


Board Policy JCAC: Sexual Harassment of Students 

Status: DRAFT - 1st
Reading

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REDLINE VERSION

Sexual Harassment of Students

The intent of this policy is to comply with the Title IX federal regulations concerning sexual harassment. To the extent that additional requirements are specified in federal law or regulations, the District shall comply with such requirements.

The District does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates, as required by Title IX and its regulations, including in admission and employment.

The District's nondiscrimination policy and grievance procedures can be located at:

Board Policy JAA

Reports, complaints or inquiries about conduct that may constitute sex discrimination under Title IX, may be referred to the District's Title IX Coordinator, the U.S. Department of Education's Office for Civil Rights, or both. The District's Title IX Coordinator can be reached at:

DeKalb County School District

Title IX Coordinator
1701 Mountain Industrial Blvd,
Stone Mountain, Georgia 30083
678-676-1200
titleixcoordinator@dekalbschoolsga.org

The grievance procedure is outlined in JCAC-R(1)

DEFINITIONS

For the purposes of this policy, the following definitions apply:

Complainant means:

- (1) A student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX or its regulations; or
- (2) A person other than a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX or its regulations and who was participating or attempting to participate in the recipient's education program or activity at the time of the alleged sex discrimination.

Complaint means an oral or written request to the recipient that objectively can be understood as a request for the recipient to investigate and make a determination about alleged discrimination under Title IX or its regulations.

Disciplinary sanctions are consequences imposed on a respondent following a determination under Title IX that the respondent violated the recipient's prohibition on sex discrimination.

Party means a complainant or respondent.

Relevant means related to the allegations of sex discrimination under investigation as part of these grievance procedures. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination occurred.

Remedies means measures provided, as appropriate, to a complainant or any other person the recipient identifies as having had their equal access to the recipient's education program or activity limited or denied by sex discrimination. These measures are provided to restore or preserve that person's access to the recipient's education program or activity after a recipient determines that sex discrimination occurred.

Respondent means a person who is alleged to have violated the recipient's prohibition on sex discrimination.

Retaliation means intimidation, threats, coercion, or discrimination against any person by the recipient, a student, or an employee or other person authorized by the recipient to provide aid, benefit, or service under the recipient's education program or activity, for the purpose of interfering with any right or privilege secured by Title IX or its regulations, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under the Title IX regulations.

Sex-based harassment is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex, including on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity, that is:

(1) Quid pro quo harassment. An employee, agent or other person authorized by the recipient to provide an aid, benefit, or service under the recipient's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct;

(2) Hostile environment harassment. Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

(i) The degree to which the conduct affected the complainant's ability to access the recipient's education program or activity;

(ii) The type, frequency, and duration of the conduct;

(iii) The parties' ages, roles within the recipient's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;

(iv) The location of the conduct and the context in which the conduct occurred; and

(v) Other sex-based harassment in the recipient's education program or activity; or

(3) Specific offenses.

(i) Sexual assault meaning an offense classified as a forcible or non-forcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation;

(ii) Dating violence meaning violence committed by a person:

(A) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(B) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(1) The length of the relationship;

(2) The type of relationship; and

(3) The frequency of interaction between the persons involved in the relationship;

(iii) Domestic violence meaning felony or misdemeanor crimes committed by a person who:

(A) Is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction of the recipient, or a person similarly situated to a spouse of the victim;

(B) Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;

(C) Shares a child in common with the victim; or

(D) Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction; or

(iv) Stalking meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(A) Fear for the person's safety or the safety of other; or

(B) Suffer substantial emotional distress.

Supportive measures are individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a complainant or respondent, not for punitive or disciplinary reasons, and without fee or charge to the complainant or respondent to:

(1) Restore or preserve that party's access to the recipient's education program or activity, including measures that are designed to protect the safety of the parties or the recipient's educational environment; or

(2) Provide support during the recipient's grievance procedures or during an informal resolution process.

DEFINITIONS

Actual Notice— Notice to of sexual harassment or allegations of sexual harassment to District's Title IX Coordinator or to any official or employee of the District. This notice requirement is not met when the only District official with actual knowledge is the respondent.

Advisor— person chosen by a party to assist with the complaint process.

Complainant— An individual who is alleged to be the victim of conduct that could constitute sexual harassment or retaliation for engaging in a protected activity. If the complainant is under the age of 18, the parent or legal guardian can file a complaint and act on behalf of the student.

Days – for the purpose of this policy means school days.

Deliberately Indifferent – means a response to sexual harassment that is clearly unreasonable in light of the known circumstances.

Formal Complaint – A document filed by a complainant or signed by a Title IX Coordinator alleging sexual harassment against a respondent and requesting the District conduct an investigation of the sexual harassment allegations. At the time of filing the formal complaint, a complainant must be participating in or attempting to participate in a District education program or activity. A formal complaint can be filed in person, by mail, or by electronic mail to the contact information listed for the Title IX Coordinator in the District's nondiscrimination notice posted on the District's website. For purposes of Board Policy GAEB and this Administrative Regulation a formal complaint must contain the complainant's physical or digital signature, or otherwise indicate that the complainant is the person filing the formal complaint. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not the complainant or otherwise a party under this Board Policy GAEB or this regulation. A formal complaint can be filed at any time including non-business hours, weekends or holidays.

Respondent – An individual who has been reported to be the perpetrator of the alleged conduct that could constitute sexual harassment or retaliation for engaging in a protected activity.

Sexual Harassment – Conduct on the basis of sex that satisfies one or more of the following:

1. An employee of the District conditioning the provision of a District aid, benefit, or service on an individual's participation in unwelcome sexual conduct; or
2. Any unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal access to the District's educational program or activity; or
3. "Sexual assault" – an offense classified as forcible or non-forcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation; or

———"Dating Violence" – sex-based violence committed by a person-

- A. who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- B. where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - i. The length of the relationship;
 - ii. The type of relationship;
 - iii. The frequency of interaction between the persons involved in the relationship; or

"Domestic Violence" – sex-based violence which includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction; or

"Sex-based Stalking" – engaging in a course of conduct directed at a specific person that would cause a reasonable person to-

- A. fear for his or her safety or the safety of others; or
- B. suffer substantial emotional distress.

School Program/Activity – This includes locations, events or circumstances where the district exercises substantial control over the respondent and the context where the sexual harassment occurred. Schools should respond when sexual harassment occurs in the school's education program or activity, against a person in the United States. Title IX applies to all District education programs or activities whether or not they occur in/on a district facility.

Supportive Measures – Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the District's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the District's educational environment, or deter sexual harassment and/or retaliation. Supportive measures may include, but are not limited to:

- 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 of the campus
- and other similar measures (See VAWA Section 304 for additional measures that may be considered)

The District shall maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the District to provide the supportive measures.

The District shall presume that the respondent is not responsible for the alleged conduct until a determination of responsibility is made at the conclusion of the grievance process. The grievance process will be followed before any imposition of disciplinary sanctions or other actions that are not supportive measures against the respondent.

The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

Standard of Evidence:

Preponderance of the Evidence – The evidence collected during the investigation must show it is more likely that not that the alleged conduct occurred.

GRIEVANCE PROCESS:

Reports or complaints made to the District regarding alleged sexual harassment in violation of Title IX shall be processed in accordance with the following process:

1. Reports or complaints may be verbal or written and may be made at any time (including during non-business hours) in person, by mail, by telephone, or by electronic mail using the contact information posted on the school and/or District website.
2. Any student, applicant for admission, or other person wishing to report or file a complaint alleging a violation as described above shall promptly notify either the principal at his/her school or the Title IX Coordinator designated and authorized by the District. Any employee who receives information alleging sexual harassment of a student shall report it to the principal or Title IX Coordinator. If the alleged offending individual is the principal, the report or complaint should be made by the complainant to the Title IX Coordinator.
3. The Title IX Coordinator or designee shall promptly contact the complainant to discuss the availability of supportive measures as defined in this policy, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint. The District shall treat complainants and respondents equitably by following this grievance process before punishing the respondent or providing remedies to the complainant. Remedies will be designed to restore or preserve equal access to the District's education program or activity. Such remedies may include the same individualized services described as "supportive measures." However, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent.
4. **Formal Complaint** – Upon receipt of a complaint, District will within 10 days send written notice to both parties to include:
 - a. District's grievance process, and
 - b. Notice of the allegations potentially constituting sexual harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known. The written notice shall include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process. The written notice shall inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence. The written notice shall inform the parties of any provision in the student code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance

process. The notice shall describe the range of or list the possible disciplinary sanctions and remedies that the District may implement following any determination of responsibility.

