title IX grievance procedures, at any time prior to reaching a determination of responsibility, the parties may instead elect to participate in a district-facilitated informal resolution process such as mediation, which does not involve a full investigation and determination. The district will obtain the parties' voluntary written consent to the informal resolution process. Informal resolution is not available to resolve a complaint that includes allegations that an employee engaged in sex-based harassment of an elementary school or secondary school student, or when such a process would conflict with Federal, State, or local law.

The district will provide the parties with a written notice of:

- The allegations.
- The requirements of the informal resolution process.
- 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 formal complaint grievance process.
- Any consequences that result from participation in informal resolution, including records that will be maintained or could be shared.

#### **Investigations**

Upon receipt of a formal complaint of sexual harassment under Title IX, the Title IX Coordinator will assign an investigator. The assigned harassment investigator will:

- Gather additional information through interviews of the complainant, respondent, and witnesses and synthesize the information in a report.
- The investigator has the discretion to determine the relevance of any witness or other evidence and may exclude information in preparing the investigation report if the information is irrelevant, immaterial, or more prejudicial than informative.
- Produce a written report that contains the relevant information and facts learned during the investigation, and may include direct observations and reasonable inferences drawn from the facts and any consistencies or inconsistencies between the various sources of information. The investigator may exclude statements of personal opinion by witnesses and statements as to general reputation for any character trait, including honesty. The investigator will not make a finding or recommended finding of responsibility. The investigator's report will include credibility assessments based on their experience with the complainant, respondent, and witnesses, as well as the evidence provided.
- The investigator's written report will be provided to both parties and their representatives, if any.

During the formal complaints process, the parties will have an equal opportunity to:

- Present witnesses and to gather and present relevant evidence.
- Have others present during any grievance proceeding, including the representative of their choice who may be, but is not required to be, an attorney.
- Inspect and review all evidence obtained as part of the investigation that is directly related to the allegations in the complaint, and respond to the evidence prior to the conclusion of the investigation.

Parties must be given at least ten (10) calendar days to submit a written response that the investigator will consider prior to completing the investigative report.

### **Dismissal**

The district must dismiss a formal complaint when the conduct alleged in the formal complaint of sexual harassment under Title IX:

- Would not constitute sexual harassment under Title IX even if proved;
- Did not occur in the district's education program or activity; or
- Did not occur against a person in the United States.

Such a dismissal does not preclude action under another provision of the district's code of conduct, or another policy adopted pursuant to state law.

The district may dismiss a formal complaint when:

- A complainant notifies the Title IX Coordinator in writing that they would like to withdraw the formal complaint or any of its allegations;
- The respondent is no longer enrolled or employed by the district; or
- Specific circumstances prevent the district from gathering enough evidence to reach a determination on the formal complaint or its allegations.

If a complaint is dismissed, the decision-maker will send written notice of the dismissal and reason(s) therefor simultaneously to the parties

### **Questions**

Prior to issuing a written determination, the decision-maker(s) will afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. The decision-maker(s) must explain to the party proposing the questions any decision to exclude a question as not relevant.

### **Determinations**

Following the question-and-answer process and upon receipt of the investigative report, the decision-maker will issue a written determination. The decision-maker's written determination will address:

- The allegations,
- The procedural steps taken in the case at hand,
- The findings of fact,
- The applicability of code of conduct and local rules to the facts, and
- The result with corresponding rationale for each addressed allegation, including a determination of responsibility, disciplinary sanctions, and whether remedies to restore or preserve access will be provided.

### **Disciplinary Sanctions and Remedies**

If the district determines responsibility for sexual harassment, if the decision is not appealed, or if the appeal is dismissed, the district will impose disciplinary sanctions, which may include:

- Student respondents: consequences may include warning, reprimand, detention, in-school suspension, and suspension from school, to be imposed consistent with the district's Code of Conduct and applicable law;
- Employee respondents: consequences may include warning, reprimand, mandatory counseling, re-assignment, demotion, suspension, and termination, to be imposed consistent with all applicable contractual and statutory rights;
- Volunteer respondents: consequences may include warning, reprimand, loss of volunteer assignments, and removal from future volunteer opportunities; and
- Vendor respondents: consequences may include warning, removal from school property, denial of future

access to school property, and denial of future business with the district.

- Other individuals: consequences may include warning, removal from school property, and denial of future access to school property.

The Title IX Coordinator will facilitate the transfer of information and determinations from the Title IX complaint process to the appropriate administrator, to aid in the imposition of disciplinary consequences.

The district may also provide or facilitate remedies, which may include:

- Training of entire departments, classes, or groups;
- Peer support groups;
- Letters of apology;
- Separation of the parties;
- Additional supervision or mentoring for the respondent; and
- Restitution and restoration.

## **Appeals**

Following a decision-maker's written determination, either party may appeal the written determination or dismissal of the complaint.

An appeal must be submitted to the Title IX Coordinator within seven (7) calendar days of receipt of the determination or dismissal (as applicable) and must identify all information a party wishes to have considered on appeal. Any appeal statement will be shared with the other party, who will have two (2) calendar days to submit a response to the Title IX Coordinator. The appeal and any response will be considered by a decision-maker other than the decision-maker who issued the determination or dismissal that is being appealed.

Grounds for an appeal are limited to the following:

- Procedural irregularity that affected the outcome of the matter; and/or
- 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/or
- The Title IX Coordinator, investigator(s), or any decision-maker 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; and/or
- The sanction is inappropriate.

A decision responding to the written appeal will be issued to the parties and the Title IX Coordinator within thirty (30) calendar days.

### Cross-ref:

0100, Non-Discrimination and Equal Opportunity

0110.2, Sexual Harassment in the Workplace

0115, Student Harassment and Bullying Prevention and Intervention

5300, Code of Conduct

### Ref:

20 USC §§1681 et seq.

34 CFR Part 106

Adoption date: