Administrative Rule

#### SEXUAL DISCRIMINATION, HARASSMENT, AND

#### RETALIATION (STUDENTS)

*Code* **JIAA-R** *Issued* **DRAFT/19**

The district has adopted the following procedures to promptly and fairly address reports of sexual discrimination, harassment, and/or retaliation.

**Definitions**

*Sexual discrimination* is defined as unfair, unjust, or prejudicial treatment of a person related to a person’s sex made by someone from or in the educational setting that results in the exclusion of a person from participation in, or denial of benefits of, any academic, extracurricular, or other educational program-related activity based on sex.

# *Sexual harassment* means unwelcome sexual advances, requests for sexual favors, sexually motivated physical conduct, or other verbal or physical conduct of a sexual nature under the following conditions:

* Submission to such conduct is made either expressly or implicitly a term or condition of a student’s education.
* Submission to or rejection of such conduct is used as a factor for educational decisions affecting a student, including, but not limited to, decisions affecting benefits, services, honors, educational programming, or other available activities.
* Such conduct or communication has the purpose or effect of substantially or unreasonably interfering with a student’s education or creating an intimidating, hostile, or offensive school environment.

Sexual harassment may include, but is not limited to, the following:

* sexually-oriented teasing, name-calling, abuse, or harassment
* unwelcome comments or conduct based on an individual’s gender identity or nonconformity with gender stereotypes
* graphic or written statements including, but not limited to, text messages, typed or hand-written notes, derogatory cartoons, drawings, posters, or graffiti
* inquiries into one’s sexual experiences or activities
* unwelcome touching including, but not limited to, pinching, patting, constant brushing against another’s body, or physical interference with movement or work
* remarks with sexual or demeaning implications

Note that such harassment does not have to be of a sexual nature and can include offensive remarks about a person’s sex, sexual orientation, and/or gender identity or expression.

Sexual harassment is prohibited against members of the same sex as well as against members of the opposite sex.

*Compliance officer* means the district staff member(s) designated to receive and investigate complaints of alleged unlawful sexual discrimination, harassment, and/or retaliation. Additionally, this individual is available during regular work hours to discuss concerns related to sexual discrimination, harassment, and/or retaliation, as well as to assist students, parents/legal guardians, and others in navigating the complaint resolution process.

The following individual(s) serve(s) as compliance officer(s) for the district:

*NAME, TITLE*

*ADDRESS*

*PHONE*

*EMAIL ADDRESS*

**Retaliation**

It is a separate and distinct violation of policy for any member of the district community to retaliate against any student who reports alleged sexual discrimination or harassment or against any student who testifies, assists, or participates in an investigation, proceeding, or hearing relating to such discrimination or harassment. It is possible that an individual may be found to have violated this anti-retaliation provision even if the underlying complaint of sexual discrimination or harassment is not found to be a violation of district policy. An individual is not allowed to do anything that would discourage a student from resisting or complaining about sexual discrimination or harassment. Retaliation includes, but is not limited to, any form of intimidation, reprisal, or harassment.

Students found to have engaged in retaliation will be subject to discipline and graduated consequences, up to and including expulsion consistent with policy JICDA, *Code of Conduct*.

Staff found to have engaged in retaliation may be subject to disciplinary action, up to and including termination.

**Reporting and Investigation**

Members of the district community, including, but not limited to, staff, parents/legal guardians, and students, are encouraged to promptly report incidents of sexual discrimination, harassment, and/or retaliation to the district compliance officer or building-level principal. Reports may be made orally or in writing. All reports not made directly to the compliance officer will be memorialized in writing and reported to the compliance officer within two (2) working days.

Reports of prohibited conduct should be made as soon as possible after the alleged act or knowledge of the alleged act. Failure to promptly report may impair the district’s ability to investigate and address the prohibited conduct.

Discriminatory, harassing, or retaliatory behavior perpetrated against a student by a staff member and/or violations of policy GBEBB, *Staff Conduct with Students*, should be reported immediately to both the district compliance officer and the superintendent. Informal complaint procedures will not be utilized to handle such complaints.

The parent/legal guardian of any student subject to sexual discrimination, harassment, or retaliation, or the student himself/herself if over the age of 18, may seek resolution through either the informal or formal procedures described below except as otherwise prohibited by this policy. When complaints involve two or more students, the parent/legal guardian of each student will be notified of and receive all correspondence related to such complaints.

*Informal complaint procedure (mediation)*

The district’s informal complaint procedure is designed to resolve complaints quickly, efficiently, and to the mutual satisfaction of all parties involved. Mediation is a voluntary process intended to allow the parties involved in a complaint to discuss their respective understandings of the incident with each other through the assistance of a trained mediator. Mediation is designed to encourage each person to be honest and direct with the other and to accept personal responsibility where appropriate. Where circumstances allow, and both parties agree to participate, mediation will be initiated as soon as possible and within five (5) school days of the date the respondent is informed of the allegations, absent any unusual circumstances.

Mediation is only available in those circumstances where the district believes that the allegations are appropriate for resolution through an informal process, and both parties voluntarily agree to participate. Mediation is not appropriate in certain cases, such as alleged sexual assaults, even on a voluntary basis.

Participation in mediation does not waive an individual’s right to participate in the formal complaint procedure or to pursue other remedies available at law, including the filing of a complaint with state or federal agencies, as appropriate. An individual may request suspension of the informal complaint procedure and initiation of the formal complaint procedure at any time.

Upon the consent of all parties to the complaint, the compliance officer will seek an outcome through mediation conducted by a qualified district mediator or an external professional engaged by the district. All parties to the complaint must mutually agree in writing upon any resolution reached through the mediation process. The outcome of the mediation will be documented and maintained by the compliance officer.

*Formal complaint procedure*

Within two (2) working days from the time a complaint becomes known, a written Sexual Discrimination, Harassment, and Retaliation Complaint Form will be completed and provided to the compliance officer. Forms for initiating a formal complaint may be found online as an exhibit to this administrative rule. Printed copies are available in all principals’ offices, the district office, and from the compliance officer. All formal complaints must include the following information, to the extent it is available:

* the identity of the individual believed to have engaged in discriminatory/harassing/retaliatory conduct (hereinafter “respondent”)
* the nature and date of the alleged violation
* a list of potential witnesses
* the resolution sought by the complainant

Upon receipt of the written complaint, the compliance officer will consider whether interim measures will be put in place during the investigation phase to protect the complainant from further sexual discrimination, harassment, or retaliation, including but not limited to, institution of a no contact order, a change of class assignment, etc. All individuals are required to report instances of another individual’s failure to abide by any restrictions imposed by an interim measure. The district will take necessary action to enforce previously implemented interim measures.

Formal investigation process

Within five (5) working days from receipt of the written Sexual Discrimination, Harassment, and Retaliation Complaint Form, the compliance officer or his/her designee will initiate a formal investigation to determine whether the complainant has been subjected to sexual discrimination, harassment, and/or retaliation. Simultaneously, the compliance officer will notify the respondent that a complaint has been filed and provide the respondent with a written summary of the allegations in the complaint, the date of the alleged incident, the names of all witnesses, the location where the alleged incident took place, and a copy of this policy and administrative rule. The respondent will also be notified that he/she has five (5) working days to submit a written response to the complaint. At minimum, he/she will be asked to respond in writing confirming or denying the facts as alleged and identifying any potential witnesses, documentation, or other evidence relevant to the allegation. The compliance officer will refer matters to law enforcement, as appropriate.

Once an investigation is initiated, it will be completed in a timely manner, ordinarily within *(option: twenty (20) working days)* of the complaint being received by the compliance officer.

*DRAFTER’S NOTE:* *The U.S. Department of Education’s Office of Civil Rights requires that districts designate and follow a “reasonably prompt time frame” for investigations. No specific time frames are provided by OCR, however, in a recent resolution agreement, they did not find fault with a FL school district’s 20-day time frame.*

The investigation may include:

* interviews with the complainant
* interviews with the respondent
* interviews with any other witnesses who may reasonably be expected to have any information relevant to the allegations
* consideration of any documentation or other evidence presented by the complainant, respondent, or any other witness which is reasonably believed to be relevant to the allegation

During the investigation all parties directly involved in the complaint may have representation. If any party elects to be represented at any step of the complaint procedure, the name of the representative must be provided, in writing, to the compliance officer within two (2) working days of the filing of the complaint form, notification of any investigation, or the filing of any appeal.

Throughout the course of the process, the compliance officer will keep the parties informed of the status of the investigation and answer any questions they may have about the complaint resolution process.