- c. If, in the course of an investigation, the District decides to investigate allegations about the complainant or respondent that are not included in the notice provided pursuant to paragraph (4)(B), the District shall provide notice of the additional allegations to the parties whose identities are known.

5. Dismissal of a Formal Complaint

The District shall investigate all allegations in the formal complaint. The District will dismiss allegations of conduct that do not meet the definition of sexual harassment or did not occur in a district education program or activity, or against a person in the United States. This dismissal will only apply to Title IX allegations. Such dismissal does not prohibit the District from addressing allegations under another provision of the District's policies.

The District, may also dismiss a formal complaint if:

- a. the complainant informs a Title IX Coordinator in writing of their wish to withdraw the formal complaint or any allegations therein;
- b. the respondent is no longer employed by the District; or
- c. there are circumstances preventing the District from gathering sufficient evidence to reach a determination regarding the allegations.

— The District will simultaneously provide parties with a written notice of dismissal including the reasons for the dismissal.

6. Consolidation of Formal Complaints

The District may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances. Where a grievance process involves more than one complainant or more than one respondent, references to the singular "party," "complainant," or "respondent" include the plural, as applicable.

7. Investigation of a Formal Complaint

After providing written notice to the parties of the receipt of a formal complaint, the District shall have 30 days to investigate. When investigating a formal _____ complaint, and throughout the grievance process, the District shall

- a. Assume the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility and not place such burdens on the parties provided that the District cannot 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;
- b. Provide both parties with an equal opportunity to present fact and expert witnesses and other inculpatory and exculpatory evidence, and an opportunity to fully review and respond to all evidence on the record;
- c. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;
- d. Provide the parties 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 either the 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;
- e. Send written notice of investigative interviews, meetings or hearings to the parties when their participation is expected including the date, time, location, participants, and the purpose of all investigative interviews or other meetings, with sufficient time for the party to prepare to participate;
- f. Provide parties, and their advisors, an opportunity to inspect and review any non-privileged evidence directly relating to the allegations, including the evidence which the District does not intend to rely 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 the conclusion of the investigation. Prior to completion of the investigative report, the District shall 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

should have at least 10 days to inspect, review, and submit a written response to evidence, which the investigator will consider prior to completion of the investigative report.

- g. District will send parties, and their advisors, an investigative report that fairly summarizes relevant evidence, in electronic or hard format, with at least 10 business days for the parties to respond. The parties may elect to waive the full 10 days. District may elect to respond in writing in the investigation report to the parties' submitted responses and/or to share the responses between the parties for additional responses. Relevant elements of the parties' written responses may be incorporated into the final investigation report, as well as any additional relevant evidence and necessary revisions. Rationales for any changes made after the review and comment period will be documented.
- h. Students shall cooperate with the investigation. Failure to do so may result in disciplinary action in accordance with the Student Code of Conduct.

If at any point in the investigation of reported sexual harassment of a student, the investigator determines that the reported harassment should more properly be termed abuse, the reported incident or situation shall be referred pursuant to the District protocol for child abuse investigation. Reported sexual harassment determined not to be sexual harassment as defined under Title IX may be investigated in accordance with Student Code of Conduct.

8. Questions

After the District has sent the investigative report to the parties and before reaching a determination regarding responsibility, the decision-maker(s) shall afford a 10 day period for each party to have 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 District shall not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege. The decision-maker(s) shall explain to the party proposing the questions any decision to exclude a question as not relevant.

9. **Determination Regarding Responsibility**—The decision maker, who cannot be the same person(s) as the Title IX Coordinator or investigator(s), shall, issue a written determination regarding responsibility within 10 days of the conclusion of the question and answer period. To reach this determination, the District shall apply the preponderance of the evidence standard to formal complaints against students, to formal complaints against employees and to all complaints of sexual harassment. The written determination shall include:

- a. Identification of all allegations potentially constituting sexual harassment as defined in this regulation;
- b. A description of the procedural steps taken from receipt of the formal complaint through the determination, including any notifications to the parties, interviews with the parties and witnesses, site visits, and methods used to gather other evidence;
- c. Findings of fact and conclusions about whether the alleged sexual harassment occurred; and
- d. The rationale for the result as to each allegation, any disciplinary sanctions imposed on the respondent and what, if any, remedies will be provided to the complainant.

