

5145.5

4118.112

4218.112

## **Personnel -- Certified/Non-Certified**

### **Students**

#### **Sexual Harassment**

##### **Prohibition Against Sexual Harassment**

New Haven Board of Education (Board) prohibits sexual harassment including sexual assault in the District's education program or activities. Education program or activity includes locations, events, or circumstances over which the school exercises substantial control over both the respondent (alleged perpetrator of sexual harassment) and the context in which the sexual harassment occurs. In addition to occurring on school grounds, sexual harassment may potentially occur off campus, in places or situations where athletic and extracurricular activities occur, on field trips, on the school bus, at school-related conferences or through use of school technology.

The District shall respond to sexual harassment occurring in the District's education program or activities for which it has "actual knowledge." "**Actual knowledge**" means notice of sexual harassment or an allegation of sexual harassment brought to the attention of the Title IX Coordinator, any official of the school who has authority to institute corrective measures on the behalf of the school, as well as to any other employee of an elementary and secondary school.

Sexual harassment may take the form of student-on-student, employee-student, employee-employee, student-employee sexual harassment, or may be perpetrated against students or employees by third parties under the control of the District. Students who engage in proven sexual harassment may be subject to discipline, up to and including expulsion. Employees who engage in proven sexual harassment may be subject to disciplinary action, up to and including termination, as well as other action required under the law.

##### **Definition of Sexual Harassment for the Purposes of Title IX**

Sexual harassment is conduct on the basis of sex that satisfies one or more of the following:

- (i) A school employee conditioning an education benefit or service on participation in unwelcome sexual conduct (i.e., quid pro quo).
- (ii) Unwelcome conduct that a reasonable person would determine is so severe, pervasive and objectively offensive that it effectively denies a person equal access to the school's education program or activity.
- (iii) "Sexual assault" as defined in 20 U.S.C. 1092 (f)(6)(A)(v)(the Clery Act), "dating violence" as defined 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) (the Violence Against Women Act (VAWA)).

Examples of sexual harassment may include, but are not limited to:

- pressure for sexual activity
- repeated remarks with sexual or sexually demeaning implications
- unwelcome or inappropriate touching
- sexual assault
- suggesting or demanding sexual involvement accompanied by implied or explicit threats concerning a student's grades or academic standing or an employee's employment status
- telling lewd jokes or sharing stories about sexual experiences – even if not directed at you but done in your presence to cause you discomfort
- sending unwanted suggestive or lewd emails, letters or other communications or sharing images of a sexual nature around the workplace or displaying posters, items or screensavers of a sexual nature
- repeatedly asking for dates despite being rebuffed
- making sexually offensive gestures or facial expressions
- dating violence or stalking

### **Other Definitions**

**“Complainant”** is defined as a person who is alleged to be the victim of conduct that could constitute sexual harassment.

**“Respondent”** is defined as a person who is alleged to be the perpetrator of conduct that could constitute sexual harassment.

**“Supportive measures”** are defined as non-disciplinary, non-punitive, individualized services, offered as appropriate and without charge to a complainant or respondent before or after the filing of a formal complaint, or where no complaint has been filed.

### **Title IX Coordinator**

The Superintendent of Schools designates and authorizes Michelle Kelly-Baker to be the District's Title IX Coordinator. This individual shall be referred to as the Title IX Coordinator and is responsible for ensuring compliance across the school district with Title IX, corresponding state law, and applicable Board policy concerning sexual harassment.

Applicants for admission and employment, students, parents or legal guardians of elementary and secondary school students, employees, and all unions shall be notified of the name or title, office address, electronic mail address, and telephone number of the Title IX Coordinator.

The Title IX Coordinator's contact information shall be posted on the District's website and included in student and employee handbooks and published in other locations as deemed appropriate.

### **Reporting Sexual Harassment**

Any person, including, but not limited to, students, their parents or guardians, employees, bystanders or third parties (whether or not the person is the alleged victim), may report sexual harassment occurring in the District's education program or activities. Reporting may occur in person, by mail, by telephone or by electronic mail, using the contact information provided 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. Reports may be made at any time including during non-business hours.

A formal complaint is defined as a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against an individual and requesting that the school investigate the alleged sexual harassment. In an instance where the Title IX Coordinator signs the complaint, the Title IX Coordinator is not a party to the complaint nor is such action taken on behalf of the complainant.

The Title IX Coordinator will make forms available for both informal reports and formal complaints. Additionally, forms will be posted on the District's website. Informal reports are permissible and may be brought by any person. However, only a complainant and/or the District's Title IX Coordinator may file a formal complaint. All formal complaints will be investigated. Supportive measures shall be offered to a complainant with or without the filing of a formal complaint.

There is no time limit on a complainant's decision to file a formal complaint, but complainants are encouraged to promptly file or report incidents of sexual harassment.

### **Response Including Supportive Measures**

Any school employee with actual knowledge of sexual harassment shall promptly inform the District's Title IX Coordinator. The failure to do so may be grounds for disciplinary action.

Upon actual knowledge of sexual harassment occurring in the District's program or activity, the Title IX Coordinator will promptly contact the complainant to advise and discuss with the complainant (1) the availability of supportive measures with or without the filing of a formal complaint, (2) the right to file a formal complaint and (3) how to file a formal complaint.

A complainant as well as a respondent shall be offered free, individualized "supportive measures" (e.g., counseling, course related adjustments, modification of work or class schedules, escort services, increased security/monitoring of certain areas, mutual restrictions on contact between the parties) designed to restore or preserve equal access to education with or without a formal complaint. These, as well as other measures, may be part of a final remedy.

Upon the filing a formal complaint, the complainant will be provided with a copy of this policy and its grievance procedures.

Written notice shall be provided to the respondent and the complainant advising that a formal complaint has been filed. The respondent shall be entitled to a presumption that they are not responsible for sexual harassment. Both parties will be treated fairly throughout the investigation and shall be entitled to an unbiased investigator who has not prejudged the matter being investigated.

Complaints that fail to allege a violation of Title IX shall be dismissed without investigation. This does not preclude the school administration from investigating or addressing the underlying conduct under relevant codes of conduct or Board policy.

### **Emergency Removal/Administrative Leave**

An emergency removal of a respondent from the education program or activity is permissible provided that the District conducts an individualized safety and risk analysis and determines that emergency removal is necessary in order to protect a student or other individual from an immediate threat to physical health or safety and notice and an opportunity to challenge the decision is provided. This does not modify any rights under the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act (ADA).

An employee-respondent may be placed on administrative leave during the pendency of a grievance process.

### **Informal Resolution**

At any point in the formal complaint process, the Title IX Coordinator, in their discretion, may offer to facilitate an informal resolution option such as mediation or restorative justice.

Both parties must give voluntary, informed written consent.

Either party has a right to withdraw consent at any time, in which case the formal investigation shall proceed.

The informal resolution process shall not be available if the complainant/victim is a student and the respondent is an employee.

### **Grievance Procedures**

The District will promptly and thoroughly investigate all formal complaints of sexual harassment in accordance with established grievance procedures.

District grievance procedures shall be established in the form of a regulation accompanying this policy.

The grievance procedure shall be used for the reporting and investigation of, and response to formal complaint of sexual harassment in the District's education program and activities against a person in the United States.

The District's grievances procedures shall be designed to comply with the regulation under Title IX as promulgated by the U.S. Department of Education, as it may be amended from time to time. Among other required provisions, the grievance procedures shall establish standards for

fairness and equity, explain how to file a complaint, address required notice, set out timelines for various components of the investigation and adjudication process, establish and explain grounds for the dismissal of a complaint and provide and explain the appeal process available to both parties, include a presumption that the respondent is not responsible for sexual harassment, state the evidence standard to be used to determine responsibility, and require objective evaluation of all available evidence.

### **Training**

Training shall be provided to Title IX personnel in accordance with the regulation under Title IX as promulgated by the U.S. Department of Education, as it may be amended from time to time. Additional training may be provided to all school employees as deemed advisable.

Training materials used to train Title IX personnel shall be posted on the District's website.

### **Prohibition Against Retaliation**

Retaliation against any party, witness or other participant to the grievance process is prohibited. Retaliation may form a basis for a complaint under this policy. The charging of a person with a code of conduct violation based upon a person making a materially false statement in bad faith in an investigation is not considered retaliatory.

### **Dissemination, Posting and Discussion of Policy**

This policy along with its accompanying regulation/grievance procedure shall appear in the Student Handbook, be discussed with students at least annually and more often as needed, be posted in prominent and accessible locations in each school building and in the Board of Education offices and be published on the District's website along with the name/title and contact information for the Title IX Coordinator.

### **Record Keeping**

The District must keep records related to reports of alleged sexual harassment for a minimum of seven years, including investigation records, disciplinary sanctions, remedies, appeals, and records of any action taken, including supportive measures. Additionally, Districts must also keep for a minimum of seven years any materials used to train Title IX Coordinators, investigators, decision-makers, and any employee designed to facilitate an informal process.

### **Alternate Complaint Procedures**

In addition, or as an alternative to the filing of a sexual harassment complaint through the District's grievance procedure, a person may choose to file a complaint with the Office for Civil Rights of the United States Department of Education.

### **Statement of Protected Rights**

Application of this policy and its grievance procedure shall not be interpreted to restrict rights protected under the U.S. Constitution, including the right to free speech, to be free from self-incrimination and to due process of law.

Legal References: Connecticut General Statutes

10-15c Discrimination in public schools prohibited. School attendance by five-year-olds.

United States Constitution, Article XIV.

Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, et seq.

Title IX of the Education Amendments of 1972, 34 C.F.R. 106.1, et seq.

Title IX Regulation, 34 C.F.R. Part 106

20 U.S.C. 1092 (f)(6)(A)(v)

34 U.S.C. 12291 (a)(8), (a)(10), (a)(36)

Gebser v. Lago Vista Independent School District 524 U.S. 274 (1998)

Davis v. Monroe County Bd. Of Educ., 526 U.S. 629 (1999)

**Policy adopted: DATE**

NEW HAVEN PUBLIC SCHOOLS

New Haven, Connecticut