Investigation report

At the conclusion of the investigation, the compliance officer will prepare a written report which summarizes the evidence gathered during the investigation and includes a determination of whether the complainant has been subjected to sexual discrimination, harassment, and/or retaliation based on a preponderance of the evidence (i.e. it is more likely than not that sexual discrimination, harassment, and/or retaliation occurred) and provides recommendations based on the evidence and this finding. In determining whether alleged conduct constitutes a violation of district policy, the compliance officer will consider the surrounding circumstances, the nature of the behavior, the relationships between the parties involved, and the context in which the alleged incidents occurred. Whether a particular action or incident constitutes a violation of district policy requires a determination based on all of the facts and surrounding circumstances.

The compliance officer will meet individually with the complainant and respondent and will share his or her report, including conclusions of fact and proposed action(s). Within five (5) working days of receipt of the compliance officer’s report, the complainant or respondent may request, in writing, a review of the decision by the superintendent. If no review is requested, the proposed recommendations will be implemented, and the complaint will be deemed resolved. The results of the investigation will be kept on file and will document the disciplinary action taken, if any, as a result of the complaint.

**Appeal**

*Level one: appeal to superintendent*

If the complainant or respondent is not satisfied with the decision of the compliance officer, he/she may request a review by the superintendent. The request for appeal must be made in writing to the compliance officer within five (5) working days of receipt of the compliance officer’s decision. The appeal must include the original complaint form, a copy of the written decision, and a written statement as to the reason for appeal.

The superintendent will review the material submitted, if necessary; investigate the circumstances; and respond in writing within fourteen (14) working days of the appeal with a determination to uphold, modify, or reverse the decision. At the superintendent’s discretion, an additional investigation may be conducted, including interviews with the complainant, the respondent, and others who may have knowledge of the alleged incident(s) or circumstances giving rise to the complaint. The appeal may include review of additional documents and/or information deemed pertinent by the superintendent.

*Level two: appeal to the board*

Within five (5) working days of the receipt of the superintendent’s decision, if dissatisfied with the decision, the complainant or respondent must submit a written request for a hearing before the board to the compliance officer. Upon receipt of the request for review, the compliance officer must schedule an appeal hearing before the board to be held at the board’s next regular or special meeting, but in no event more than six (6) weeks from such request. The compliance officer will provide the board members with copies of all investigation reports, the compliance officer’s decision, the superintendent’s decision, and all related documents.

The hearing will be informal, and the legal rules of evidence and procedure will not apply. The complainant and respondent will be given an equal opportunity to submit written evidence and to bring witnesses before the board. The complainant and respondent will be permitted to make a statement before the board and may be permitted to examine their witnesses and to cross-examine witnesses presented by the other parties. The board may question any witnesses brought before it. The complainant and the respondent may be accompanied by representation, including legal counsel, at the hearing. While the complainant and respondent may not personally question or cross-examine each other during the hearing, they may do so through a representative.

The board will create and maintain a record of the hearing which will include the names of all witnesses, all investigation reports, a summary of all witness testimony, and all documentary evidence.

Within ten (10) working days of the hearing, the board will issue a final written decision. The board may concur with the findings of the superintendent and direct that the recommended actions be taken or may make alternate findings and, as appropriate, direct the superintendent or other appropriate administrator to take action. The decision of the board is final.

**Remedial Action**

The district will take remedial action as necessary to address and resolve any found incidents of sexual discrimination, harassment, and/or retaliation. Such remedial action may include, but is not limited to, provision of resources, including counseling to the respondent as a means to prevent recurrence of future sexual harassment; disciplinary sanctions; strategies to protect the victim and witnesses from retaliation; other steps to address any impact on the victim, witnesses, and the broader district community; and any other necessary steps reasonably calculated to prevent future occurrences.

**False Reports**

Because incidents of sexual discrimination, harassment, and retaliation frequently involve interactions between persons that are not witnessed by others, reports of such conduct cannot always be substantiated by additional evidence. Lack of corroborating evidence or “proof” should not discourage individuals from making a report under this policy. However, individuals who make reports that are later found to have been intentionally false or made maliciously without regard for truth may be subject to discipline and graduated consequences, up to and including expulsion consistent with policy JICDA, *Code of Conduct*. This provision does not apply to reports made in good faith, even if the facts alleged in the report cannot be substantiated by subsequent investigation.

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