————— This information will be sent simultaneously to both parties along with the appeal process. The Title IX Coordinator is responsible for the effective implementation of any remedies.

10. APPEALS PROCESS:

————— Appeals of the written determination or of a dismissal can be made by either party within 10 days after the decision on the following bases:

1. A procedural issue that affected the outcome;
2. Newly discovered information or evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome, or
3. Title IX Coordinator(s), investigator(s), or decision-maker(s) had a conflict of interest or bias that affected the outcome.

————— As to all appeals, the District shall:

- a. Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
- b. Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;
- c. Ensure that the decision-maker(s) for the appeal complies with the training standards set forth in this policy;
- d. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
- e. Issue a written decision describing the result of the appeal and the rationale for the result; and
- f. Provide the written decision simultaneously to both parties within 10 days of the receipt of appeal.

INFORMAL RESOLUTION

The informal resolution process allows the District the discretion to offer and facilitate an informal resolution process such as mediation or restorative justice so long as the parties provide voluntary, informed written consent to attempt informal resolution. Parties can only engage in the informal resolution process when a formal complaint is filed. The District cannot require parties to engage in the informal resolution process. Parties can withdraw the informal resolution process, and resume the investigation process regarding the formal complaint, at any time prior to reaching a resolution.

Informal resolution is unavailable for allegations of employee on student sexual harassment.

Prior to informal resolution, the District will:

1. Provide to the parties a written notice disclosing: The allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal 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, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;
2. Obtain the parties' voluntary, written consent to the informal resolution process.

RECORDKEEPING

1. The District shall maintain for a period of seven years records of—
 - A. Each sexual harassment investigation including any determination regarding responsibility, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the District's education program or activity;
 - B. Any appeal and the result therefrom;
 - C. Any informal resolution and the result therefrom; and
 - D. All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. The District shall make these training materials publicly available on its website, or if the District does not maintain a website, shall make these materials available upon request for inspection by members of the public.
 - i. For each response required under the District's process for responding to a sexual harassment formal complaint, the District shall create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the District shall document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the District's education program or activity. If the District does not provide a complainant with supportive measures, then the District shall document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the District in the future from providing additional explanations or detailing additional measures taken.

CONFIDENTIALITY:

The District shall keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by federal or state law or regulations, or to carry out a Title IX proceeding, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

RETALIATION PROHIBITED:

Parties exercising their rights under Title IX are engaging in protected activity. Retaliation is strictly prohibited. No school or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under Title IX.

Charging a party with code of conduct violations not involving sexual harassment but arising out of the same facts or circumstances reported in the formal complaint, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.

Complaints alleging retaliation may be filed according to grievance procedures specified in the Code of Student Conduct.

The exercise of rights protected under the First Amendment does not constitute retaliation.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding does not constitute retaliation, provided however that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

Retaliation allegations should be reported to the Title IX Coordinator at the school level for student investigations.

TIME FRAME:

The District shall allow for the temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. 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.

NOTICE:

The District is required by Title IX and its implementing regulations to notify employees, students, parents or legal guardians, applicants for admission and employment, and professional organizations holding professional agreements with the District that the District does not discriminate on the basis of sex in the operation of its education programs or activities, including admissions and employment.

Contact information for the District's Title IX Coordinator is located on its website and in all handbooks or catalogs that the District makes available to employees, students, parents or legal guardians, applicants for admission and employment, and professional organizations holding professional agreements with the District.

Inquiries about Title IX and its implementing regulations may be referred to the District's Title IX Coordinator, to the Assistant Secretary of the U.S. Department of Education, or both.

The Superintendent, or designated staff, are authorized to develop the regulations necessary to implement this policy.

Nothing in this policy is intended to create rights beyond those already created by federal and/or state law.

Supporting Links

FIRST READ ~ Amendment to the Bylaws & Policies: Proposed Board Policy JCAC, Sexual Harassment of Students - https://simbli.eboardsolutions.com/SB_Meetings/ViewMeeting.aspx?S=4054&MID=88982